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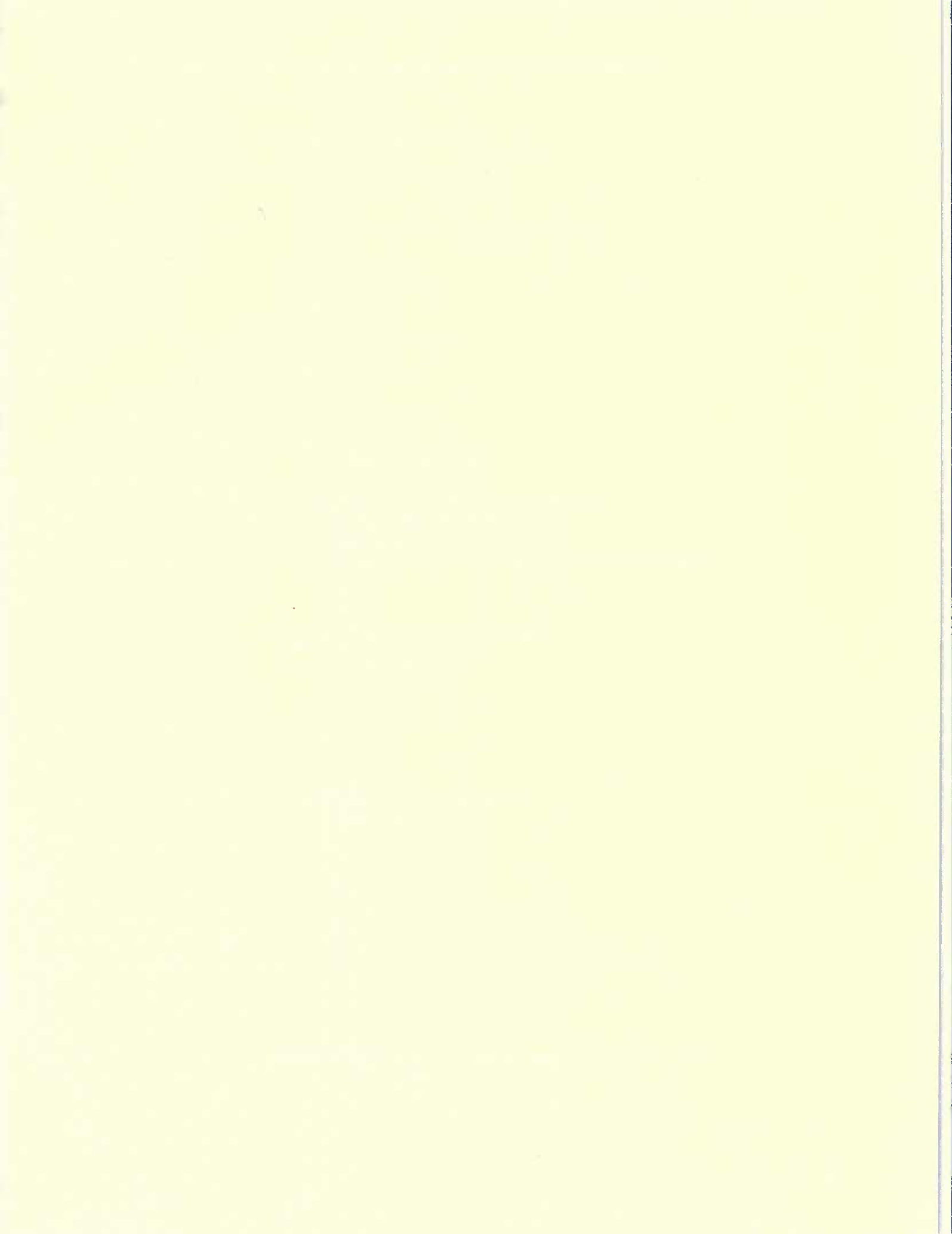
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Sierra Club History Committee Oral History Series

James W. Moorman

ATTORNEY FOR THE ENVIRONMENT, 1966-1981:  
CENTER FOR LAW AND SOCIAL POLICY,  
SIERRA CLUB LEGAL DEFENSE FUND,  
DEPARTMENT OF JUSTICE DIVISION OF LANDS AND NATURAL RESOURCES

An Interview Conducted by  
Ted Hudson  
1984

With an Introduction by  
Mike McCloskey

Sierra Club History Committee  
1994

Sierra Club History Committee Oral History Series

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James W. Moorman, 1992

*Photo by Dupont Photographers*





Cataloging information

Moorman, James W. (b. 1937)

Attorney, environmentalist

Attorney for the Environment, 1966-1981: Center for Law and Social Policy, Sierra Club Legal Defense Fund, Department of Justice Division of Lands and Natural Resources, 1994, vii, 168 pp.

Discusses family, education, and interest in environment; Sierra Club's Atlantic and Southeast chapters, 1960s; legal cases as attorney in Justice Department's Lands Division, 1966-1969; attorney for Center for Law and Social Policy, 1969-1971: early use of NEPA [National Environmental Policy Act] in environmental litigation, trans-Alaskan pipeline case, growth of field of environmental law; Sierra Club Legal Defense Fund executive director, 1971-1977: relationship with the club and its legislative program, litigation on wilderness, forestry, clean air issues, Admiralty Island timber sales; assistant attorney general for land and natural resources, 1977-1981: Attorney General Griffin Bell and other members of Carter administration, land acquisition, Indian rights, Alaskan land, toxic waste issues.

Introduction by Michael McCloskey, Sierra Club chairman

Interviewed 1984 by Ted Hudson, volunteer for the Sierra Club History Committee as part of the Sierra Club History Committee Oral History Series.



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PREFACE--Sierra Club Oral History Program to 1978

In fall 1969 and spring 1970 a self-appointed committee of Sierra Clubbers met several times to consider two vexing and related problems. The rapid membership growth of the club and its involvement in environmental issues on a national scale left neither time nor resources to document the club's internal and external history. Club records were stored in a number of locations and were inaccessible for research. Further, we were failing to take advantage of the relatively new technique of oral history by which the reminiscences of club leaders and members of long standing could be preserved.

The ad hoc committee's recommendation that a standing History Committee be established was approved by the Sierra Club Board of Directors in May 1970. That September the board designated The Bancroft Library of the University of California, Berkeley as the official repository of the club's archives. The large collection of records, photographs, and other memorabilia known as the "Sierra Club Papers" is thus permanently protected, and the Bancroft is preparing a catalog of these holdings which will be invaluable to students of the conservation movement.

The History Committee then focused its energies on how to develop a significant oral history program. A six-page questionnaire was mailed to members who had joined the club prior to 1931. More than half responded, enabling the committee to identify numerous older members as likely prospects for oral interviews. (Some had hiked with John Muir!) Other interviewees were selected from the ranks of club leadership over the past six decades.

Those committee members who volunteered as interviewers were trained in this discipline by Willa Baum, head of the Bancroft's Regional Oral History Office (ROHO) and a nationally recognized authority in this field. Further interviews have been completed in cooperation with university oral history classes at California State University, Fullerton; Columbia University, New York; and the University of California, Berkeley. Extensive interviews with major club leaders are most often conducted on a professional basis through the Regional Oral History Office.

Copies of the Sierra Club oral interviews are placed at The Bancroft Library, in the Department of Special Collections at UCLA, and at the club's Colby Library, and may be purchased at cost by club regional offices, chapters, and groups, as well as by other libraries, institutions, and interested individuals.



Our heartfelt gratitude for their help in making the Sierra Club Oral History Project a success goes to each interviewee and interviewer; to everyone who has written an introduction to an oral history; to the Sierra Club Board of Directors for its recognition of the long-term importance of this effort; to the Trustees of the Sierra Club Foundation for generously providing the necessary funding; to club and foundation staff, especially to Michael McCloskey, Denny Wilcher, Colburn Wilbur, and Nicholas Clinch; to Willa Baum and Susan Schrepfer of the Regional Oral History Office; and last but far from least, to the members of the History Committee, and particularly to Ann Lage, who has coordinated the oral history effort since 1974.

You are cordially invited to read and enjoy any or all of the oral histories in the Sierra Club series. By so doing you will learn much of the club's history which is available nowhere else, and of the fascinating careers and accomplishments of many outstanding club leaders and members.

Marshall H. Kuhn  
Chairman, History Committee  
1970-1978

May 1, 1977  
San Francisco  
(revised March, 1992, A.L.)



## The Sierra Club Oral History Program, 1978-1992

Inspired by the vision of its founder and first chairman, Marshall Kuhn, the Sierra Club History Committee continued to expand its oral history program following his death in 1978. In 1980, with five ROHO interviews completed or underway and thirty-five volunteer-conducted interviews available for research, the History Committee sought and received funding from the National Endowment for the Humanities for a major project focusing on the Sierra Club of the 1960s and 1970s. In a four-year period, NEH and matching Sierra Club funds made possible the completion of an additional seventeen major oral histories conducted by the Regional Oral History Office and forty-four volunteer-conducted interviews.

Oral histories produced during and following the NEH grant period have documented the leadership, programs, strategies, and ideals of the national Sierra Club as well as the club grassroots at the regional and chapter levels over the past thirty years. The work of the club is seen in all its variety--from education to litigation to legislative lobbying; from energy policy to urban issues to wilderness preservation; from California to the Carolinas to Alaska, and on the international scene.

The Sierra Club oral history program, together with the extensive Sierra Club papers and photographic collection in The Bancroft Library--a collection of 1325 linear feet of archival records, more than 34,000 photographs, and films, tapes, and Sierra Club publications, all recently processed and catalogued--help celebrate the Sierra Club centennial in 1992 by making accessible to researchers one hundred years of Sierra Club history.

Special thanks for the oral history project's later phase are due Maxine McCloskey, chair of the Sierra Club History Committee 1988-1992; Ray Lage, cochair, History Committee, 1978-1986; Susan Schrepfer, codirector of the NEH Sierra Club Documentation Project; members of the History Committee; and most importantly, the interviewees and interviewers for their unfailing cooperation.

Ann Lage, Coordinator  
Sierra Club Oral History Program  
Cochair, History Committee  
1978-1986

Berkeley, California  
March 1992



## INTRODUCTION--by Michael McCloskey

In looking back on Jim Moorman's career, one has to conclude that his was the dream of everyone who wants to be an environmental lawyer. What better career path can one envisage: he was there at the birth of environmental law in the U.S.; he brought pioneering cases, shaped the idea of public interest litigation, led the federal government's top environmental law shop, and became a respected practitioner.

He was at the right place at the right time, but he also had what it takes and made things happen. Sometimes opportunity came to him, but he also sought chances to do more. And he did a great deal for the Sierra Club as the first executive director of the Sierra Club Legal Defense Fund. I know because I was the executive director of the Sierra Club at that time and worked with him.

Jim came to this post from the Center for Law and Social Policy, where he had brought pathbreaking cases on DDT, wilderness, and the Alaska pipeline. The Center was one of the first to show the promise of environmental suits, and they were all filed by Jim. As a litigator, Jim showed ingenuity in finding handles where others saw none. He dug out surprising evidence, little known laws, and lined up persuasive witnesses. And he won cases.

We were lucky to get him, and he wanted to get the Sierra Club into litigating on a big-time basis. But he didn't want to bring political cases; he insisted that they have a credible legal basis. Soon he had doubled the budget and brought a talented crew of lawyers aboard. He worked out the ground rules for the Sierra Club's legal program and set up an administrative structure.

Jim didn't view the Sierra Club Legal Defense Fund as an institution with a destiny separate from the Sierra Club. He saw it as the Sierra Club's law office for conservation. He wanted to know and serve his clients (and he recognized that the Sierra Club owned the name). This was no problem since he had come out of the Sierra Club's volunteer ranks. He helped form the Southeast Chapter and served as its council delegate. He had offered ideas on how to organize the club's legal program. Jim liked to attend Sierra Club board of directors' meetings and visit activists in the field. He got along with almost everyone in the club. Club leaders trusted him, and he trusted them.

He couldn't have done more to set the right tone. The program quickly came to be respected and effective. Judges knew our cases were credible, and our track record became impressive. Lawyers sought to work for Sierra Club Legal. Cases were planned with strategic goals in mind. Jim carved a niche for the Sierra Club legal program as specializing in public lands

issues and endangered places. We avoided competing with other leading public interest firms working in this area, such as NRDC [Natural Resources Defense Council]. Jim had been a long-time friend of John Adams who headed NRDC. A cooperative relationship developed with them.

Jim had no desire to rule empires. After getting Sierra Club Legal on a firm footing, he returned to litigating for the Sierra Club, picking up the remanded Mineral King case and Admiralty Island litigation and the Redwood park case. He won the Monogahela forest case and helped counter backlash in Congress. While always the most fastidious of lawyers, he was equally adept in dealing with Congress.

All of this was too good to last. But for a while the public benefited as Jim went to work for the administration of President Jimmy Carter as assistant attorney general for the Division of Lands and Natural Resources in 1977. There he recused himself from all cases involving the Sierra Club and saw himself as a law officer for everyone. But he wanted their services to be adequate. He fought for more resources, tripling the budget, settling differences with EPA over lack of enforcement, and establishing new sections, such as for wildlife. While administering the division, which handled more cases than any other in Justice, he also handled some cases himself. For instance, he successfully defended challenges to President Carter's action in setting aside a clutch of new national monuments in Alaska.

Since 1981 as a private practitioner, Jim has continued to contribute positively to the development of this field, particularly as a member of the board of the Environmental Law Institute.

Many have entered this field, but few were in a position to do more to shape it in its formative stage and enjoy the thrill of victories few dreamed possible. We owe him a great deal--all Americans do. The land is in better condition because of what he did and productive institutions thrive because of the leadership he gave.

Michael McCloskey, Chairman  
Sierra Club

April 4, 1994  
Washington, D.C.



## INTERVIEW HISTORY--James W. Moorman

James Moorman was interviewed in January through April of 1984 as part of the Sierra Club History Committee's on-going program of oral history interviews with major club figures on the national and grassroots levels. Moorman's prominence as an founding figure in the field of environmental law and his service as the first executive director of the Sierra Club Legal Defense Fund made him a natural candidate for an oral history interview. When Potomac Chapter activist Ted Hudson volunteered to conduct the interviews for the History Committee, the project was underway.

Just as Moorman was an ideal interviewee (Ted Hudson recalls: "It was an easy interview; I just asked a question every hour or so, and let Jim talk into the tape machine.") Ted was a fortunate choice as his interviewer. A Sierra Club leader, he had just finished a term as chairman of the Potomac Chapter's executive committee. An attorney by education, he knew the federal government scene from his employment in the Division of Legislation and Regulatory Management of the Bureau of Land Management. A trained volunteer for the Sierra Club oral history project, he had earlier completed an interview with environmentalist George Alderson.

Although the taping of the interview was completed with dispatch, the turning of tapes into transcript into an edited, corrected, indexed, and bound volume has taken ten years. We are grateful for the initial editing by Janet Harris and for the time Jim Moorman put into his review and revision of the transcript. Moorman's concern in his revisions was to make the document historically accurate and understandable to the reader.

The final processing of the interview was completed by the staff of the Regional Oral History Office, a division of the Bancroft Library, University of California, Berkeley.

Ann Lage, Coordinator  
Sierra Club Oral History Project  
Sierra Club History Committee

Berkeley, California  
April 6, 1994





## SIERRA CLUB ORAL HISTORY PROJECT

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name JAMES WATT MOORMANDate of birth Nov. 22, 1937 Birthplace Pittsburgh, PA.Father's full name Lewis Lawrence MoormanOccupation Securities & Mutual Funds Birthplace Brandenburg KyMother's full name Lillian WattOccupation \_\_\_\_\_ Birthplace Bridge Port Conn.Your spouse Brenda Ann ThompsonYour children Lily Elizabeth ("Beth") MoormanWhere did you grow up? Cazenovia, N.Y. ; Greensboro, N.C., Rutherfordton, N.C.Present community Washington, D.C.Education A.B. - Duke University '59LL.B. - Duke University '62Occupation(s) AttorneyAreas of expertise Environmental LawOther interests or activities Hiking, Camping, birding,  
history (American)Organizations in which you are active over the years I wasActive in several environmental organizations.Am currently Co Chair of The American Alliance  
For Rights & Responsibilities



## I FAMILY, EDUCATION, AND INTRODUCTION TO THE SIERRA CLUB

[Interview 1: January 10, 1984]##<sup>1</sup>

### Family History

Hudson: This is Ted Hudson at the home of Jim Moorman. We're beginning the Sierra Club oral history interview. The date is January 10, 1984. I think I'll assume my harshest Mike Wallace pose and ask my first probing question.

Moorman: Just as long as it's not a Roger Mudd probing question.

Hudson: You've been a leader of the environmental movement for a long time, been inside the Carter administration, had access to the innermost secrets of the environmental movement and the Democratic party. How do you account for being christened James Watt Moorman?

Moorman: Ah! Well, my maternal grandfather was born in Scotland, as was my maternal grandmother, in the little town of Ferry Den on the East coast of Scotland between Dundee and Aberdeen. His name was James Watt. My mother, Lillian Watt, named me after her father. He enjoyed telling me of his early life as a seaman. As a young boy "Pa" Watt had been a cabin boy on a square rigger. He sailed the Cape of Good Hope twice. He sailed around Cape Horn in the winter. It was very rigorous service, four on, four off, and everything wet.

Hudson: Four on, four off?

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This symbol (##) indicates that a tape or a segment of tape has begun or ended. For a guide to the tapes, see page 163.

Moorman: Four hours on duty, four hours off duty around the clock. Everything on the ship wet. He told me of being in India as a young seaman. He remembered being on the docks of Charleston, S.C. and being asked by the American boys, because he spoke with a Scots accent, if he were a Yankee. One day Grandfather Watt jumped ship in Bridgeport, Connecticut. He then wrote home to Scotland for my grandmother. Pa Watt spent the rest of his life in Bridgeport where he had a job with the Customs Service. During Prohibition he was in charge of the whiskey seized from smugglers. As a result he became important in the politics of Bridgeport, because only he had access to the whiskey.

Pa told me that Scots ate their dessert first to make sure they got it and things like that. I only remember him after he had retired, when he played a lot of pinochle in the firehouse in Bridgeport.

Hudson: So there's no connection with the more recently notorious James Watt?

Moorman: The notorious James Gayus Watt? No, except I think he's also Scottish, and so he's probably a distant cousin of mine. Could be--who knows?

Hudson: So you came along in Pennsylvania?

Moorman: Well, I was born in Pennsylvania [November 22, 1937].

Hudson: Not in Connecticut?

Moorman: No. My father, Lewis Lawrence Moorman (known to his friends as L.L.), was in various aspects of the securities business most of his life. Dad and Mother were living in Pittsburgh when I happened along. Dad was a member of the Pittsburgh Stock Exchange. I don't have very many recollections of Pittsburgh, only the kind of flashes children remember from their first four or five years. My first comprehensive recollections are of Cazenovia, a small town in upstate New York near Syracuse.

Cazenovia is not a very big place. Dad worked for Standard & Poors in Syracuse. I've never known precisely what Standard & Poors is, except that it's securities-oriented. Among other things, it rates bonds for their comparative safety. Dad's office was in Syracuse, which is about twenty-five miles from Cazenovia. He worked there until the end of the Second World War, when we moved to North Carolina. By that time, he had left S&P and had become involved with mutual funds. He was a mutual fund wholesaler. That is to say he went around to the various brokers and dealers in the securities business to persuade them to sell his company's mutual funds. He had a territory which

covered most of the South: North Carolina through Texas. He travelled throughout that territory visiting dealers.

Hudson: Did you have an opportunity to see the world in that way? You started in school, I guess, when you were in North Carolina.

Moorman: I traveled with him a couple of times. My mother passed away when I was about twelve. A couple of times during the summertime, I took trips with him. I remember going to Atlanta with him and also going to Florida. Florida was his biggest state. Texas was another big state for him. I don't actually know why we lived in North Carolina. I wasn't very interested in Dad's business, or in securities. I have an older brother who went into the securities business.

Hudson: Do you consider yourself culturally a North Carolinian? It sounds more like that than upstate New York.

Moorman: Yes. I am a western North Carolinian, if that distinction means anything to you.

Hudson: As opposed to the eastern tidewater.

Moorman: Yes, the Piedmont and mountains as opposed to the coastal plains of North Carolina. We lived in Greensboro for three years after the war, and then we moved to Rutherfordton, which is over near Asheville. My wife, Brenda Ann Thompson, is also from Rutherfordton. I went to college and law school at Duke. I have few early ties other than with North Carolina, so I consider myself to be a North Carolinian.

#### Childhood Interest in Natural World

Hudson: You spent some time growing up in the Asheville area. That's a beautiful natural setting to live in. Did that have any influence on your later development in getting interested in conservation?

Moorman: I don't know the answer to that. I've never viewed western North Carolina as being particularly more attractive than other places. I don't think it's any more attractive than, say West Virginia, a comparable place, or New York State. How did I get interested in the natural world, the environment, and things like that? I'm not quite sure. I do know that I was very interested in the Boy Scouts. My father brought me a Boy Scout manual when I was still pre-Boy Scout age. I don't know whether he just did it on impulse--saw it somewhere and bought it on impulse--or whether he



had a specific idea or motive. I remember being fascinated by it, and becoming very much interested in the Boy Scouts. I became interested enough in the end to become an Eagle Scout, and to become a counselor at a Boy Scout summer camp in Tryon, North Carolina: Piedmont Boy Scout Camp.

Hudson: Was that part of the Schiele's Scout Reservation, I think it's called? They may have changed the name.

Moorman: Well, now that's very interesting.

Hudson: It was named "Schiele," I believe. Something like that. My college roommate was from Gastonia and was very big in Boy Scouts in that neighborhood. He talked about Schiele.

Moorman: Yes. The Schieles, husband and wife, ran the Piedmont Boy Scout Camp and the Piedmont Council of the Boy Scouts. Gastonia was the location of the Council's headquarters. The Schieles lived in Gastonia, which was about fifty miles east of Rutherfordton. I am under the impression that the Piedmont Scout Camp is now gone.

Hudson: It may be.

Moorman: It was not referred to as the "Schiele Center" at that time. Mr. Schiele, as we always called him, was a very strong personality. He was somewhat of an aloof person, but had tremendous respect. He had built quite a large camp--a camp which was different from most Boy Scout camps. I don't think he was greatly appreciated in the larger Boy Scouts of America organization. His camp had more elaborate physical facilities than most Boy Scout camps. Most are fairly crude affairs. His was not. He raised a lot of money and had a very fine facility. Being a counselor at the camp was considered to be an honor in the area. The positions were highly sought after. I considered being asked by the Schieles to be a counselor to be the equivalent of getting my Eagle Scout badge.

Hudson: I don't know which comes first.

Moorman: You had to be an Eagle Scout before the Schieles would ask you to be a counselor. He was a very strict disciplinarian. He would not tolerate any breach of his rules for the conduct of the camp. Let me give you an example. He hired advanced medical students to serve as summer camp "doctors." One night a camp doctor violated one of his rules by sneaking into Tryon for a date. Unhappily for him, he got caught and Mr. Schiele dismissed him on the spot. That was at about 2:00 in the morning. [Laughter]

Hudson: No severance pay.



Moorman: He was given an hour's reprieve. Schiele told him he couldn't stay on the premises any longer. He had had a responsibility to the boys, he'd breached that responsibility, and Schiele wouldn't tolerate him on the premises. It was absolutely necessary for him to gather his stuff together, get in his car, and be gone. That's the sort of fellow Schiele was. He was very big on "responsibility".

Hudson: You had a great exposure to that?

Moorman: You bet, and I would say that I had tremendous respect for him and greatly admired him.

Another aspect of the camp was interesting. Schiele's wife, Ruby, was very interested in Indian culture. They spent vacations in the Southwest, where she had sought out and assembled a wonderful collection of turquoise jewelry and things like that. Once a summer they would invite the counselors to a party at their bungalow and, as part of the ritual, she would show us her collection. Her pride and joy was her "spider web" turquoise. She would only wear the spider web two or three times during the summer, on the most special occasions. We put on an Indian pageant each week which she directed. The counselors and some of the scouts performed every Thursday night. It was well attended. It was held in an attractive little outdoor arena and people would come from all over the Council to see the pageant. I was a "feather" dancer. The pageant was based on Hiawatha. Mrs. Schiele made all the costumes herself. It was a tremendous amount of fun for all of us and we took it very seriously. Ruby's attitude was one of seriousness and reverence and we all picked that up.

Hudson: It sounds rather like private church camp or something like that. Like the one I attended, same idea with Indian pageants.

Moorman: More so than the average Boy Scout camp, yes. That's interesting that you have a friend who was involved.

Hudson: If the times are right, he may have been one of your campers. We were both class of '69 in college, class of '65 in high school. So, that's . . .

Moorman: I guess I was class of '55 in high school. I was a counselor there in the years '54, '55, '56, in that period of time.

Hudson: I don't know how young you are when you become a Boy Scout. I never was one myself.

Moorman: Twelve, and then they dropped the entrance age to eleven. I think I was sixteen when I first was a counselor. I was in

charge of the rifle range among other things. I did lifeguard duty and stuff like that. A close friend from Spindale (the boundaries of which run up against Rutherfordton), Newton McCormick, was also a counselor. He later became the camp doctor. (Newton was not the fellow discharged for sneaking out.) We bunked together and shared many activities.

Hudson: When I hear a name I'll be taking it down and you can correct my spelling.

Moorman: Sure. The typical campers came with their scout troops from around the Council. A troop would come for a week and stay in the camp's log and screen cabins. The camp also had some campers that stayed longer, independent of their home town troops. They were put together in the camp's own "service" troop. Service Troopers performed certain sub-counselor jobs, and acted as assistant counselors. I spent the large part of one summer as a member of the Service Troop before becoming a counselor.

Hudson: Project boys, in my camp. They'd go out and help build the trails and fix the bridges and that kind of thing.

Moorman: Help in the kitchen, and on weekends, when the regular campers were gone, we'd clean up, and do a variety of maintenance and repair chores. I had previously spent a summer at another camp, Camp Morehead on the coast of North Carolina near Morehead City. The emphasis was on sailing at Camp Morehead. I enjoyed Morehead and I loved the sailing. But, now that I think about it, Morehead was not my first camp. The first time I went to camp was when we lived in Greensboro, and that must have been, oh, about 1948. It was a YMCA camp somewhere near Greensboro. My mother had concerns about whether I would like it, so my folks only signed me up for one week. At the end of that week, I asked them if I could stay another week. I ended up staying three weeks in all. I enjoyed camp life and I think it was one thing that got me interested in the out-of-doors.

Also, I remember being interested in birds at an early age. I had a primitive bird guide, and at an early age could identify thirty or forty of the more common birds. Like a lot of the kids at that age, I also had a BB gun and sometimes used little birds for target practice. I had forgotten all about that until I was sitting here about a year ago talking to Bill Wyantt. Bill has an article in a recent Living Wilderness. He used to be a reporter for the St. Louis Post Dispatch. Bill asked me if I had been a BB gun brat. I said I had, and asked why he asked? He said, "Well, the connection is phenomenal. A large number of the kids who chase after birds with BB guns grow up to be bird watchers. It seems anomalous," he said, "but apparently is so." I said he could prove this point by me. He said he always asked

that question, and was amazed at how many times the answer comes up yes.

Anyway, I got to know what a ruby crowned kinglet and a golden crowned kinglet were at rather young age. And I have persisted in that interest. In fact, I did more serious birding in 1983 (last year) than I have in my entire life. I did something that I'd declined to do previously: I started compiling a bird list. And when I first made my list, I remembered seeing some of the birds I put on that first list over sights of a BB gun.

Hudson: If you ever shot any, did you go and retrieve the corpses and identify them?

Moorman: I'm afraid so. I'm afraid so.

Hudson: You're not yet, I suppose, one of these people that can see a speck over on the horizon and say, "Oh, that's a downy kingbird," or something. I've seen birders that . . . Well, they really impress you, I guess. Whether they actually know what they're talking about or not, they sound good. They can identify the bird by its flight and that sort of thing.

Moorman: Do you bird at all, Ted?

Hudson: I thought I might once upon a time, but I never really have seriously.

Moorman: Well, like many things, you get better at it the more you do it. As you do it, you begin intuitively to identify birds which you've previously examined. You get to know them, and you're able to identify some birds very quickly. When you're into it, there are a lot of birds that you see for just the briefest moment and you know what they are. Someone like Ken Berlin, who was section chief of the Wildlife Law Section at the Justice Department, and who has a life list in excess of 2,500 birds, walks through the woods and spots nineteen types of warblers and thirty-five other things in thirty minutes. On the same walk, I will identify only one-quarter of those birds.

Hudson: That sounds pretty good.

Moorman: Ken has done it so much that he just picks them right up. If you work at it long enough, you develop that knack. One of the things that interested me about birding is that no matter how much I do it, I continue to learn more and more about nature. It's an endless quest.

Education

Hudson: Getting back to career and development and that sort of thing. You finished high school in Rutherfordton and then went on to Duke. What did you study there? Pre-law, political science, history?

Moorman: I was a political science major. At Duke my environmental consciousness was a little odd. I was completely unaware of environmental organizations such as the Sierra Club. I knew vaguely about the Audubon Society, but I didn't really think of it in terms of an activist organization.

Hudson: Conservation work as opposed to outings and bird watching?

Moorman: Right. I remember that Boy Scouts had an award called the Hornaday Award for Conservation. I thought I would like to earn that award. I don't think I really understood what conservation was. To me at that time, it was improving game habitat and things like that. Anyway, I remember being something of a nut about billboards and finding them very distasteful, and also being disgusted about the insensitive development of a lake in a rather beautiful setting between Rutherfordton and Ashville called Lake Lure. People didn't seem to grasp that while they loved this lake, they didn't respect it. They thought it was beautiful, but they didn't understand that when they knocked off half a hillside to put in a house, they were destroying the thing that they liked. I didn't know anybody else who shared this concern with the degree of intensity that I did. I wondered if I was peculiar because this stuff bugged me emotionally. Nobody else seemed to mind. Why was I bothered by it?

Hudson: And now we know; we are peculiar!

Moorman: [Laughter] Well. . .

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Early Hikes

Moorman: While we're talking about early influences, there's another thing I want to mention. In Rutherfordton there was an older fellow named Jim Dockery. He was fourteen years old when I was eleven.

Hudson: I know him well.



Moorman: You know him well?

Hudson: If it's the same Jim Dockery.

Moorman: I know one Jim Dockery. He took a liking to me. When I was a eleven, he invited me to go on a hike. By Sierra Club standards it wasn't a great hike. We hiked down a dirt road to a bridge over Cathy's Creek and went swimming. We had our Boy Scout canteens. I thought it was a big deal. I got a big charge out of it and it certainly stimulated my interest in hiking. It's interesting to me that he has now become active in Sierra Club matters.

Hudson: You've apparently kept in touch with him?

Moorman: Yes. We don't communicate that often, but we do stay in occasional touch. He invited me down to talk to the [local Sierra Club] chapter a couple of years ago at a retreat in western North Carolina. As a young man, he suffered a near tragedy. He was working on a dude ranch in Wyoming and contracted polio. Certain muscles in the back of his legs just aren't there as a consequence. He loves the outdoors, but polio made it difficult to do everything that he would have liked to have done.

Moorman: Another person, by the way, from Rutherfordton, North Carolina, is Fred Anderson.

Hudson: Oh, really?

Moorman: Yes, Fred was . . .

Hudson: Fred of the Environmental Law Institute.

Moorman: Fred of the Environmental Law Institute.

Hudson: It sounds like a small town.

Moorman: It is a small town. About three thousand people.

### Practicing Law in New York City

Hudson: So after Duke, you stayed at Duke and went on to law school?

Moorman: Yes. I had been interested in becoming a lawyer ever since I participated in a bootlegging trial in Asheville as a witness. In those years I was not thinking about environmental affairs.

Environmental law didn't exist as we know it today. Duke had no courses in environmental or natural resources law. I was simply concentrating on law and being a law student. I took it very seriously. I was on the Board of Editors of the Duke Law Journal. Also, I married Brenda Thompson when I was in law school, and took that seriously. And I worked. So I was really busy with many things at that point.

Hudson: Let's pin down our time frame here. This was in the early 1960s?

Moorman: '59 through '62 were the years I was in law school. When I got out of law school, I solved the military requirements of those days by becoming a member of the North Carolina National Guard. I served for six months at Fort Jackson, South Carolina. Then I went to New York and interviewed law firms. I stayed with John Adams, a law school classmate and good friend. John Adams is the current executive director of the Natural Resources Defense Council.

Hudson: He's not a Boston Adams, I suppose.

Moorman: No, he's a Roscoe, New York, Adams. His parents immigrated from Northern Ireland. John's father, also named John, plays the bagpipes in an Orange Irish band to this day. Anyway, John had a lot more sense about how to get a job than I did. He went to New York after law school and got a job with Cadwalader, Wickersham & Taft--the firm I'm now with.

I didn't know what I wanted to do when I got out of the army or exactly where to go. So I went to see John and spent a couple weeks with him. John told me how to go around and interview the big New York firms. I wrote a resume and then he rewrote it, making it a much better resume. I got three or four offers and took a job with Davis, Polk & Wardwell.

Hudson: Did you have a National Guard commitment on weekends and that sort of thing after?

Moorman: I did, but when we lived in New York, the Army didn't have a slot for me, so I didn't participate the whole time Brenda and I lived in New York. For those three years, I didn't have to go. When we came to Washington in '66, I was placed in a reserve unit and went to reserve training weekends. A totally boring experience. At Fort Jackson, the Army was not boring. That six months was quite interesting. It was the typical boot camp experience that you see in movies, but interesting nevertheless. Army Reserve meetings in contrast were totally uninteresting. From what I could tell, the only purpose of the meetings was to keep the



organization together. You couldn't consider it serious soldiering.

Returning to New York, I didn't much like the city. I was not temperamentally suited for the life in Manhattan. It just is not an appropriate habitat from my perspective. I felt particularly deprived because of the lack of contact with the natural world. Brenda and I did a couple of things to correct that situation. One thing we did with John and Pat. John had recently become married to Patricia Smith who he had met at Duke. We decided we would like to find a house somewhere in the country. We didn't have any money, but we figured if we pooled our resources we could find a weekend place. We found a house in Beaverkill, New York, inside the Catskill Forest Reserve. You're probably familiar with the Adirondack Forest Reserve.

Hudson: I've never been there, but I know of it.

Moorman: Well, a lot of people aren't aware that there's a smaller, but juridically equivalent Catskill Forest Reserve. It's only about one-tenth of the size of the Adirondack Forest Reserve but it's much closer to New York, and it's really quite a fine place. The state of New York owns hundreds of thousands of acres in the Catskill Reserve. There are also many private properties within it that are quite lovely. The Beaverkill River, which rises in the Catskill Forest Reserve, is a beautiful river and a famous trout stream, among other things.

The Beaverkill has many trout fishing clubs along its banks. It's well preserved. Brenda and I still own that house. John and Pat now have another house within sight of ours. At the location of these houses, there used to be a real town. In the nineteenth century, the great Catskill hemlock forest was devastated by tanners. The hemlock wasn't sought for its lumber, but its bark, which was taken for tanning. The great logs were skinned and left to rot. They were visible for years like a great litter of huge bones. After that, there was an era of scattered dairy farms. With a second growth oak forest growing up, an acid industry arose. The hardwoods were cooked for acid, though I don't know exactly how they did it. Beaverkill also became a place where people vacationed. They rode the train up from New York to little vacation hotels in the summer. When John and I arrived, all of those things had more or less come to an end. Most of the old hotels on the beaverkill were falling in. The dairy farms had been mostly abandoned and were growing up. Here and there, a picturesque farm or a farmhouse remained. The town of Beaverkill, once a thriving town, was now five old, white clapboard houses, one tiny white Methodist church and a covered bridge.

Discovering the Sierra Club, 1964

Moorman: Sometime not too long after that I discovered the Sierra Club.

Hudson: How?

Moorman: I discovered the Sierra Club on Wall Street by looking through the window of the Doubleday Bookstore at 14 Wall Street, and seeing a Sierra Club book on display.

Hudson: Was it an Exhibit Format book?

Moorman: An Exhibit Format book; no question about it. One caught my eye. I went into the store, and I was absolutely enthralled by the book--absolutely enthralled.

Hudson: Do you remember which one it was?

Moorman: No. I don't remember which one it was, because they had more than one and I looked at them all. And the thing about the books which enthralled me--it hit me immediately--was a revelation to me: somebody was out there whose perspective on the world was the same as mine. They had done these books! The books said it all. One of Ansel Adams' books was there and one of Eliot Porter's books was there, probably In Wildness. I noticed that the publisher was the Sierra Club, so I inquired as to what the Sierra Club was.

Hudson: Right there in the bookstore?

Moorman: Well, I don't remember that detail, but I do remember observing that something called the Sierra Club was the book's publisher. I inquired and found out that there was a Sierra Club chapter in New York. I discovered David Sive and Stewart Ogilvy<sup>1</sup>--they were with the Atlantic Chapter of the Sierra Club. I guess it was love at first sight; I thought the club was the greatest thing. I was absolutely tickled that this Sierra Club existed. When I became aware that it was a group of turned on, dedicated people with a mission, I was overjoyed. Do you know David Sive?

Hudson: Yes.

Moorman: Well, Dave has one of those old houses in the Catskill Forest Reserve, a really wonderful place that I visited at this time

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<sup>1</sup>Sierra Club oral history interviewees. See series list.

with other Sierrans. You look across from his old farmhouse toward Barkaboom Mountain. It's a very nice place.

Hudson: I better check the spelling on that.

Moorman: I'm not sure I can spell Barkaboom. Do you know Stewart Ogilvy?

Hudson: I only know the name.

Moorman: Well, Stewart Ogilvy was very much involved in the Atlantic Chapter. I think he might have been the council rep. Dave was the chapter chairman. There were a couple of active members who had hiked the entire Appalachian Trail. I remember enjoying their stories. And I met George Alderson<sup>1</sup> at this period.

Hudson: He commuted up to New York for meetings?

Moorman: Yes.

Hudson: And then he would play in the marine band or whatever it was.

Moorman: No, it was the "Strolling Strings" of the air force.

Hudson: The air force?

Moorman: Right. I met George within a couple of months of joining the club. I'm sure he wouldn't have remembered me from this time. I was sitting in the back of the meeting. Ogilvy became very interested in Dave Brower<sup>2</sup>, and left the club when Friends of the Earth was formed. And David Sive, too, was very much involved with Brower and Friends of the Earth. Then Ogilvy did something else, and I lost track of him. I believe he worked for a foundation dealing with population problems.

Hudson: You joined the club in '64 or '65?

Moorman: Yes. In those days you had to have two members sign your membership application form, and Ogilvy and Sive signed my membership application.

Hudson: George told me that any application that came in without a name on it would be signed by David Brower. They were getting less exclusive in those days apparently.

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<sup>1</sup>Sierra Club oral history interviewee. See series list.

<sup>2</sup>Sierra Club Oral History interviewee. See series list.

- Moorman: I didn't know anything about Brower or the other leaders of the club. That there were arguments and disputes in the club was something I did not yet know about. I just thought the Sierra Club was terrific. Brenda and I went on some of their hikes and so we . . .
- Hudson: Did you plunge right into activism from the beginning of your membership, or did you just go on outings?
- Moorman: We went on the local outings. I didn't have much time for activism as a Davis, Polk associate, but Brenda had some time and started working for the Scenic Hudson Preservation Conference.
- Hudson: This sounds like the end of the sixties, when the Storm King case arose?
- Moorman: It was the Storm King dispute. This was in '65 or '66. She worked with Rod Vandever, who ran the conference. The Storm King dispute was the main environmental dispute of the chapter. I don't remember any others that the chapter was involved in at that time. We became aware of disputes involving other issues around the country, but we were only tangentially involved.

Another thing I remember about New York is discovering the Jamaica Bay Wildlife Refuge, right in the limits of New York City. What a wonderful place. A tremendous wildlife refuge. Brenda and I went there on Sundays to bird. I remember seeing my first snowy owl there. Brenda spotted it.

As you can see, living in the city developed my interests in the environment and made me appreciate it more. At this time, Brenda and I took a pilgrimage to New England to visit Acadia, Mount Katahdin, the White Mountains and places like that. I came to the conclusion that I didn't want to spend my life as a corporate lawyer on Wall Street. Davis, Polk was a very good law firm and the work was interesting, but not nearly as interesting as the environment. And, I didn't like living in New York. I didn't see any point to living on a shelf and commuting through a tube under the ground to another shelf. [Laughter] It just wasn't my cup of tea. I didn't like it, and Brenda didn't like it either.

I remember doing some securities work that took me to Chicago to visit clients and then from Chicago to Washington to file reports with the SEC. I remember thinking how grim and gray and dirty New York was, and how grim and gray Chicago was. But in Washington, there were tulips; it was green; the buildings were a reasonable height; there were trees; it was attractive. Why was I living in a place like New York? I could be living in Washington or some other reasonable habitat.

- Hudson: Eat your heart out Mayor Koch!



II ATTORNEY FOR THE DEPARTMENT OF JUSTICE LANDS DIVISION,  
1966-1969, AND SIERRA CLUB CHAPTER LEADER

Combining Vocation & Avocation##

Moorman: I began to wonder if there were any jobs where I could marry my interest in the environment with my profession as a lawyer. I consulted with David Sive.

Dave Sive came up with the idea. Dave had a friend named Eddie Weisel, Jr. Eddie had been a partner at another New York law firm, Simpson, Thatcher & Bartlett, but now had the job at the U.S. Justice Department as assistant attorney general in charge of the Land and Natural Resources Division. David Sive knew Eddie and had learned about the division. He told me it was the one place he knew of where a lawyer could practice law that had something to do with the environment.

Hudson: And have a chance of being on the right side.

Moorman: Yes, right. With his introduction, I made an appointment with Eddie Weisel, Jr., and I came down from New York to see him. In those days the Lands Division was staffed by career people, many of whom had been there for twenty or thirty years. Some had come to the division before the Second World War, gone off to war and were back. Eddie wanted some new blood. He thought the fellows in the division were set in their ways. He had already recruited two or three fellows of the type he wanted. One was Glen Taylor, currently a lawyer at Natomas Oil Company. The Lands Division was so different from the law firm that Eddie had come from he couldn't adjust. He was used to having young associates to form teams headed by more senior partners. That wasn't the way of the Lands Division at all. Each lawyer did his work alone. They tended to specialize and become efficient but, over time, narrow and inflexible. Eddie wanted a few younger, more flexible attorneys to team on complex cases.

Now I should point out that there was no EPA at this time. You had no Clean Air Act, Clean Water Act, none of the

environmental laws that we now have. The Interior Department's business was basically what the Lands Division did.

Hudson: Trial work. You were like the barrister for the Solicitor's Office of the Interior.

Moorman: Right. Interior's litigation. As a matter of fact, if you go to the Solicitor's Office in the Interior Department, you can see the names of all the solicitors on the wall. If you look closely, you will see that prior to 1913, they were not called "solicitor," they were called "assistant attorney general." The assistant attorney general was a Justice Department official assigned to the Interior Department. About 1913 they split the job and the Justice Department lost the solicitor's functions to the Interior Department.

The Lands Division sounded like a good spot for me, because it involved the natural resources agenda of the Interior Department. Eddie wanted me. I was from the same kind of firm he was from and he knew I could perform the role he wanted me to. He wanted three or four young people that could be used in a team fashion on big cases. So he offered me a job and I accepted.

Hudson: Was there an awareness of an environmental bias, shall I say, on his part? Was he aware of your interest in Sierra Club and that sort of thing?

Moorman: Maybe, but it really wouldn't have meant a whole lot to him. The Sierra Club was not yet the household name it is today. Eddie's principal outside interest was art. Art and politics. He knew the president very well. He had a picture of himself on his wall in a child's sailor suit. He was sitting on Lyndon Johnson's knee--Johnson's was in a naval officer's uniform. [Laughter] Eddie's father was very close to Johnson and Eddie's relation to the government was not the normal one. Eddie . . .

Hudson: Was he the assistant attorney general?

Moorman: Yes, he was the assistant attorney general. I was assigned to the General Litigation Section. I wanted the General Litigation Section because I wanted litigation and trial experience. The first three weeks I was there, however, I wasn't given anything to do. Not a thing.

The reason was because the general litigation section chief, David Warner, a wonderful man, was totally overworked. He had so much to do, he didn't have time to think about what he wanted me to do. It drove me crazy. I was excited and was eager to do something, but he gave me nothing to do. It was a funny feeling, especially after I had been at a place where the associates were



expected to work as hard as they possibly could and did. I spent long hours at Davis, Polk. I even had times when I literally worked around the clock. Getting home at 11:00 was not unusual. To go to work where someone would not give you something to do for three weeks was a shock. I had serious second thoughts about the division. I wondered whether I had just assigned myself to oblivion by taking a job there. Go with the Lands Division and never be heard from again. Holy cow!

### Western Water Law Cases

Moorman: Well, the job turned out to be a good one and the work turned out to be interesting. I got assigned to some water law cases. One case . . .

Hudson: Western water law?

Moorman: Oh, yes. The Carson River dispute was one of the most interesting. The Carson is a Nevada river. It rises in Alpine County, California, but runs most of its course in Nevada and ends in a sump in the Great Basin. The case was called the Alpine Land & Reservoir Company case, after the first name of the list of many Carson River water users sued by the United States. The case involved the adjudication of all the water rights on the Carson River from its sources in Alpine County, California, to its inland end point at the Stillwater Wildlife Refuge in Nevada.

Hudson: Since water is a state question, it sounds like you would be deciding this between two different states . . .

Moorman: No. It was not an equitable apportionment case between states. It was a general adjudication of the individual user's rights. There were a lot of federal interests. There was a federal reclamation project (the Newlands project) on the Carson. It was on the Carson, but also took a substantial amount of water via a very leaky canal from the Truckee River. There was an Indian Reservation at the end of the Truckee River, the Pyramid Lake Indian Reservation. Because the Bureau of Reclamation had built this canal to take water from the Truckee River to the Carson, Pyramid Lake was drying up.

Hudson: It still is.

Moorman: Yes. Well, the upstream users on the Carson River were at cross purpose with the federal government's needs for the Newlands Project. So you had two river systems, private irrigators, a federal irrigation project, a wildlife refuge below the Newlands

project and an Indian reservation. It was very complicated and rather old. The case had been going on since 1926. It was the oldest case not to go to final judgment in the federal courts.

Hudson: It still hasn't gone to judgment?

Moorman: I'm not sure what's happened as of today. There were ten years of trial in the thirties over the different water users' water rights, which resulted in an interim decree which was forgotten about during the Second World War. After the Second World War, the judge appointed a special master to come up with a proposed final decree. The special master, a man named Mueller, had his own idea of justice, and apparently nobody agreed with Mueller. The court then appointed a water master (not to be confused with the special master) to administer the parties' rights until a final judgment was entered. The water master administered the river on a live-and-let-live basis, and, for a while, nobody seemed to worry too much.

Then the Indians began to complain about the drop of the level of Pyramid Lake. The Indians wanted the Truckee River diversions stopped so Pyramid Lake could get more water. If the government stopped the Truckee diversions, the Newlands project on the Carson would dry up. Someone at the Interior Department decided that if the government could force the upstream users of the Carson to limit their use, then Newlands would not need Truckee River water. To achieve that, we had to finish up this ancient water adjudication on the Carson River. If the government could obtain a final decree that would tighten up the water use on the upper Carson, the water yielded could replace the Truckee River water for the Newlands project and the Truckee water could then go back to Pyramid Lake.

The upstream users on the Carson used a very inefficient flood irrigation method, and did not want to spend the money necessary to conserve water. The government had built an inefficient diversion from the Truckee River to the Carson for a government irrigation project. The government could have lined the canal and saved water, but it really wanted to abandon the canal and cut off all Truckee diversions. The government could also pay for efficient irrigation ditches for upstream users. That, however, would accomplish nothing but to give the upper users a windfall if they continued to have rights to the volumes they were using.

Hudson: It sounds like there were at least two different competing government interests there? The trustees for the Indians on the one hand and the reclamation folks on the other hand?

Moorman: Oh, sure, absolutely. Plus, you also have the Fish and Wildlife Service. They got the return flow from the Newlands project for the Stillwater wildlife refuge at the end of the Carson. It's a very interesting case, but, it presents an almost insoluble problem.

Hudson: So what does the government attorney do in such a case? Is he more of a catalyst or a judge really? Or are you advocating for one side?

Moorman: I was assigned to the case along with a more senior attorney, Henry Depping. I did the miscellaneous work necessary to advance the case. One of the things that I did was to determine whether the proposed decree that Mr. Mueller had put together in the fifties had any basis in the record of the ten years of trial in the thirties. The Justice Department had lost its copy of the record of the trial, so I had to go out to Carson City to the federal courthouse and review the court's copy of the record. I spent several weeks doing that. This was a record of ten years of trial, and I was attempting to compare the evidence in that record to the proposed rights given to the various landowners by Mueller in his proposed decree. I stayed on eastern standard time the whole time, because the casinos in Reno were open around the clock and I could eat there anytime. I would get up in the morning at 3:30 and go to a casino to have breakfast, read the paper and do miscellaneous things, get into the courthouse in Carson City at 7:30 a.m. and stay till 5 o'clock p.m. I would then go back to Reno, eat supper in a casino, and go to bed. I did that for about three weeks.

On Sundays when the courthouse was closed, I drove up the Carson to examine various aspects of the watershed I had only seen on maps. In Alpine County in California, I discovered Grover's Hot Springs. There was no one there. It was snowing ever so slightly. Steam was coming up from behind a fence. I peeked in and discovered the hot springs. There was no one in sight. I have never enjoyed a bath more.

Hudson: One of my office mates is from Nevada. His saying is, "There are folks in Nevada who have never seen their shadow by natural light." [Laughter]

Moorman: I found there to be little relation between the evidence and what Mueller proposed to give the upstream users. He was very generous, though apparently not generous enough to satisfy them. My overall impression was that he gave everyone about twice what they were entitled to. So I prepared objections to the so-called Mueller Report. These objections were a couple inches thick. When I left the Justice Department in 1968 or '69, they had not been filed. When I came back to the Justice Department in 1977



as assistant attorney general, a young lawyer came up to me and introduced himself as being the attorney then currently assigned to the Alpine case and asked me if I remembered the objections to the Mueller Report that I had prepared a decade earlier. When I said I remembered them, he said, "Well, you'll be interested to know that we filed those objections yesterday." [Laughter] So the Alpine case is a slow-moving saga, but a very interesting case.

Among the things I found interesting about the case were the hydrologists, the first I had met. The parties had all hired hydrologists. It was my first true natural resource allocation case. We all needed experts to persuade the court that our various plans for the river would accommodate the various interests. It was my first acquaintance with the use of environmental experts. The legal points were also interesting. I had to learn how western water law worked. We were met by all sorts of motions. We were even hit with a motion, after this case had been around for four decades, to dismiss the case for lack of jurisdiction because it involved an interstate river. And it is true that there is currently no basis for such a case in Federal District Court. The case was in the Nevada District Court, and there were Californian as well as Nevada water rights in the case, and there is no law on the books today that would allow you to file a case in Nevada to adjudicate water rights in California.

It took me some time to find the statute under which the case had originally been filed. After the First World War, Congress had given the federal courts nationwide jurisdiction for the purpose of prosecuting certain war profiteering frauds. For a period of about five years, the federal courts had nationwide jurisdiction for federal government claims. The federal government had taken advantage of this statute, which was written in generality, to file general water adjudication cases on several interstate rivers. There was even a Supreme Court decision involving another Nevada river which had held such jurisdiction appropriate. The opinion was by Justice Holmes, of all people: the Ricky Landing & Cattle Company case. Because the jurisdictional statute had expired long ago, that case was not indexed the way most precedents are and the research route to find it was not the normal one. When I turned up Holmes's opinion, I was astonished. In the end, it was a simple, easy argument, but it had been difficult to sort out.

Other Cases: Hydrological Benchmarks, Oyster Beds, Acreage Limitations, Water Rights

Moorman: The things that I was doing on the Alpine case were lawyer's tasks. But it was natural resource legal work and I loved it. I also had some of the acreage limitation cases under the . . .

Hudson: Reclamation law?

Moorman: Yes. I was involved in the Tulare Lake and the Imperial Valley cases. These were large acreage limitation cases. But I had smaller cases on other subjects that I liked a lot. I had a fascinating case involving a land dispute near Ukiah, California. The BLM had set aside a watershed--completely closed it off to any human intrusion--to establish a "Hydrological Benchmark." It was a program established by Luna Leopold, who was then chief hydrologist of the United States.

The idea of the hydrological benchmark program was to find places in the United States as undisturbed by man as possible to establish baseline data to measure the degree of disturbance of the hydrology of the rest of the country. The 14,000-acre watershed in my case was partially BLM Land and partially private land a fellow named Angelo had preserved. Angelo had given the government his half of the land on condition that it be included in this program and that no one be allowed to disturb the land.

When Angelo, the person who had given half of the watershed to the United States, said "not disturbed", he meant "not disturbed". The Geological Survey had placed a small instrument package on his former property to measure rainfall and all of that stuff. Angelo went berserk, and he went to court and got an injunction against the United States from entering onto this property, even though it was now the property of the United States. It's very unusual for a judge to enjoin the United States from going on its own property. We finally got the matter squared away, but it was sad. Angelo was distraught and over-reacting. The government really was administering the property in the spirit of his gift. The only thing they had done was put in one of these packages to measure rainfall, temperature and so forth.

Hudson: Yes, I know what you mean. He was trying to enforce the condition . . .

Moorman: Yes. In his mind, the most extreme, forever-wild covenant possible. No scientific instruments, no anything! [Laughter] I also remember this case because I got into a fight over it with David Golay, an assistant U.S. attorney in San Francisco. The

case was filed originally in the state court in Ukiah. I wanted to remove the case to the Federal District Court and then move to dismiss it. Golay thought we should try the case in the state court. I didn't see that there was any point to trying it. We had a fight. David Warner, the section chief agreed with me and the case was removed and dismissed. Dave Golay was still in his job as a Lands Division assistant U.S. attorney when I became assistant attorney general. We had patched up our little feud by that time and were cordial with each other.

I had a wonderful case involving oyster beds off the coast of North Carolina near Southport, which is almost to the South Carolina border. The Corps of Engineers had dumped dredge spoil over some oyster beds, and the watermen who owned the beds had sued for compensation. There is a statute, a federal statute, which is very solicitous of oyster beds. If you muck up someone's oyster bed, you have to pay the owners on a strict liability basis.

Hudson: By that you mean no negligence?

Moorman: No negligence. All you have to prove is causation.

Hudson: I'm asking that question for the benefit of non-lawyers.

Moorman: Sure, I understand. The Corps of Engineers wanted to fight these cases tooth and nail. Apparently the colonel in charge of the local district had let it be known that he didn't see any way he could maintain the Intercoastal Waterway if he had to be concerned about every damn oyster bed on the Atlantic Coast. [Laughter] I decided to do some on-scene investigating. So I went to Wilmington with my Corp of Engineers contact. We stayed in the Cape Fear Hotel. I also brought an oyster bed expert to the scene from the University of Mississippi, Dr. Gordon Gunter. Gunter had eyebrows like Mephistopheles and he limped and had a sinister look. So picture it! The civil servant from the corps, who struck me as a used car salesman type, Gunter, and myself. Then there was the lawyer for the oyster men and a couple of the oyster men. These oyster men, I have to tell you, looked great. I mean they were such sympathetic people. They just seemed like the salt of the earth, you know. One in particular. My gosh! And, as I said, my man from the Corps of Engineers looked like a used car salesman. He was tricky. I didn't think that I could trust him at all. I began to feel the case would be hard to win if we went to trial. But, my man from the corps didn't want to settle at all. He was under orders to fight.

So we all got into two small boats and went to sea. We went out through the marshes, out to where the oyster beds were. Finally after about 30 minutes, we arrive at the first oyster



bed, which was under water. Once there, Dr. Gunter takes up an oar. Then he strikes down through the water: thump, thump, thump, plunging the oar straight up and down in the water so he could feel the bottom. Then Gunter turns and says, "Take me to the other oyster bed." So we go over to the other oyster bed, and he does the same thing again. He takes his oar, puts it over the side of the boat, plunges it in the water, thump, thump, thump. He then turns to me and says, "Settle the case."  
[Laughter]

That night Gunter, the corps and I had supper and got a little drunk at the Cape Fear Hotel. I drew Gunter out on why he said to settle the case. Basically he was telling me that he could tell simply by what he did that there was spoil over oyster beds, that there were oyster beds underneath mud. And so I said to my man from the corps, "Our expert says, 'Settle the case.' We're going to settle the case and pay these water-men what their oyster beds are worth." There was hemming and hawing from the corps. He didn't want to settle. He was under orders not to settle.

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Moorman: I drew up the settlement memoranda required by Justice Department procedures and, after months of delay, finally got the corps to sign off. I informed the lawyer for the watermen what we were going to do. And I'll be doggone, if it still didn't take me six or seven months to get checks to those guys. It was the longest and most complicated procedure. For the corps, of course, it was a matter of principle; the money didn't mean anything to them. There wasn't much money involved. They just didn't want to pay for oyster beds.

I had another interesting case.

Hudson: Is that strict liability law still on the books?

Moorman: I think it might be. I don't know. I haven't had another oyster case. [Laughter] You know how the Corps of Engineers is. They're stubborn. When they don't like something, they resist it. It was my first brush with the corps.

I had another brush with the corps. It involved the fight over the acreage limitation at Tulare Lake. The dam involved, on the Kings River, was a Corps of Engineers dam. Congress had allowed the corps to build the dam instead of the Bureau of Reclamation, but had specified that Reclamation Law would apply. It was a bad deal for the Bureau of Reclamation, because they didn't get to build or operate a dam, but they were stuck with

enforcing this law they didn't much like, the acreage limitation law applying to the agricultural users of irrigation water.

To enforce the limitation, Justice had sued the water users at the Bureau's request. The Corps of Engineers didn't like the suit. I tried to get the records that the corps had on the dam, for purposes of the law suit. The corps told me that the records had been sent to a federal records center, but they had lost the index which indicated where they had been sent so they couldn't retrieve the records. It was baloney, but they never gave me a thing, not a thing. If I had been on the other side of the case, through court discovery procedures, I could have forced the corps to go dig out the records and give them to me. But since I was in the government, there wasn't a thing I could do to make the corps cooperate.

Our "client" was the Interior Department, the Bureau of Reclamation. The corps wasn't the least bit interested in reclamation law. The corps resented the fact that Congress had applied reclamation law to a corps dam, and didn't want to cooperate in the least, and didn't. I find acreage limitation interesting, because it is a resource allocation system. When I arrived on the scene, though, the system was in serious decay. Political pressure had largely undone the integrity of acreage limitation over the years. The chance that these cases, promoted by Stewart Udall, the secretary of interior, could revive acreage limitations was not great. We gave it our best shot.

Another case I was involved in involved the adjudication of water rights in Colorado. It was the Eagle County case.

One of the notable reserved water rights cases is the Eagle County case, which went to the Supreme Court of the U.S. I was out of the Justice Department when it went to the U.S. Supreme Court. But I argued it in the Supreme Court of Colorado and before that in the State District Court in Eagle, Colorado, which was a lot of fun. I used to go to Denver, fly over to Eagle on something called Aspen Airlines.

Hudson: It still is Aspen Airlines. I flew it this summer.

Moorman: They'll land you at Eagle if you want to land there, which is down the road a bit from Vail. People oftentimes land at Eagle, rent a car and drive up to Vail. I was one of the few people who didn't want to go to Vail; I just wanted to go to Eagle. I enjoyed flying over the Rockies, and seeing the Gore Range and the other ranges. We landed on a huge airfield in Eagle, with nothing there but a trailer. Apparently the FAA built the Eagle field as an emergency landing strip.

At that time Eddie Weisel, Jr. was no longer the assistant attorney general in charge of the Lands Division. The assistant attorney general was by then a man named Clyde O. Martz.

Clyde had replaced Eddie who had moved over to become the assistant attorney general for the Civil Division. In Eagle I was trying to get water rights for the U.S. Forest Service. As I introduced myself, Judge Luby looked me in the eye and said, "Mr. Moorman, I've looked at your brief, and I see another name on the cover beside yours." I said, "Yes, sir." The Judge said, "It's the name of Mr. Clyde Martz." I said, "Yes, sir." He said, "Do you know Mr. Clyde Martz?" I said, "Yes, sir. He's my superior. He's the assistant attorney general for Land and Natural Resources." He said, "Did you know that Mr. Martz is from Colorado?" I said, "Yes, sir." He said, "Did you know that he was once the court administrator for the state court system here in Colorado?" I said, "I didn't know that, your Honor." He said, "Then you probably didn't know that he once made me go to Denver and try cases, did you Mr. Moorman?" I said, gulp, "No, I didn't know that, your Honor." [Laughter] He said, "Hmm." He didn't say another word to me and, of course, he didn't give me a single thing. I don't think he would have ruled for me in any event, but what a stroke of bad luck for him to have a grudge against my boss.

I also used to go to Breckenridge, Colorado, on one of these water rights cases. Breckenridge was interesting to me because I could see the horrible effects of the old mining dredges on the valley there. I also had a case in Leadville. I did something foolish on one of those trips. Instead of flying, one time I drove over the mountains from Denver to Eagle. On the way back I stopped at a trailhead high up in the mountains. It was about 4:00 in the afternoon. I pulled off at a parking lot where there was a Forest Service trail sign, and took a little stroll up the trail. The Rockies there are so wonderful: the evergreen trees and the meadows and one thing or another. I strolled around for a while, and then, all of a sudden, I was surrounded by fog. I didn't have on anything but a short sleeve shirt. All at once, it was really quite chilly, quite cold, and it was drizzling rain, and I couldn't see. I realized that I had to be very careful, pick up the trail and get back down to my car. I eventually got back to my car. Back at my hotel in Denver I bought a guidebook to the Rockies in the hotel shop. The first page told of hikers who died of exposure in the Rockies after wandering up a trail with improper clothing and equipment about 4:00 in the afternoon. [Laughter]

Since then I have become involved with the Sierra Club and I have gotten into hiking in the West and all of that, and learned how to do it. At that point I didn't know anything about the western



scene. Despite Judge Luby and foolish hikes, I was having a very good time in the Lands Division working on all those western resource cases.

Southeast Chapter of Sierra Club

[Interview 2: February 2, 1984]##

Hudson: Let's turn to the Sierra Club part of your history. Were you involved in creating the Southeast Chapter of the club?

Moorman: Yes. When I came to Washington to work for the Lands Division, I, of course, had already become involved in the Sierra Club in New York. As we discussed last time, I had met David Sive and Stewart Ogilvy and others. So when I came to Washington, I made it a point to look George Alderson up and become involved in Sierra Club activities here in the Washington area. I also met Lloyd Tupling<sup>1</sup> and Bob Waldrop. Both Bob Waldrop and Lloyd Tupling worked for the club here in the Washington office. They were different types. Bob was a young fellow and an outstanding canoeist. He used to canoe through Little Falls periodically. He later moved to Alaska, where he's spent a lot of time wandering around in the wilds and did a lot of mountain climbing. Lloyd was a classical Capitol Hill type. He used to work for the Neuberger's [Senators Robert and Maurine] and really understood the Hill. Both were extremely nice people, but very different. Bob had a capacity to get people interested in the club through out-of-doors activities. He frequently led hikes and other outings, which were always very interesting. He was also a bit of a loner, and I think shepherding a lot of duffers around, up and down the hills, sometimes grated on him. Lloyd was an extremely patient and able lobbyist and knew how to help someone follow an issue on the Hill.

There were a lot of local issues at the time. One we were working on at the time was the Potomac National River. Bob Waldrop had pointed out that the Potomac was the least dammed of any of the eastern rivers. The South Branch of the Potomac and its tributaries in particular have many wonderful canoeing streams. The Potomac National River never came into being, but it was one of our pet projects at that time.

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<sup>1</sup>Sierra Club oral history interviewee. See series list.

Another thing that I became interested in at the time was the West Virginia Highlands. Bob Waldrop introduced me to the West Virginia Highlands Conservancy. Brenda and I visited a house he had rented at Mouth-of-Seneca, West Virginia, right under Seneca Rocks. You had to cross over the North Fork of the South Branch on a swinging bridge to get to the house. Bob and others introduced me to the Dolly Sods, which everybody wanted as a wilderness area, and to Otter Creek and other great West Virginia places.

Another person who was instrumental in forming the Southeast Chapter and who was also a West Virginia Highlands fan was Helen McGinnis. Did George mention Helen?

Hudson: I don't believe so.

Moorman: Helen worked across the street from the Justice Department at the Smithsonian Institute. She had a Volkswagen Beetle rigged so she could sleep in it. The right seat was removed and replaced with a bed board. She used to spend enormous amounts of time in West Virginia. She prepared the maps that we still use for the Dolly Sods, Otter Creek, and some other areas. Helen was part of the local Sierra Club, as was George and myself. Tony Ruckel was another person who was in town at that time. He was also one of the founders of the local chapter. I was instantly drawn to Tony because of his spirit and wit. And there was Margaret Spaetz, who was at the Interior Department in some capacity. I lost touch with Margaret Spaetz years ago.

At this time, at an annual barbecue of the West Virginia Highlands Conservancy at Mouth-of-Seneca, I renewed my acquaintanceship with Fred Anderson. Fred is currently a professor of environmental law at the University of Utah. Prior to that, was for ten years the editor of the Environmental Law Reporter and president of the Environmental Law Institute. He happens also to be from my hometown of Rutherfordton, North Carolina. The same town that Jimmy Dockery is from. At the time of the barbecue, I had not seen Fred in over a decade. He had been off to Oxford on a Marshall scholarship and had been to Harvard and done a variety of other things. He happened to be driving through West Virginia that day and noticed that there was a barbecue in progress. He investigated and ran smack-dab into me!

Thereafter, Fred also became involved in the activities of the West Virginia Highlands Conservancy. Later he was a collaborator with me on a case involving the Otter Creek Area.

Hudson: Excuse me. I just wonder if I can be heard there. You were working for the Justice Department at this time in the Lands Division.

Moorman: Yes.

Hudson: And you mentioned Margaret Spaetz being in the Interior Department. Were there problems with conflicts of interest in doing conservation work for the Sierra Club or the Highlands Conservancy? Did you feel anything like that?

Moorman: I didn't really, because we were doing pretty low level stuff. We weren't involved in any lawsuits. Our lobbying efforts were amateurish. A lot of time was spent holding meetings with one another and making contacts with the national Sierra Club, trying to get the national Sierra Club interested in our issues, and things of this nature. Occasionally we became involved in a national issue. When the redwoods campaign was underway, I learned that a key congressman was from my home district in western North Carolina. He was chairman of the Parks Subcommittee of the House Interior and Insular Affairs Committee.

Hudson: Who was that?

Moorman: That was Roy Taylor. He wanted to be in charge of the Parks Subcommittee because the Great Smoky Mountains National Park was in his district.

Hudson: Roughly what year was this then? Track it down that way.

Moorman: Oh, we're talking about 1967 or 1968--sometime right in there when the Redwoods National Park issue was hot. During the course of the campaign, the Senate had passed a very good redwoods park bill. The House bill about to be reported out of Taylor's subcommittee was an awful bill--just an awful bill. And of course, it was all the doing of Wayne Aspinall. [Chairman of the Interior and Insular Affairs Committee and Congressman from Colorado].

I told Lloyd Tupling my hometown was in Taylor's district and asked Lloyd if I should get an appointment with him. Tupling said, "Yes, why don't you try it?" So I called up his office, said I was Jim Moorman from Rutherfordton, North Carolina, that I was in town--which was true--and I would like to drop in and see the congressman. They said all right, to come on up that afternoon about 3:00. I'm sure the congressman didn't get very many visitors in Washington from his district, and I'm sure he met every one of them. As I sat in the congressman's waiting room, the mailman came in with a huge pile of mail. One of the secretaries said, "What do you guess this is?" And another one



said, "I know. More junk mail on redwoods." The tones of voice were exaggerated mock disgust. It was clear the attitude in the office on redwoods was not so good.

Finally the congressman could see me. I said I was from Rutherfordton. I mentioned my father-in-law, who was someone whose name I thought he might know, and he said it was. And he said, "Well, now, what's on your mind, Mr. Moorman?" And I said, "Redwoods." And he said, "Redwoods!" like he couldn't believe it. I was probably the only person from his district that had ever shown up in his office that had any interest in redwoods. I said, "I understand that there is a bill in your subcommittee on the Redwoods National Park." He said, "That's right." And I said, "I also understand it's a very poor bill. It doesn't have much acreage in it, and it's much worse than the Senate bill." And I said, "I'm not very happy about that, congressman."

And he started talking. He said he was very interested in parks. He talked about "the Glacier," something about Glacier National Park, and then about a proposed Northern Cascades National Park bill. And he talked about the Grand Canyon. And he talked about this and that; every park he had visited. Finally I said, "That's very interesting, but I'm really only interested in the redwoods." And then he said, "Well, you know, legislation's a very complicated thing. Our Chairman"--and by "our Chairman" he was referring to Wayne Aspinall--"wants us to come out with a somewhat spare bill for purposes of negotiation with the Senate." He had finally spoken the truth, ugly as it was.

Then I said, "I don't really understand that at all. All I can tell you is this, sir: those trees have been around since the birth of Christ. You're from a very religious district. I don't think it would go over too well in your district if the voters realized that you had let the only living things left on the planet from the age of Christ be mowed down." I thought he was going to faint and fall out of his chair.

Hudson: It sounds like a threat.

Moorman: Probably a very dumb one. I said we were amateurish. Anyway, I thanked him for his time and left. I thought to myself, I really overdid it. I got carried away. So I went around and told Lloyd Tupling what I had said, and he howled. He said, "It was good for him to hear from someone from his district who felt strongly about the redwoods, and you probably said the only thing that would have made an impression on him." I didn't tell anybody at the Justice Department I had done this, and I didn't tell anybody in the congressman's office that I worked at the Justice

Department. That was the one time I did something I thought might not be appropriate.

Hudson: It makes me feel better because I do the same thing, working for Interior.

### West Virginia Highlands Conservancy

Moorman: Well, what else did I do in those days? Brenda and I spent a lot of time on the West Virginia Highlands.

Hudson: Why don't you explain what the West Virginia Highlands Conservancy was?

Moorman: The West Virginia Highlands Conservancy was a local organization concerned with northeastern West Virginia. It was concerned with the creation of the Spruce Knob-Seneca Rock Recreation Area. Also the Dolly Sods and the Otter Creek de facto wilderness areas. The Conservancy was also concerned with issues like the Allegheny Scenic Parkway, planned to be another Blue Ridge Parkway, proposed to run right down Cabin Mountain, one of the best places in the whole area. It was made up of four groups of people: There were local highlanders,, there was a group from Pittsburgh, loosely associated with the Pittsburgh Climbers. I remember one Pittsburgher in particular, Sayre Rodman. Then there were us folks from Washington, and last there were the Izaak Walton Leaguers from all over West Virginia.

We used to have meetings at places like Mouth-of-Seneca or, in the winter, at the lodge at Blackwater Falls State Park. It was hairy driving to get over there in the winter, but we always had a very good time. The Izaak Walton League people were very colorful. The Izaak Walton League is a strong organization in West Virginia. They were led by Grover "Zip" Little. He lobbied the West Virginia legislature to abolish strip mining. He was just a terrific fellow, full of...Zip, which was a wonderful nickname for him. Zip and a sidekick named Keith--great big, heavy fellow--Keith Pooser, used to regale us with stories about the West Virginia legislature. It was there that I learned, for example, that the speaker of the West Virginia House once gave bonuses to his staff after one session in the form of Cadillacs. Apparently strip mining issues were lucrative for those with their hands out.

So we had the Izaak Walton League people, the Pittsburgh Climbers, the Washington crowd, who were mostly Sierra Clubbers, and the local folks. It was an awfully nice group of people.

Hudson: Was their function typical conservancy function: raising funds to buy land? Or were they more into lobbying and political action?

Moorman: It was more like the Sierra Club. It was an issues lobbying group. They were lobbying for the Spruce Knob-Seneca Rocks Recreation Area, lobbying for the wilderness areas and one thing or another. They published reports on the Dolly Sods with maps and so forth. It was a group which was principally concerned with conservation issues. It was not a land-acquiring outfit like the Nature Conservancy.

At this time I met Rupe [Rupert] Cutler for the first time. Rupe Cutler was working for the Wilderness Society. I met him on Spruce Knob at a Conservancy outing.

Witnessing the Brower Controversy as Southeast Chapter Council Representative, 1968-1969##

Moorman: At this time, Ted, we also organized the Southeast Chapter of the Sierra Club. George Alderson was anxious that we have our own chapter. The Atlantic Chapter was huge, covering almost everything in the East. We decided to break off everything from Maryland south. My guess is that the original executive committee of the Chapter was George, Tony Ruckel, myself, Helen McGinnis, and Margaret Spaetz. Those are the names which come to mind.

I was elected the first council rep of the Southeast Chapter, which delighted me. I thought that was far and away the best position, because it meant I could go to San Francisco and rub elbows with the leaders of the Sierra Club. But I didn't know what I was getting into. I didn't know much about the fights that were going on at the center of the Sierra Club at that time between David Brower and Dr. [Edgar] Wayburn<sup>1</sup> and others.

Hudson: This was about 1969 or '70?

Moorman: No, this would be 1968, I believe. I hadn't yet left the Justice Department. I went to two Board/Council meetings, and I have to tell you, I was very upset by them. The first one I went to was at Clair Tappaan Lodge. They held the meeting on the lawn. And

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<sup>1</sup>Sierra Club oral history interviewee. See series list.



it was a vicious meeting. I can still remember the intensity of it. I particularly remember Will Siri<sup>1</sup>. He was in a ski suit and looked very dramatic. Brower was quiet through the whole thing. He was the eye of the storm. A lot of people said things which were very emotional and, to me, upsetting, because this was not what I was interested in at all. It was distressing to find this going on. I remember in particular Jeff Ingram, the club's Southwest representative. Jeff criticized one of the board members in public, in front of all of the other board members and all in attendance, for throwing trash in the Colorado River. I thought that was a vicious thing to say and no way to carry on a debate, but I only use it as an example. The fact that Ingram would say something like that in that meeting indicates just how upset everybody was.

But the meeting wasn't a total loss. I did "rub elbows" and met many people I was very pleased to meet. For example, I met Doug Scott<sup>2</sup> for the first time at that meeting. Phil Berry<sup>3</sup>, in particular, went out of his way to make me feel at home. He took me aside and asked me if I would be on a lawyers' committee he was putting together. A lot was going on, and I felt flattered that Phil went out of his way to pay some attention to me in the midst of the battle. I also did some chapter business. I made a presentation about the Potomac National River.

Hudson: Had Phil Berry been president of the club before that time?

Moorman: No, no. Dr. Wayburn was currently president of the Sierra Club.

Hudson: I know Phil had been president off and on.

Moorman: No, Phil had not yet become president of the Sierra Club. He was the next president. He was to be elected president at the next election. He was on the verge of becoming president.

Gary Torre was a lawyer at Lillick, McHose & Charles. He was the club's counsel in its fight with the post office and the IRS over tax exemptions. Torre was terribly upset. There had been a fight between Dr. Wayburn and Torre on the one hand, and Dave Brower on the other hand, as to strategy with regard to tax and postal exemptions. Torre's strategy was to portray the club's lobbying activities and legislative activities to diminish their importance in percentage terms to create the impression

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<sup>1</sup>Sierra Club oral history interviewee. See series list.

<sup>2</sup>Sierra Club oral history interviewee. See series list.

<sup>3</sup>Sierra Club oral history interviewee. See series list.

that they were not very significant in relation to total club activities. On the other side, Dave Brower wanted to throw the club's lobbying in the government's teeth. He didn't want to get the club into a position where it would be forced to moderate its lobbying activities in order to preserve tax exemptions. He wanted to fight on the principal that the club was entitled to exemptions despite its activity.

Well, Wayburn, the club's president, backed Torre. He apparently had sent Torre to Washington with instructions to make a presentation to the government minimizing the lobbying activities. When he finished his presentation, the lawyer from the government said something like: "This is a very interesting presentation you have made, Mr. Torre, but have you been in touch with Mr. Brower?" And Torre replies, "No, why?" And the government attorney says, "Well, I was on the phone with him an hour ago, and he said just the opposite of what you have told me." This is generally how it was related to me by others at the meeting. Anyway, Torre was indignant and complained at the meeting. That was just one of the many fights that was going on at this time. But they almost all related to David Brower's conduct as executive director and whether he was carrying out the will of the board and the clubs' elected officers. The Torre story illustrates the nature of the dispute. I'm sure insiders have set it forth more accurately. I never was privy to or bothered to learn the details.

What struck me was the intensity of the emotion at the meeting. The way people were treating each other was the way people treat each other who had once been extremely close and fond of one another and had fallen out. To an outsider it was irrational. I couldn't understand initially why everyone was so heated.

One person I met who seemed unperturbed was Tom Turner<sup>1</sup> who then worked as an assistant to Dave and who later became editor of Not Man Apart at FOE [Friends of the Earth]. His girlfriend, Trish Saar, however, was militantly involved. They went out of their way for some reason to make me feel at home. Trish came back to D.C. about a month later and stayed with Brenda and me. She worked very hard to convert us to the Brower viewpoint, and, I guess, was successful in her subversion.

I went one more time to a board/council meeting and took Brenda with me. It was so exotic, I just couldn't let her miss it. In between I had talked to some people and became a bit of a Brower partisan. The meeting was at the Palace Hotel on Market

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<sup>1</sup>Sierra Club oral history interviewee. See series list.



Street, the one with the Garden Court dining room--the beautiful room with the glass ceiling.

Hudson: Down near the Ferry Building?

Moorman: On Market where Post comes into Market.

Hudson: The club had a banquet there, I think, last year.

Moorman: It was the meeting at which Dave Brower was fired. A lot of people in the East were Brower advocates at that time. Certainly David Sive was and Ogilvy. George Alderson was. I spoke in favor of Dave and the books program, which was one of the subjects of controversy.

An interesting thing happened at that meeting. The San Francisco Examiner had on its front page that afternoon pictures of a fallen redwood, a tree which had a tunnel carved in it for cars to go through in Sequoia or Kings Canyon National Park. They had two photographs on the front page. One was a picture of the tree standing, an old photograph, and then the recent picture of it, fallen. The headline was "A Fallen Giant." Ansel Adams<sup>1</sup> called a group of us over to him and said, "This is very interesting." He said, "You see this photograph of the tree standing?" He held it up and everybody looked and said, "Yes." "I took that photograph. That's one of my photographs." And he says, "And do you see a person standing there by the tree that you can't make out who it is?" And there was a small blurry figure next to the tree. Then Adams said, "That is David Brower." He had just been fired, and the irony was immediately apparent to Ansel Adams. Adams, of course, had voted to fire Dave.

Hudson: So there were the two factions: Adams on one side and Brower on the other. But that's a very simplistic understanding of what really was going on.

Moorman: Yes. I think that they were behaving like people in a family who were mad at each other and could not be reconciled. In the emotional context, it was inevitable that Brower would have to go. I don't really want to spend much time talking about the Brower thing, because I wasn't a player. I witnessed the end, and I did say something at the time, and what I said I felt strongly at the time.

Having later observed all the personalities for a number of years, I believe the breakup was inevitable. I do think that

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<sup>1</sup>Sierra Club oral history interviewee. See series list.

Dave Brower's leadership qualities had a lot to do with making the club a national organization. But those leadership qualities were not the qualities of a politician. As a consequence, he had a hard time knowing how to deal with the various miscellaneous power centers that develop in any organization. A politician, someone like Franklin Roosevelt, knows how to deal with the barons of the Senate--people who are important to his party even though he might disagree with them in many regards. Dave didn't have that quality. He just didn't know how to get along with those he didn't agree with. Dave had the capacity to inspire people and get them quite excited.

Because Dave Brower couldn't build from his base in the Sierra Club the result was that the environmental movement was leaderless. As far as the public is concerned, the environmental movement has never had a national spokesman like Ralph Nader or Jesse Jackson. It has just advanced on a broad front with lots of organizations, but with no spokesman which everyone knows--environmentalists and non-environmentalists--as the spokesman of the entire movement. Brower is the one person that could have been that national spokesperson.

Hudson: That's an interesting approach. But then we wouldn't have had a Friends of the Earth.

Moorman: The Sierra Club would have been both the Sierra Club and Friends of the Earth. I think Friends of the Earth has been an important organization. I think, for example, it has done more to spread the environmental movement beyond the shores of our country than any other organization.

At the time, my reaction to the fight was disgust. I came back to Washington, and at the next meeting of the Executive Committee of the Southeast Chapter, I resigned. I said that the fight going on in San Francisco upset me; I thought it was counter-productive; I didn't like it, and I just was not going to remain an active member. I was simply withdrawing. And I did. I withdrew from any active involvement in the Sierra Club at that point.

Hudson: Even social activities and outings and that sort of thing?

Moorman: I may have gone on an outing or two--local outings--but I had simply dropped out of anything else involving the Sierra Club. I never gave up my membership and had no intention of doing so. But I had had it with involvement. I just didn't like it. The contention was just distressing.

Transition from Johnson to Nixon Administration in the Lands Division

Moorman: At this point I also wanted to leave the Justice Department, so I began to look for a job.

Hudson: Is this the Johnson-Nixon transition?

Moorman: Yes. I was in the Lands Division for about six months after Nixon came in. The assistant attorney general at that time-- Clyde Martz, whom I mentioned earlier--left and went back to Colorado. [Attorney General] John Mitchell filled, on the day he came in, every post in the Department of Justice except assistant attorney general for the Lands Division. Apparently, he had forgotten about the Lands Division. The day before he arrived, Mitchell called Martz and asked him if he would stay for an interim stint. Martz told him had he been given some lead time he might have considered it, but he had sold his house, had sent his family back to Denver, had an airplane ticket to Denver for the next day and was leaving. [Laughter] He said, "I suggest you appoint Glen Taylor as acting assistant attorney general."

Glen Taylor is currently an attorney with Natomas Oil Company. He is a very fine lawyer and a good liberal Democrat. He had gone to the University of Colorado Law School and had been involved in the formation of the Rocky Mountain Mineral Law Foundation. He liked me, and there wasn't any problem under Glen of not having good cases or anything like that, but the atmosphere in the Department of Justice was not too good. For example, I had to go up to [Richard] Kleindienst's office and explain in detail what the acreage limitation cases were all about. That made me very uncomfortable.

Hudson: Kleindienst was...

Moorman: Not to Kleindienst personally. Kleindienst was then the deputy attorney general. I reported to a young fellow in Kleindienst's office. It might have been John Dean. I've tried to remember if it was John Dean. If not Dean, himself, it was a John Dean type. And while he didn't tell me to do anything or not do anything, it didn't take an idiot to know that the landowners had complained about the cases and that Republicans were getting themselves fully briefed. I had never been asked to go to the deputy attorney general's office for anything ever before. I never hobnobbed with anyone above assistant attorney general prior to that. It made me feel very uncomfortable.

One day when we were having lunch, Glen told me the same thing. He had to go up and explain a water pollution case



involving Lake Superior and taconite tailings. This was a case where a steel company was dumping tons and tons of taconite tailings into Lake Superior. There was a big fight about the dumping that had gone on for years, and it was one of the few pollution control cases that we had in the Department of Justice at that time. I asked Glen, "What did they tell you to do?" He said, "It was very indirect, but the message was unmistakable that they sure would like this case to go away." Zingo!

One day they appointed Shiro Kashiwa, a real estate lawyer from Hawaii and former attorney general of Hawaii, as assistant attorney general for lands. Shiro Kashiwa is presently on the Court of Claims. He was Senator Fong's protégé. He was a very pleasant man. I liked him. But he really did not have any experience or background with the Land Division's work, nor any understanding about western resources law.

An embarrassing moment for me came when Mr. Kashiwa called me into his office and asked me if I had read an article which had appeared in the New York Times about Indian (mainly Navajo) water rights on the Colorado River. I had read the article, had noted it, because I was involved in water rights cases. Kashiwa knew I was involved in water litigation. He looked at me and he said something I'll never forget. He said, "Jim, who do they think they are? They're just Indians!" I thought, Oh boy, what have we got here? Well, he went on about it, and it eventually became clear to me that there was nothing malicious in what he was saying. He just didn't understand that the Indians had long-standing property rights to water in the Colorado River. He didn't know these kinds of rights existed. He thought the tribe was making some kind of political grab.

Hudson: That sounds like a strange statement from a Japanese American who probably went through all sorts of persecution himself.

Moorman: I don't really know whether he suffered persecution. Certainly when I knew him, he did not seem like a victim. He appeared to be a very successful and self-confident attorney, not so different from any other American.

Anyway, Kashiwa was a very conservative, patriotic fellow. After expressing his dismay over the Navajos, he began to talk to me about all sorts of things. He had been to Ocean City, Maryland, and he was not impressed by the quality of the development there. It wasn't up to the likes of Waikiki Beach. He shook his head about that. He talked to me a lot about condominium developments. And he then asked me if I knew Senator Fong and told me a lot about Senator Fong, and said such things as: "Senator Fong will bring East and West together."

I sat in his office that morning for about an hour and a half. Mr. Kashiwa is a nice man, and I invited him to come to my swearing in when I became assistant attorney general, and I was very pleased that he came. But his mind was so far away from what I perceived to be the mission of the Lands Division that I knew it wasn't going to be fun for me any more. So I decided to look for a job.



### III AT THE CENTER FOR LAW AND SOCIAL POLICY, 1969-1971

#### Origins of the Center

Moorman: One of the places I sought a job was in the office of Senator Sam Erwin; I'm from North Carolina. I didn't get a job with Sam, although I got an interview with him. I've often wondered if I had gotten that job whether I would have been involved in the Watergate hearings. Anyway, while looking around, I let some people know that I was looking for a job. One day I received a call to tell me that something called the Center for Law and Social Policy was being organized. The Center was being organized by Charles Halpern, who was an associate at Arnold & Porter, and by Bruce Terris. Bruce Terris is still a practitioner here in town. Bruce was also chairman of the D.C. Democratic Party. He's a fairly prominent environmental lawyer. Also, Geoffrey Cowan was involved with organizing the center.

Charlie was the spark plug of the Center. Charlie is currently the dean of the new law school at Queen's College, the law school of the City College of New York that was just organized. This is their first year. Charlie had the idea for a public interest law firm. The idea was to get a grant from the Ford Foundation or other foundation and provide legal services for citizen movements and groups which were essentially without legal services in the fields of consumer, media, health, and environmental affairs.

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Moorman: Charlie had handled a number of mental health cases. Geoffrey Cowan was interested in media issues, like the fairness doctrine. Bruce Terris wanted do the consumer stuff. They were looking for someone to do environment. The solicitor of the Department of the Interior, a man named Eddie Weinberg, knew that I was looking for a job, and he recommended that they get in touch with me.

Hudson: This is the new solicitor under [Secretary of Interior Walter J.] Hickel?

Moorman: No, no, no. Weinberg was solicitor under Udall. Eddie Weinberg had been a career lawyer in the Solicitor's Office, and had worked up to the job of associate solicitor for Water and Power. That meant dealing with the Bureau of Reclamation's problems. And then later he was deputy solicitor. When Frank Barry, who had been solicitor for seven years under Udall, left, Udall promoted Eddie to the top job. Eddie had to leave when the Republicans took over. He's now in private practice here in Washington. In the course of handling the acreage limitation case involving in the Imperial Valley, I personally defended his deposition. An aggressive lawyer, Alan Krebbs of O'Melveny & Myers, took Eddie's deposition. Eddie was impressed by the way I had handled Krebbs and some other things that I had done which he was involved in. He thought that I was a good lawyer and when he learned about the center's need, he recommended me without my knowing it.

So one day when I was in my office at the Justice Department, the telephone rang and the voice on the other end of the line introduced itself as Bruce Terris. I had seen Bruce Terris on TV, had heard his name and knew who he was, but the name didn't ring a bell at the time. He said, "Hi, this is Bruce Terris." And I said, "Yes? Bruce Terris, Bruce Terris, do I know you?" or something uncouth like that. And he mentioned who he was and that I might have heard of him. I said, "Yes, well, what can I do for you?" And he said, "I understand that you are looking for a job." My ears perked up, and I said, "Oh? How did you know that?" He mentioned Eddie Weinberg, and he said he and a couple of his colleagues were forming a public interest law firm, and they wanted to include someone who was interested in environmental law. I said, "What's a public interest law firm?" [Laughter] Another pause. And he said, "Well, if you're interested, why don't you come on up to Arnold & Porter's offices and meet with us tomorrow afternoon." And I said, "Where's Arnold & Porter?" [Laughter] It shows you how little I knew about anything.

Hudson: I had the same question right now. Go ahead. I know them, but I don't know where they are.

Moorman: At that time, Arnold & Porter was in a house at the corner of N Street and Nineteenth that Teddy Roosevelt used to live in. They had a bunch of houses in the neighborhood.

Hudson: Where the Defenders of Wildlife is now?

Moorman: It's across the street from Defenders of Wildlife, an old red mansion. It's kind of attractive. Arnold & Porter owned several houses all around there, but the Roosevelt mansion was the main address. You know how hot and miserable Washington can be in July? Well, it was one of those days when I went over there, and outside the door, in the little driveway in front of the building, was a black limousine. A woman came out the front door. She had on a big floppy hat and a cigar in her mouth.

Hudson: Oh no.

Moorman: It was Caroline Ager, Abe Fortas's wife. Both Abe and Caroline were partners of the firm. She scowled at me--never will forget it--she scowled at me, threw her cigar in the gutter, jumped in her limousine, and took off. [Laughter] Anyway, I went in and I met with Bruce and Charlie. We hit it off. One reason I was able to hit it off with these fellows was because I had already given some thought to the idea of environmental litigation. In fact, I had put some of my thoughts in writing.

You'll recall that Phil Berry had appointed me to a lawyers' committee. That appointment inspired me to write a paper, a letter or something to Phil Berry suggesting that the Sierra Club organize a specialized environmental law office, something vaguely like what they later did with the Sierra Club Legal Defense Fund. I'm not suggesting by this that the original idea for the Sierra Club Legal Defense Fund was my idea. Phil Berry was a lawyer, and he was very interested in environmental litigation, and I'm sure he had already been thinking along those lines. He had become president of the club, and one of the things that he had spent a lot of time doing as president was handling a big environmental case at Newport Beach.

Phil was very interested in environmental litigation. Also David Sive was deeply involved in the Storm King case. There was a lot of interest in what environmentalists could do in the courts. There was concern about the "standing-to-sue" issue. There was a lot of interest in the general question of how to do it. As for the center, I didn't yet know what cases we might bring, but I had enough knowledge and ideas that they liked what I said. I was interested and knew the environmental scene. They suggested they were interested in my joining them, although they didn't yet have their grant from the Ford Foundation.

After my meeting, I walked home from Arnold & Porter. Brenda and I lived in Georgetown, which was a thirty-minute walk. It was very hot and I was utterly and completely soaked by the time I got home. We were living up on Dent Place. I went in and found Brenda and said, "Brenda, something interesting has happened." She said, "What's that?" I said, "A group of fellows



have asked me to retire and pursue my hobby, environmental law." And I explained it.

Not too long afterwards, they got a grant of about \$30,000 from a small foundation, the Stern Family Fund.

[Interruption]

Moorman: Charlie got us together and he said, "Well, we've only got \$30,000 and that really isn't going to take the four of us very far, but I suggest we go ahead and start anyway." So the question was whether I should leave the Justice Department and take a job which might last only about two months. Brenda and I talked it over and the conclusion we came to was that I should do it, because the people I would meet and the contacts I would make would be worth the risks. If the center fell apart, I'd get a job through the contacts I would make. It was the single most important decision in my career.

Hudson: So Halpern was working for Arnold & Porter at the time?

Moorman: He quit Arnold & Porter and I quit the Justice Department.

Hudson: Did he leave Arnold & Porter as a result of a falling out, a failure to make partner or something?

Moorman: Oh no. No, no, no.

Hudson: Wanted to change gears?

Moorman: No. Charlie Halpern is really the father of public interest law. He had an idea and he wanted to create a particular type of institution. He's a terribly imaginative fellow, and he's a wonderful guy. He had been working on this a long time. He would never have been happy as a partner in Arnold & Porter or any place else, but I have no reason to doubt that his relations with the firm are excellent. He retains a number of friends there. Whether he would have made partner or not, who knows. He certainly has the ability to be a partner. He just didn't have an interest in the commercial practice of law.

So we opened up the Center for Law and Social Policy on Swann Street. Geoff Cowan had rented a house on Swann Street--I think between Eighteenth and Seventeenth Street. At that time, Swann Street was a very poor neighborhood. It was one of those streets where cars, if left unattended for too long, began to disintegrate--I mean as parts were removed from them. We had numerous break-ins in the office and the scary part of it is that Geoff slept there. It was his house. We moved a couple times. We first moved to a house on Hillyer Place. In the two years I



was there, we moved twice, so we had three different locations. We did get a grant from the Ford Foundation, but we did not get the grant immediately. We didn't get it for a while.

### Representing the Environmental Defense Fund to Deregister DDT

Moorman: I did a number of things there, but I did three things which I'm very fond of in memory. The first involved the Environmental Defense Fund. The Environmental Defense Fund, at that time, was a group of scientists at Stony Brook that had hired a lawyer named Victor Yannacone. Victor Yannacone's most notable contribution to environmental law was the phrase current in the early seventies: "Sue the bastards." [Laughter] I've never met Victor Yannacone. He is, I'm told, a colorful fellow.

Anyway, he had a falling out with Charlie Wurster, one of the scientists on the EDF Board, and also with Smolker and the others who had put the Environmental Defense Fund together. Joe Sax, a professor of environmental law at the University of Michigan was also on their board. Joe was also on the Board of the Center for Law & Social Policy. Joe told me it wasn't working out between the EDF scientists and Vic. There were a lot of disputes.

EDF's biggest interest at that time was DDT. They wanted to stop the use of DDT. Yannacone had been going around suing Long Island mosquito control districts and things like that for them. He may also have been involved in some kind of administrative proceeding in Michigan. But Joe Sax had an idea that EDF could deliver a knockout blow to DDT if it could get DDT deregistered under the Federal Insecticide, Fungicide and Rodenticide Act [FIFRA]. He had read the statute carefully and he thought DDT did not meet the requirements of the act. He got together with me and asked me if I would be interested in pursuing the idea. I studied the matter. The idea was thrown out at the Center for general discussion. We talked a lot about his idea and also about the procedural problems. I became convinced we could do this and I said I was willing to try seeking deregistration. Charlie, Bruce and Jeff were game.

With Yannacone terminated, EDF was without a lawyer, though they shortly thereafter hired Lee Rogers.

I got reams and reams of material on DDT from Charlie Wurster, scientific articles and things like that, and I read a lot of about DDT. I prepared a petition to request that DDT be deregistered under FIFRA. We filed the petition with the

Department of Agriculture--EPA not then being in existence--to have DDT suspended and deregistered under FIFRA because it did not comply with the labeling requirements of FIFRA. It had certain qualities which made it inconsistent with the labeling requirements. The substantive requirements for pesticide registrations were in terms of what you put on the label--a strange duck, but that was how it worked.

When we filed this petition asking Agriculture to deregister DDT, we held a press conference. We got Stewart Udall to come as a draw for the press, and he was wonderful. He called DDT "the uninvited additive," a phrase that got the press's attention. When the Agriculture Department neglected to do anything with our petition, we later filed a Petition for Review in the Court of Appeals of the D.C. Circuit. (I use the term "we" here because a lot of different people at the center helped out. I can't remember now who helped on what, but everyone jumped in as necessary.) I don't think anyone had ever done this before, because when I filed the Petition for Review with the Court of Appeals, the clerk made me go to the library and pull the code book off the shelf and show her the jurisdictional section of FIFRA that I relied on.

Eventually that petition resulted in an opinion under the title EDF v. Hardin, in which the Court of Appeals said the Agriculture Department had to process our petition. That started the proceedings which ultimately led to the demise of DDT.

#### Invoking NEPA in the Trans-Alaska Pipeline Dispute

Moorman: After we had gotten going on the DDT matter, the trans-Alaska Pipeline matter came along [a proposed oil pipeline from Prudhoe Bay to Valdez, Alaska]. We represented EDF, the Wilderness Society, and Friends of the Earth in that case. The Sierra Club voted not to participate in the case, which was disappointing to me at the time. David Brower [then at FOE] had asked me in the late fall or early winter of '69 if I could see any legal way to stop the pipeline. I had poked around and discovered the right-of-way provisions of the Mineral Leasing Act.

Hudson: Was that the twenty-five foot limit?

Moorman: One could get a pipeline right-of-way over public lands for the width of the pipe and twenty-five feet on each side. No more. And that was the only thing I found. It was clear that the pipeline was going to violate that requirement. But initially it struck me as being such a legalistic thing that I didn't have

confidence that one could simply file a suit to enforce the right-of-way limit and stop the Trans-Alaska Pipeline. I told Dave what I'd found, but also that it just didn't seem enough to me.

Subsequently, the National Environmental Policy Act [NEPA] was passed. NEPA came into law on January 1, 1970. When I first read NEPA it struck me that maybe it could be used to raise the real substantive environmental issues in the pipeline dispute. If Interior did not prepare an environmental impact statement, then that would give us an opportunity to raise all the environmental things we were concerned about with regard to the pipeline. I consulted over NEPA with Joe Sax, since Joe Sax and I had collaborated on FIFRA and DDT. Joe took the point of view that there was nothing to NEPA. [Laughter] He said agencies would just write a report and stick it in the file and that would be all there was to it. But I had hopes that there would be more to it than that. So I began to talk about it to the groups that were interested: to Brower, at Friends of the Earth, to EDF, and to the Wilderness Society. The Wilderness Society was particularly interested in the matter.

Stewart Brandborg was then executive director of the Wilderness Society, and he was very interested. Jim Dean, the editor of The Living Wilderness at that time, participated in our discussions. They were interested, and they agreed to put up the expense money if I could do the lawyering without fees. (For some unknown reason, Brandy would call me "Dr. Moorman.") Friends of the Earth and EDF wanted to participate, but they didn't want to put up the expense money on the case. The Wilderness Society said it would put up the expense money if their name went first on the pleadings. Brandborg wanted the Wilderness Society publicly identified with the pipeline fight. And they were more interested in the case, actually, than anyone else, initially. They were the driving force, I would say. The different plaintiffs had different interests, but theirs was the broadest and strongest in the beginning.

Hudson: I don't remember NEPA being an issue with the Alaska Pipeline. Did it?

Moorman: Oh yes. Yes. It was . . .

Hudson: Just one of many cases of law school to me at that point.

Moorman: I thought the preliminary injunction on the Trans-Alaska Pipeline would be the first preliminary injunction under NEPA. It actually was the second. There was another one shortly before involving a golf course somewhere in Texas, where the use of HUD money to build a golf course was enjoined for lack of an



environmental impact statement. I learned of it first before our P.I. argument. I was quite pleased at the time to have a precedent for what I was doing, though it would have been nice, I suppose, if the pipeline had been the first. Certainly the injunction of the Trans-Alaska Pipeline for failure to have an environmental impact statement put NEPA on the map. Interior actually had produced something called an environmental impact statement, but it was a joke. The environmental impact statement they had was a flimsy two- or three-page document that would make you laugh.

Once we decided to try to enjoin the pipeline, life became very exciting. The word began to spread and I began to get calls from people from all over the country who were interested in the matter. The calls came in at all hours. People would call me from Alaska. They'd be sitting around in Alaska somewhere at 10:00 p.m. and be interested in talking to me and they'd just call me, forgetting that it was 3:00 a.m. in the morning in D.C. And I would get called...

Hudson: To do what?

Moorman: Well, they were interested in the issues, and they would know something about some of the environmental problems. They'd heard I was in this, and they were just making contact. It was astonishing. I have never been involved in anything else in which interest just mushroomed so quickly. I was looking for scientific expertise. Robert Curry, a soils professor at the University of Montana, and I got in touch with each other. He was extremely helpful. Curry understood soils and what was going to happen as that hot pipeline melted the permafrost. It would be like a string pulled down through a block of ice.

Curry knew a lot of geo-type people. One guy he knew in the Geological Survey, Art--this is not quite the name-- "Lochenbruch," had done a study Bob obtained for me which showed that the pipeline was going to melt its support out from under itself and snap. It was going to create a thaw bulb in the permafrost under it which would continually expand, causing a slurry to continually run out from under the pipe and the pipe to then lose support. The original engineering that had been done on the pipeline by the oil companies was abysmal. Bob prepared an affidavit for me explaining the whole thing. [Bob later went to work as a Sierra Club scientist.] There was also John Milton. Do you know John Milton? I haven't seen him in years.

Hudson: Not personally. I've read a book of his about the Brooks Range.

Moorman: Well, he had just returned from the trip he wrote that book about. We got in touch and spent an afternoon in which he



explained the Brooks Range and North Slope. He gave me an affidavit. Aldo Leopold...

Hudson: Aldo Leopold?

Moorman: Excuse me, his son, not Starker, who is the caribou expert, but Luna Leopold, who had been the Chief Hydrologist of the United States Geological Survey and who was still in the Geological Survey, talked to me at that time, explaining to me some of the facts. He had studied the pipeline, but he had to be careful because he was still in the government. He gave me certain general information and pointed me toward certain people. He really couldn't play an active role with me because of his position, but he was helpful in giving me the names of people who, it turned out, could help me.

At that time, I was working every hour I could conceivably work. I wanted to get a preliminary injunction before they granted the right-of-way for the pipeline. Getting together the case was a big task--it was a huge case. I can remember being very strung out. I also remember feeling very much as though I had put the center in a bind.

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At the time we had brought the Trans-Alaska Pipeline case, but before we had gotten the preliminary injunction, we were also waiting for a decision in EDF v. Hardin, the DDT case. I became very concerned that I had set the entire Center for Law and Social Policy up for a fall. The Ford Foundation had not yet made a grant to us. They were waiting to see how we did.

Hudson: You were still operating on a \$30,000 shoestring?

Moorman: I think we had picked up another minor grant along the way, but it was not for a lot more. I think we had gotten a second \$30,000 from some source. But anyway, both cases were high profile, yet chancy. We had gotten a very conservative judge in George Hart on the pipeline case, and we were really being pushy in the DDT case in asking the Court of Appeals to force the Agriculture Department to make a decision on our timetable. I was nervous. I was working all the time on the pipeline case. I told Geoff Cowan that I thought we could easily lose both cases and that the people at Ford would say, "Gee, they're nice and interesting guys, but they're in over their heads, bringing cases they can't win." I had virtually the entire center working on the two cases. We had gotten off the ground with our environmental cases rather fast. The cases in our other areas hadn't developed yet, and it took virtually all of the resources of the center to handle my cases.

Hudson: So Halpern and Cowan and the others were essentially doing research for you?

Moorman: No. I wouldn't say that, but I would say that about 75 percent of the center's resources were devoted to the two cases. Bruce Terris helped a lot on the DDT Court of Appeals brief, and Charlie helped a lot on the pipeline. We had a student intern program there at the time, and a lot of the students were working on different aspects of the cases. A lot of effort was going into these cases. Charlie helped a lot, and he was with me at counsel table when we argued the preliminary injunction. When we won the cases it was very exciting and caught a lot of attention. The Ford Foundation gave us our grant. I was very, very elated.

The oral argument was a wonderful experience. The government case was handled by Herbert Pittle, an old Lands Division hand and a friend of mine. He'd been in the Lands Division for thirty or forty years. The courtroom was filled with oil industry lawyers. I mean there must have been thirty or forty of them. [Laughter] I made my argument first, and I can't tell you whether I made a good argument or a bad argument. When Herb got up to make his argument, he dropped his papers. He was nervous (as was I), and his papers fell all over the place.

After the oral arguments, Judge Hart asked Pittle if the government would agree to a delay so he wouldn't have to issue an injunction. Pittle said he'd have to go consult with his superior. I thought that meant he'd have to go make a phone call back to Justice. Well, before he called, a knot of oil company and government lawyers, about thirty people, formed.

Herb then went out of the courtroom and made his phone call and came back in a few minutes and reported that "the government wouldn't agree to any delay." Then Judge Hart, who had a wry way of expressing himself said, "I think you're going to have to take it up with the fifth floor," meaning he intended to issue the injunction and the government, if it liked, could take an appeal to the Court of Appeals, which was on the fifth floor of the Court House. At that moment I was so overcome that all the voices and the scene just faded into the distance. For a few moments, the talk seemed a long way away, and then it all came back. I remained in a euphoric mood for at least two weeks. I've never had an experience quite like it. Never have I accomplished anything in the practice of law which has had such an emotional impact on me as that injunction did. It was just fantastic.

Hudson: You described it as an oral argument. Was it more of an argument or a summation as in a trial law sense? Were there questions

from the bench like in the Supreme Court or in a court in law school?

Moorman: Certainly there were questions. The preliminary injunction was submitted in the form of a memorandum of law with affidavits. The judge did not take live testimony. The Federal District Court for the District of Columbia rarely takes live testimony on preliminary injunctions. It hears oral argument, like an argument before a court of appeals, in motion practice. I argued for thirty minutes or so, and Herb argued for thirty or forty minutes or so. There were a few questions from the bench. I had a brief rebuttal, and then the scene I just described took place. It all took about an hour and a half. That's all that took place. It was a classic preliminary injunction argument submitted on affidavits. The affidavits, of course, included the affidavits of the people I've mentioned like John Milton and Bob Curry.

#### Otter Creek Wilderness Preservation

Moorman: So that was wonderful. At about this time we also won a third victory, which had to do with the Otter Creek wilderness. We brought the case to stop the coal mining and clear cutting of the Otter Creek watershed in the Monongahela National Forest.

Hudson: A proposed wilderness at the time, I guess?

Moorman: It was de facto wilderness at that time--a proposed wilderness area. We based the case on Forest Service regulations. Dub O'Neill, an intern, helped me work up that case. Fred Anderson also helped. We got a favorable decision. The case is called West Virginia Highlands Conservancy v. Island Creek Coal Company. Are you familiar with the opinion?

Hudson: No, not specifically, but I'm aware of the whole situation. It's still alive, by the way.

Moorman: Well, I take it they're trying to get paid for their coal. That's a lot better than their mining it, frankly.

Hudson: The Forest Service is still considering the possibility of mining.

Moorman: Oh, what a tragedy if they do. Well, anyway . . .

Hudson: It's a hollow ploy for the money, I'm sure. It seems much more reasonable for the company to get its money.



Moorman: We had a trial in Elkins. The Federal Court took evidence on our request for the injunctions. Sayre Rodman testified, and Fred Anderson was present in the courtroom. Our local counsel, Willis Shay handled the proceeding with assistance from me. Willis was a Clarksburg attorney with the Steptoe firm. The judge ruled for us. The government appealed and I argued the appeal in the Fourth Circuit Court of Appeals in Richmond, where we also won and got a good opinion. It was a nice victory.

Preparing the Case in Trans-Alaska Pipeline Matter

Moorman: After that we had a tremendous time especially with the Trans-Alaska. A lot of work went into the Trans-Alaska Pipeline case. A couple of things are worth noting. An interesting episode had to do with the discovery taking place in the case. We were engaged in the normal discovery that takes place in litigation. We had asked the Interior Department to produce documents and we'd also served interrogatories on them. They had not answered our interrogatories. They claimed that they didn't have the information to answer the interrogatories. They also did not produce the documents that we had asked for. They said the documents were in Fairbanks, in the Interior Department office in Fairbanks, and if we wanted to see them we would have to go to Fairbanks.

So I went to Fairbanks in the middle of the winter. On arrival I was told not to stay outside for too long, because there was an ice fog about. Ice fogs can tear up your lungs. It wasn't exactly the best time of year to become acquainted with Alaska. At the Interior office, a pile of documents was brought to me by a fellow in the local Solicitor's Office. His name was Bob Mothershead or Muthershed. Let's say Bob Mothershead. Well, Bob didn't know anything about the case and this little episode illustrates the danger of turning any task on a lawsuit over to someone who knows nothing about your case. What Bob did was simply hand me the file.

In the file were the following items: in addition to the documents I had expected to get was a draft set of the answers to the very interrogatories the government lawyers in Washington had told us they couldn't answer--the Interior Department's answers. In addition to the answers was a copy of a letter forwarding the draft answers to the Solicitor's Office in Washington. In addition to the draft answers and this letter sending the answers back to D.C. was a copy of another letter transmitting to D.C. copies of the documents that they were showing me in Anchorage. They had run me to Fairbanks to review documents that they said



were only in Fairbanks, and there I had their letter saying copies were back in D.C. So I put these letters and the interrogatory answers in the pile of documents I wanted and asked Bob Muthershead to have them copied, and he did!.

I went back to my hotel and called Victor Kramer. Victor Kramer was a retired Arnold & Porter partner who had once been one of Thurmond Arnold's trustbusters at the Anti-trust Division. Among the many things he did at the center, he helped on the Trans-Alaska Pipeline case. Incidentally, I believe him to be the best lawyer I have ever had the pleasure to work with. Just a sensationally good lawyer. But anyway, he said to send the incriminating material back to him by air freight and he'd go to the judge.

Before I got back from Alaska, he had gone into court and raised holy hell about the government's sleazy behavior. We had caught them red-handed, no question about it. [Laughter]

Hudson: Did they cover your airfare as part of the cost?

Moorman: I'm not sure they did. But we certainly gave them a black eye before the court.

A second interesting thing happened when Interior came out, after about a year, with a draft environmental impact statement. Wally Hickel left at this time, and Rogers C.B. Morton came in as secretary of the interior. Morton had been made aware of all the interest in the pipeline during his confirmation hearings and decided to hold hearings on the draft environmental impact statement. The hearings were set to be held in Washington. I asked Vic what should I do about the hearings? Vic's advice was wonderful.

Victor said, "Jim, let me tell you what to do. You and Sandy"--and by Sandy he meant Sandy Hillyer, who we had hired out of law school to help on the pipeline case. Sandy Hillyer is currently doing legal work for the Big Sur Institute, which is working to get legislative protection for the Big Sur Coast. Sandy had just come to work for us. Anyway, Vic said, "You and Sandy spend the next month on the telephone." When I asked for a fuller explanation, he said, "Call everybody in the country that you can discover who has an interest in this pipeline matter and who might have something to say. Get them to come back to these hearings and to prepare and submit statements."

Sandy and I spent the next month on the telephone. The hearings were a triumph for us. We managed to get everybody and their brother: all kinds of organizations; local people; people came from Alaska and Oregon and just everywhere. A huge crowd

showed up at the departmental auditorium at the Commerce Department where the hearings were held.

Hudson: Ordinary people saying, "I don't want this pipeline"?

Moorman: Well, yes, but also we had professors who knew about metallurgy who said that the pipe would be too brittle; we had experts who knew about all the other aspects of the problem. I mean these were knowledgeable people--people who had something to contribute and people who cared a lot. And we had the press. It became a big story. Morton had just come into office, he saw this tremendous public concern about the pipeline, he heard attack after attack on the draft EIS, and he decided they had to do the draft environmental impact statement over again. We bought an entire year by frightening Morton at those hearings as he came into office. I don't have the slightest doubt about it.

Hudson: Let me ask the question I asked before when we weren't on the air: did all this delay then lead to a better, cleaner pipeline once the studies were made and Congress had its one-vote decision?

Moorman: The pipeline fight led to a far better-engineered pipeline--no question about that. Ultimately, the questions as to whether or not to have a pipeline or to have a different route were lost. The pipeline fight, though, tremendously heightened public awareness about Alaska and about the values there, and ultimately led to the passage of the Alaska National Interest Lands Act. Congress had given a lot of land to the state in the Alaska Statehood Act. Then, in the Alaska Native Claims Settlement Act Congress gave an enormous chunk to the native Americans. Well and good, but the overall public interest was left out. The huge fight over the pipeline brought this huge oversight to everyone's attention and placed Alaska high on the national agenda.

Hudson: It primed the press, too.

Moorman: Yes, it did. It primed the press. It developed muscles, you might say, for the later fight. The pipeline was lost, but ultimately we did pretty well in Alaska, all things considered.

I think the preliminary injunction was significant for another reason. The fact that you could use the National Environmental Policy Act to halt a major project for three and four years while the country deliberated over the question of whether or not it was the right thing to do was in itself a significant victory.

I left the case after two years when I went on to the Sierra Club Legal Defense Fund. I only stayed at the Center for Law and Social Policy for two years.

Delay alone can kill a project. Delay would have killed the pipeline had it not been for the Arab oil embargo. As a consequence of the delay and improvements Interior imposed, the cost of the pipeline rose dramatically. Had the embargo not driven up the price of oil, the pipeline would not have remained economic.

Hudson: I was going to ask that question. One side of the question is the delay allowed the pipeline to be improved. The other is that through inflation and the normal passage of time and the legal expenses and whatnot, it increased the cost. What's your view of the public policy tradeoffs?

Moorman: In the case of the pipeline, I think that had the price of oil not risen dramatically in 1973, the pipeline would not have been sufficiently economic to have been built. As it turned out, because the rise in the price of oil was so dramatic after the '73 boycott, it was economic at any cost.

Hudson: The Prudhoe Bay field just would have remained there for future use?

Moorman: That's right. The Prudhoe Bay field would not have been an economic field to develop at 1971-72 prices. One thing that ran the cost of the pipeline up was all the new engineering. They had planned to build a down-and-dirty pipeline. Certainly this component of the cost increase was in the public interest and acknowledged by all sides. Another component of cost increase was a cumulative interest caused by delay. A third component was the loss of a questionable economic fiddle explained by Charlie Cicchetti in his book, Alaska Oil. A fourth factor was inflation. Now, as a generality, what do I think of environmental litigation that raises the cost of projects? I think that those rising costs could theoretically be an unfortunate side effect that damages a good project. I also think most of the projects which have been attacked by environmentalists, and thus made more expensive, were boondoggles to begin with so I don't think increasing costs is a big problem.

A Corps of Army Engineers' dam may cost more if you bring, but lose, a case against it. This means that the waste is larger, and that's unfortunate. I don't see, though, how you can tell citizens not to try to stop a project which they think is wasteful on the ground that if they lose, it's going to be even more wasteful.



To me the fact that the public is highly supportive of environmentalism and there is no backlash in Congress about environmental lawsuits means basically that the public has considered this litigation and said, "Fine. Keep at it." If the litigation has raised the cost of projects, it has not done so to the point where the public thinks that is a problem.

Hudson: OK. We started off this segment about the center saying three things that you wanted to cover, and I don't know whether we've touched...

Moorman: Well, there were three cases that I wanted to mention: one was the Otter Creek case, one was the pipeline case, and one was the DDT case. There is one other thing that I wanted to mention about this era, and then I think we can finish with the center. I see we're about to run out of tape, but it occurred to me that I have failed to mention a very important event which occurred at the outset of the Center for Law and Social Policy, and I will wait to talk to you about it on the other side of this tape.

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Airlie House Conference, 1969, a Catalyst for the Field of Environmental Law

Moorman: There was something else which happened in my Center for Law and Social Policy days which I would like to mention. At the outset--that could be late in 1969--a very interesting conference was held at Airlie House, Virginia [Law and the Environment Conference, September 12, 1969]. The conference was sponsored by the Conservation Foundation. Malcolm Baldwin, who was then working for the Conservation Foundation, put the conference together. He invited all the people, raised the money for it, set it up, and organized it. Malcolm was very interested in the nascent field of environmental law. He noticed the various things people were doing around the country. He noticed what the Sierra Club was doing out at Mineral King and what Dave Sive was doing at Storm King and so forth. He was aware of the formation of the Center for Law and Social Policy. He kept track of all of this.

Malcolm got us all together, and it was a tremendously interesting conference. A lot of people involved in environmental law met each other for the first time at Airlie. I know Phil Berry was at that meeting, as I believe was Don Harris who was involved then in the Sierra Club's program. Dave Sive, of course, was there, and Mike McCloskey was there too. A couple of people who later became environmental law professors were



there. Some of the fellows putting NRDC [Natural Resources Defense Council] together were there. EDF folks were there.

I undertook the task for Malcolm of preparing an outline of environmental law for the conference. I worked hard on it. I worked on it in my waning days at the Justice Department and my first days at the Center for Law and Social Policy. I got about a fifty-page outline together. It included a miscellany of legal cats and dogs. Remember, there was no NEPA; there was no Clean Water Act.

Hudson: The Rivers and Harbors Act of 1895 or something like that.

Moorman: Oh, the Rivers and Harbors Act--that was a prominent part of the outline. Also, you did have this strange Water Pollution Act that was administered by the Interior Department. It had elaborate conference procedures that people were supposed to go through to arrive at ad hoc solutions to specific problems. It never worked. A man named Murray Stein ran the program, and he went around the country conducting conferences. He had the authority to ask the Justice Department to file suits, but he never did. That would have taken the action away from him, I guess. At HEW--the Department of Health, Education, and Welfare--there was a primitive air pollution program run by a Sierra Club member, John Middleton. I met him once on a Sierra Club hike.

Anyway, the outline was a success. I talked about standing and all those things. Dave Sive complimented me on it. I felt quite good about it. Compared to that little outline, we now have shelves of regulations and laws. In those days it was the only thing we had. It was a mixed bag of natural resource law, environmental law and procedural issues. Nevertheless, it was a useful thing.

Hudson: This was before the Environmental Law Institute got off the ground, too, I suppose?

Moorman: Yes. In fact, one of the ideas that came out of the Airlie conference was to publish the Environmental Law Reporter. The Environmental Law Institute was created to publish the Reporter. Someone at the conference knew Tom Alder. Tom was publishing the Selective Service Law Reporter. It was suggested that we consult with him, which later happened. So the idea of forming the Environmental Law Institute and putting out the Environmental Law Reporter was one of the products of the conference.

A lot of people involved in environmental law met each other at Airlie for the first time. It had a catalytic effect. It was at that conference that I first met three people involved with the Sierra Club's legal program with whom I later had many

dealings. Beatrice Laws, one of the first employees of the Sierra Club Legal Defense Fund with myself, was at that conference. Don Harris, who was the president of the Sierra Club Legal Defense Fund later when I was there, and Phil Berry and Mike McCloskey were at the conference. So the Sierra Club was there with a contingent of four.

Hudson: Bill Futrell--did he ever get involved in this?

Moorman: Bill Futrell<sup>1</sup> was not at the Airlie House conference. I did not know Bill until I went to work for SCLDF. Sidney Howe, the president of the Conservation Foundation, helped us raise the money for the Reporter. We recruited Fred Anderson to be the first editor-in-chief.

I was one of the initial directors of ELI. It was a struggle for a while, but Fred Anderson did a terrific job with the Reporter. He later became the president of the Institute and made ELI into a "think tank." It's attributable to Fred's efforts as the leader of the institute that ELI became more than merely the publisher of the Reporter.

When he left, Bill Futrell was recruited to replace him. Bill Futrell built on what Fred left and took ELI to new heights. At Airlie House, we weren't thinking beyond the Environmental Law Reporter.

Hudson: A publishing house and everything?

Moorman: Yes. It was rewarding to be able to assist Fred in that. Of course, board members should never take too much credit. Fred and the staff really did it all. But I was glad to have a small role and to still have a role with the institute.

The Airlie House conference was the single, most fruitful conference I've ever attended. Most of the participants I've talked to have felt the same way. They feel that the conference was catalytic and that it established a network among the people interested in environmental law, which was very important. Things took off after Airlie.

#### The Genesis of the National Environmental Policy Act, 1969

Hudson: So NEPA was going through Congress at this time.

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<sup>1</sup>Sierra Club oral history interviewee. See series list.

Moorman: Yes, but here is an interesting thing about NEPA: NEPA was not a law which the environmental movement lobbied through Congress, though Mike McCloskey and others testified in favor of it. NEPA was one of those few laws that was created the way high school civics textbooks suggest that laws are created. The Congress itself thought of, and passed, NEPA!

Senator Jackson and also Senator Muskie and a couple of other people had noticed that there was a lot of interest in the environment in the country. And they or one of their staff-- maybe it was Bill Van Ness--set up a colloquium on environmental protection. They invited a Professor Lynton Caldwell from the University of Indiana in Bloomington, who I believe is still there, to come and tell the senators what they ought to do to protect the environment. He proposed the environmental impact analysis idea among other things. I don't quite know where the idea for the CEQ [Council on Environmental Quality] came from-- maybe from John Dingell. But CEQ was an important element of NEPA, because it was an agency set up to make the other agencies comply with NEPA.

Hudson: You have somebody to do all these things.

Moorman: Well, yes. And they put all this together in NEPA. At first nobody thought it was going to be of great significance. Had Congress understood what the EISs [environmental impact statement] would be and what the law suits over EISs would do, I doubt if they would ever have passed NEPA.

The unanticipated thing that happened, of course, was that the passage of NEPA coincided with the loosening by the courts of the doctrine of standing to sue. With standing available to environmentalists, NEPA became the vehicle through which environmental groups got access to the decision-making process of the federal government. And, of course, the effect of that was to change the decision-making process in the federal government on environmental matters. Congress did not anticipate that NEPA would be such a vehicle.

I have never heard of NEPA before it passed. Sometime in early January somebody asked me if I had heard of this new National Environmental Policy Act. And I said, "No, what does it say?" I got a copy and, as I discussed earlier, talked to Joe Sax and others in relation to the pipeline.



The Center's Program for Legal Education

Moorman: You asked me just what was the Center for Law and Social Policy. Charlie Halpern had two ideas, and he married them in the Center for Law and Social Policy. One, we've discussed, was to have a public interest law firm to represent unrepresented citizen movements and groups. The other idea that he was very hot on was clinical legal education. Halpern did not like the traditional form of legal education, the kind of legal education you see in the television program "The Paper Chase." Charles felt that was fundamentally the wrong way to do legal education.

In addition to getting money from the Ford Foundation, Charlie got four law schools--Yale, Penn, Michigan, and UCLA--to set up a program where they would give credit to students who would come for six-month periods to the center for a clinical legal training program. We always had a group of a dozen or so students at the center. They worked on the cases. We would teach them how to handle cases. They did research, and we also had a seminar program in which we discussed the issues involved in what we were doing.

Hudson: So it's like the old tradition before law schools where a lawyer learned his trade by sitting at the elbows of a senior lawyer.

Moorman: That's right. But we also had seminars, and I thought the seminars at the center were terribly exciting. We had a great time. Bruce, Vic, Charlie, Geoff and I would argue with the students at length, going into all the things that we were dealing with. We also had visiting lecturers who were interesting--Arthur Goldberg, Lloyd Cutler, Paul Porter, etc.

There was one thing about it I didn't like. I found that the rhythm of education clashed with the rhythm of litigation. We had obligations to the students to educate them, and we had obligations to the cases to get them litigated. I was up to my neck in the pipeline case, working like a dog. I found that I had a hard time balancing the two things. That was one of the reasons why I decided to go to the Sierra Club Legal Defense Fund. It was too much, trying to run both a clinical legal program and a public interest law program. I wanted to concentrate on public interest law. I didn't have anything against the clinical legal education program. I just felt that we were trying to do too much.

But despite that personal reservation, I do believe the center was effective. Arthur Goldberg was the Chairman of our Board. He's a wonderful man, and he was very helpful. He had a lot to do with getting the law schools and the Ford Foundation to



support us. We had a lot of other good people on our board: Joe Sax, the environmental law professor from Michigan; Monroe Price, a UCLA professor; Mitch Ragovin, who was an Arnold & Porter partner; and a number of other good people.

The Center for Law and Social Policy was an intense experience, with a lot of things going on. As you can see, the Trans-Alaska Pipeline, DDT, students, Otter Creek, and other things. And all that took place in two years. I have never had a more intense two years in my life.

I did some socializing with Larry [Laurence I.] Moss<sup>1</sup>, the Larry Moss who later became president of the Sierra Club. He got me involved with Wassaw Island off the coast of Georgia, which the good folks of Savannah wanted to develop. The Fish and Wildlife Service now has Wassaw Island. It's one of the Georgia isles which has never been logged. We went down there once on a Thanksgiving trip. We found a little compound of New England houses among the original live oak and pine forest. There were alligators and a wild beach. We dug clams and had a wonderful time.

Cooperation Among a Network of Environmental Law Attorneys: SST, Calvert Cliffs, Hilton Head

Moorman: The SST [supersonic transport] matter was very much alive at that time. Larry was involved with the SST fight.

Hudson: That was Oscar Gray's big project.

Moorman: Was it?

Hudson: Yes.

Moorman: There was a woman named Joyce Teitz, just out of law school, who worked very hard to defeat the SST.

Hudson: George mentioned her name.

Moorman: She wore pigtails and was full of energy and excitement. She called a lot of people, and she, with the help of Larry Moas and others, stopped the SST.

At that time there was also a new law firm in town named Berlin, Kessler & Roisman, which wanted to do public interest law

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<sup>1</sup>Sierra Club oral history interviewee, in process.

in the private law firm format. One of the things that came my way in those days was the opposition to the Calvert Cliffs nuclear power plant. I did a little work on it, but came to the conclusion that I just had too much else to do. I asked Tony Roisman if he would be interested in handling the case. There were some Johns Hopkins professors that were opposed, as was the Chesapeake Bay Foundation and others who didn't want this nuclear power plant on the Bay. Tony took the case on and won a sensational opinion from the Court of Appeals for the D.C. Circuit, the Calvert Cliffs Coordinating Committee case.

Hudson: Yes, it's another one of those, "Yes, you do have to obey the law" decisions.

Moorman: It was the opinion of Judge Skelly Wright, and it was the first comprehensive Court of Appeals opinion on NEPA. It was a wonderful legal opinion, a wonderful precedent. Unfortunately, because of lack of interest at the Supreme Court, several important aspects of the Calvert Cliffs Coordinating Committee opinion did not become the law. NEPA law is not as good today as it was the day that opinion came down from the Court of Appeals for the D.C. Circuit.

I was also involved for a while with Amchitka. Do you remember Amchitka? Amchitka was a nuclear test site off the coast of Alaska. That matter became one of David Sive's cases. I really didn't have time to do that either. There was also another matter I briefly dabbled in involving Hilton Head, South Carolina, and a big chemical plant that BASF, the German chemical company, wanted to build. I went to South Carolina, but determined that the local people opposed to the plant could afford to pay a lawyer and would pay a lawyer. One of the rules of the center was that we wouldn't handle cases where fees were available. I was successful in referring the case to Dave Sive, and he stopped the chemical plant from being built.

So there was collaboration between the center and other lawyers, especially lawyers in the network that came out of Airlie House--Tony Roisman was at Airlie House. We were giving cases back and forth to each other and helping each other with our cases and finding resources for one another.

Hudson: What did you mean by not wanting to be involved in cases where there was a fee involved?

Moorman: The Center for Law and Social Policy wanted to represent citizen groups that didn't have the resources to pay lawyers' fees. At Hilton Head you had a resort industry that didn't want a chemical plant. Did you read Conversations with the Archdruid?

Hudson: I'm reading that off and on.

Moorman: Having seen Wassaw Island, the unspoiled Georgia Island, it's very clear to me that Hilton Head is not my ideal. I much prefer Wassaw Island. On the other hand, the Hilton Head development seemed a better use than turning the Island into an industrial slum like the Jersey Meadows, which is what the chemical industry was on the verge of doing. It was half a loaf; the world is full of compromises. But I just didn't see the Center for Law and Social Policy doing battle to preserve the Hilton Head environment for rich retirees. They could pay, and they did, and they won. I think it was a legitimate fight that they fought and I'm glad they won, but I didn't think it was something that a lawyer living on foundation money should do.

It was a very, very nice time. I look back on those years with great fondness--the Center for Law and Social Policy years. A lot was going on: new institutions, new lawsuits, new law, new precedents. Bad projects were being stopped. Wow!

Hudson: I remember those days. I was just getting set to go in the army when Earth Day happened, and I was thinking, Doggone, they're starting too soon. I haven't even had a chance to go to law school yet!

Moorman: I should tell you of one irony concerning Earth Day. Was Earth Day on April 11?

Hudson: I don't remember the date.

Moorman: Something like that in 1970. The preliminary injunction hearing for the Trans-Alaska Pipeline was originally set for Earth Day. The hearing got postponed. It didn't occur for another two weeks. But when the judge first set the hearing, I said, "Holy cow! He set the hearing for this on Earth Day and he doesn't know it, and the oil companies don't know it. I'm going to get to make my argument on Earth Day. That's fantastic!" But then there was a postponement, and the argument didn't occur until two weeks later. But it was wonderful anyway. The fact is Earth Day came rather early in all this movement. We've been living on the energy created by Earth Day ever since. Here we are fourteen years later and still going strong.

Hudson: Shall we adjourn for the evening?

Moorman: I think so.



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#### IV THE SIERRA CLUB LEGAL DEFENSE FUND, 1971-1977

[Interview 3: February 16, 1984]##

##### Beginnings of the Legal Defense Fund

Hudson: As I recall, we had designed this evening to talk about the Sierra Club Legal Defense Fund aspect of your career. I remember earlier in our discussion you mentioned--I believe it was during your trip to San Francisco as council delegate for the Southeast Chapter--that you talked with Phil Berry about the possibility or the merits of the idea of forming a Sierra Club legal committee. Perhaps you could begin with that and trace how the idea developed.

Moorman: Phil created a committee and asked me to serve on it. Phil was very much interested in environmental legal activities. He was a lawyer himself. When he was president of the Sierra Club, he fostered the creation of an active Sierra Club legal committee. The most active members of that committee were Fred Fisher and Don Harris, who were--and still are for that matter--partners in the San Francisco firm of Lillick, McHose, and Charles.

When I was active in Sierra Club affairs as council rep for the Southeast Chapter, Phil put me on the committee, and, in response, I prepared a memo proposing a formalized environmental law office like the NCAAP, Inc. Fund for the Sierra Club, which I had sent along to Phil. I have not seen that paper for many years. Others were interested in such things. Phil got a lot of input on his legal program from various people. Phil was the leading proponent of the Sierra Club's legal program and the Sierra Club Legal Defense Fund.

Hudson: Was this before the Center for Law & Social Policy?

Moorman: Yes, it was before I was aware of the Center for Law and Social Policy. When I became involved with the Center for Law and Social Policy, I had dropped out of active work with the Sierra Club.

The idea of environmental litigation was an idea whose time came in the late sixties. A lot of people had an interest in it, and we talked about it a lot.

The Ford Foundation in particular was interested in all aspects of public interest law, and they provided a number of start-up grants for organizations--not only the Center for Law and Social Policy, but they provided money for the Natural Resources Defense Council, SCLDF, and for others. The man in charge of that program at the Ford Foundation was Sandy Jaffey, a very imaginative fellow who devoted a lot of time and energy to how the legal process could be used to represent unrepresented social movements and groups. He was interested in the whole subject. He and Charles Halpern got along quite well.

Phil Berry, and perhaps Fred Fisher also, went to Ford on behalf of the Sierra Club and asked if the Ford Foundation would provide them with some money to help them convert their Sierra Club legal committee into a more professional organization. Fred Fisher, Don Harris, and Beatrice Laws were overseeing a growing body of volunteer law suits. It was all being managed from the hip pockets of Harris and Fisher with half-time support from Beatrice. Fisher and Harris had very busy and active practices of their own. They're both quite able people, but it was a strain on them and as the program grew, the strain grew. Once the idea of bringing lawsuits got around the club, a lot of proposals for cases emerged.

Hudson: So the two of them were doing this just strictly pro bono and running the whole thing themselves?

Moorman: Yes, they were doing it pro bono. Beatrice Laws worked half-time on the matters. I think Don and Fred Fisher were long-standing friends of Phil Berry's, and Phil had talked them into helping out, and, before they knew it, they were managing a major program. Lawsuits were being brought by different people around the country on behalf of the Sierra Club, and somebody had to coordinate them, oversee the litigation, make sure that it was being handled responsibly, make sure that it was done in an appropriate professional manner. So Fred Fisher, Don Harris and Beatrice were doing that.

Beatrice did most of the paperwork for Fred and Don and the Sierra Club's legal committee. There is an overwhelming amount of paperwork to manage an active litigation oversight program,



especially in the Sierra Club where you have a large number of committees and subgroups of the club who are interested in various aspects of the program. Coordinating between various elements of the club, keeping up with the lawyers, maintaining quality control, all of that, took a lot of work. So Phil asked the Ford Foundation to give the club a start-up grant to create the Sierra Club Legal Defense Fund.

Hudson: Had the pair of them developed a track record that they could help justify gaining the grant?

Moorman: I was not involved. I was not personally involved with the grant application of the Ford Foundation. I do not know what Ford required exactly. The grant that Ford made was not a particularly big one, I should add. It was not on the scale of the grants made to the Center for Law and Social Policy or to NRDC. It was sufficient to allow the hiring of a couple of lawyers and the renting of an office. It was a start.

One thing the Club had done was obtain the injunction against the Disney ski development at Mineral King in the Sierra. They had also won a very exciting victory in Colorado involving the Gore Range/Eagle's Nest roadless area--the Parker case--that was Tony Ruckel's case. Are you familiar with that case?

Hudson: No.

Moorman: It involved an area not far from Vail on the western side of the Rockies. It involved a de facto wilderness area next to one of the designated primitive areas. Congress had not yet determined if the primitive area in question should be a wilderness area, but it was on the schedule for consideration under the Wilderness Act. The club won an injunction against the construction of a logging road and the timbering of the roadless area adjacent to the primitive area on the ground that the Wilderness Act provided that Congress would set the boundaries of new wilderness areas when it considered the various primitive areas and, therefore, that meant that Congress could extend the boundaries as well as contract the boundaries. In other words, Congress could consider whether they wanted to include more wilderness than the Forest Service had included in the primitive area or less. While an area was waiting consideration by Congress, the Forest Service couldn't arbitrarily deprive Congress of its opportunity to consider expanding the area by cutting the adjacent area. This was an important decision under the Wilderness Act and an important boost for the wilderness forces of the Sierra Club. And it had created a stir.

So the Sierra Club lawyers, you know, were accomplishing things. Phil Berry had won an important victory at Newport

Beach, a very complicated fight which involved the development of lands owned by the Irvine Company and others. The Sierra Club was doing a lot of things.

Appointment as Executive Director of SCLDF

Moorman: So anyway, the Ford Foundation decided to provide some money. I learned of this, and made an inquiry as to whether they would consider me to run the new organization. They said they would. So I came to San Francisco, stayed with Fred Fisher in his home in Berkeley and talked at some length with Harris and Fisher about the proposed Sierra Club Legal Defense Fund. I also had dinner one night with some Sierra Club board members.

Hudson: Can we pin this down on time a little bit?

Moorman: Hold on just a second. Well, this would have probably been sometime early in 1971.

Hudson: This is after the pipeline preliminary injunction?

Moorman: Oh, yes, long after that. This would have occurred, I guess, around March of 1971. They took me to dinner with Will Siri, and Phil Berry, and I believe possibly Judge [Raymond] Sherwin was there and possibly Dr. Wayburn.<sup>1</sup>

They wanted to know how comfortable I was with the Sierra Club in light of the fact that I had been a declared Brower partisan. They wanted to look me over, talk to me, and make sure that we were going to be able to live together. And they made quite clear to me at that time that I had to stay within my budget. That clearly was one of the things Dave Brower and the board members had not been able to agree about. I made it clear that I understood. I also made it clear that I had no interest in the feud with Brower. Even though I had favored Brower at the time, I really wasn't interested in the dispute, and I was delighted to work under the Sierra Club's banner. I liked the Sierra Club. They were satisfied and left it up to Fisher, Harris and Berry as to whether or not to hire me.

The Sierra Club Legal Defense Fund was organized with a separate board of directors; the club ended up with three

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<sup>1</sup>Sierra Club oral history interviewees. See series list.

organizations: the Sierra Club, the Sierra Club Legal Defense Fund, and, of course, the Sierra Club Foundation with its board. And, as we got some money for the Defense Fund from the Foundation, I had to attend board meetings of all three organizations. [Laughter] That was a lot of board meetings, I can tell you.

Hudson: Can I ask how old you were when this started?

Moorman: Well, this was in 1971, and I was born in 1937, so I guess . . .

Hudson: Thirty-four.

Moorman: Well, I'm forty-six now. I was thirty-four.

Hudson: Did you have a title? Was there a title that you were given?

Moorman: Executive director of the Sierra Club Legal Defense Fund. They hired another lawyer at that time, too--Jerry Gleason. He was a very pleasant fellow, but did not stay with the defense fund long. He's now an attorney in the General Counsel's office of the Environmental Protection Agency, where he's become something of an expert on the Clean Air Act. So the Defense Fund began with myself as executive director, Jerry Gleason as a staff attorney, and Beatrice Laws as a half-time attorney continuing to do coordination, plus a great secretary, Mary Kay Jackman.

There were a number of things about that beginning which I remember. Brenda and I took a little time to travel across the country on our way to the job. We visited some of the environmental battlefields on the way. For example, we went hiking in the Gore Range and stopped to see the exact site where the injunction stopped the road in the Parker case. There was a thick pine forest where the road stopped and the trail went down to East Meadow Creek--the Parker case is also referred to as the East Meadow Creek case. We noted that the Forest Service had placed a sign there, a serious sign, which read: "Beware of Falling Trees." The thought of the Forest Service posting warnings about falling trees at trail heads is hysterical. One of their arguments had been that this was an over-mature forest and that it should be harvested. I assume the Forest Service sees over-mature trees breaking off and falling on unsuspecting hikers from moment to moment.

Anyway, when we finally got to San Francisco, it turned out that Beatrice Laws had gone on vacation and that Fred Fisher had gone on vacation. This was probably right at the beginning of August, you see. Don Harris was waiting for me to show up so he could go on his vacation. We were a couple days late arriving in San Francisco. We were just enjoying life and didn't realize



that it mattered to anyone as to exactly which day we showed up, so we were disturbing Don's plans by not arriving on the day we said we would. [Laughter] Don was most anxious to get away, but he didn't feel as though he could leave until I showed up, so he was annoyed. Not the most auspicious start.

They had rented a small suite of rooms on California Street in the Dollar Steamship Building. It had three offices and a place for a couple of typists. There was no furniture. The only thing there was a desk that Beatrice Laws used, one secretary's table with a chair and typewriter, and there was nothing else.

Hudson: Telephone?

Moorman: Yes, I think we had our telephones. In my office there were only stacks and stacks of papers which were the files of the legal committee which they had brought over and dumped. [Laughter] Harris was so anxious to hand all this to me, it was funny. It was "Thank God you're here, Moorman. Here are the files. Goodbye." And he zipped out. He had an impatient family somewhere wondering where he was, so he left. As for myself, I didn't know quite how to begin. So I just started with the first pile and went on from there.

The first day I asked Mary Kay Jackman, the secretary--she was a wonderful Texan--where we could get some furniture. She said we should go over to the other side of Broadway where there were some used furniture stores and see what we could find. So we went over there and found a couple of desks and chairs that were serviceable. The key thing was getting the store to agree to a quick delivery, because I didn't have anywhere to sit. So, for a very low price--I mean, for peanuts--we furnished the office that day, and the store delivered the items promptly and I had someplace to sit.

We also did a few little things to decorate the office. The Sierra Club lent us an Ansel Adams photograph of Mount McKinley, and somewhere we got a picture of John Muir. Brenda found a couple of plants for the office and we hung a rug, an Andean rug that I took from our house.

Our offices were not in the Mills Tower with the Sierra Club, but a couple of blocks away. That was a decision made by the board of the Sierra Club Legal Defense Fund before I arrived. There was a feeling that it was not a good idea to have the lawyers' offices in the same office with their clients. There was a feeling that professionalism required a bit of distance. The Sierra Club's staff was not completely happy about this. They may have been right.



Hudson: Was there some thought also of legal separation for tax purposes and that sort of thing?

Moorman: One of the reasons for a separate Sierra Club Legal Defense Fund was the Sierra Club's problems with its tax exemptions. They did want tax exempt money for the Sierra Club Legal Defense Fund. That is really the only reason for a separate corporation. There is no raison d'etre for a Sierra Club Legal Defense Fund if it isn't doing Sierra Club's work. That being so, there was no point to a separate entity unless it gave you some other advantages. The tax exemption was the advantage. Everyone understood SCLDF's principal purpose was to service the Sierra Club's legal needs--its conservation legal needs, not its corporate legal needs.

One of the things that I had very much in mind when I took the SCLDF job was that the Sierra Club had a lot of feuds. There was still a lot of emotions around from the Brower breakup, and there were numerous other feuds.

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Moorman: I pledged to myself that I would walk away from the job on a minute's notice if I found the politics unbearable. I was very pleased that it turned out to be an unnecessary pledge. While, yes, there was a lot of intense politicking in the club--and I'll mention some things that happened along the way--with a couple of minor exceptions, everybody at the club was quite good to me, both on the staff and among the board members and the other volunteers. Almost everybody was supportive; everybody, more or less, was helpful; and everybody was more or less understanding of the difficulties and problems that I had along the way. It really couldn't have been a better experience. Dr. Wayburn, Will Siri, Judge Sherwin, Mike McCloskey, Phil Berry and many, many others. There were princes. It was exactly the opposite of what I feared it would be. There were some hotly contested issues along the way, but they never rose to the level of personalities so far as I was involved. That was really quite good.

#### Oversight and Supervision of Sierra Club Chapter Lawsuits

Moorman: One of the problems in getting the Sierra Club Legal Defense Fund off the ground was the enormous interest in the litigation program that had built up. Lawyers all over the country were interested in participating in the program. The various club chapters were getting lawyers left and right to agree to bring cases they were interested in. The club's leaders, however, were

determined not to license the chapters to file suits in the name of the club. They wanted to maintain centralized quality control. That was to be one of the functions of the Sierra Club Legal Defense Fund. Even though we might not conduct those cases, they wanted SCLDF to stay on top of them. They wanted us to make sure that the briefs were good, that the cases were good cases, that the cases were handled properly, that the club's interests as a whole were being looked after. And, furthermore, they wanted to continue the control of the authorization of new suits.

So the first problem was to manage this without becoming a bottleneck. We created two committees to authorize lawsuits. We had a committee of the Sierra Club Legal Defense Fund itself that reviewed case proposals, and the club's Conservation Committee, which consisted of three people: the executive director of the club, who was always Mike McCloskey; the president of the club, who was Ray Sherwin when I arrived; and the vice president for legal affairs, who was Phil Berry. Oddly enough, the club's committee never met. But the committee functioned, nevertheless. It got reports and the members all had a lot of input in decisions. They conferred with each other by telephone. They reviewed the papers and they made comments. They called me with questions. The club's committee was not a rubber stamp.

I thought the oversight was very good. It forced me to prepare memos for the leaders of the Defense Fund and the club which explained what the cases were about, what we could get, what involvement would cost, and other things they were interested in.

Now, occasionally--[Laughter] you know, we weren't always right. I remember one particular case where I said the club ought to stay out of a case. It was a case the Oklahoma Chapter wanted to bring. My advice was followed. The chairman of the Oklahoma Chapter was disgusted. He thought we were being excessively bureaucratic. The Oklahoma Chapter arranged for a local environmental group to bring the case, and they won the case. [Laughter] And then the chapter wanted the Sierra Club to get in on the appeal. But, of course, we didn't do that; we stuck by our guns. Then the other group won the appeal! Oh what looks of disgust did I receive from the chapter chairman. I did the best I could, and just had to be philosophical that my assessment of any case as being unwinnable or as not being an appropriate case for the Sierra Club, might be proven wrong in the long run.

Hudson: Was there a test of national significance that was involved also?

Moorman: We did not insist on national significance. If we were going to use the resources of the Sierra Club Defense Fund, national significance was a criteria, but not for a case which a local chapter wanted to bring for which they had obtained a pro bono counsel where our role was simply to be oversight and supervision.

#### Role of Executive Director of SCLDF

Hudson: Before we get into cases, specific cases, could we talk a little bit more about your role as executive director? As I understand executive directorships from watching [Sierra Club executive director] Mike McCloskey,<sup>1</sup> you're in charge of the staff, fund raising, I guess, to a certain extent? The whole operation?

Moorman: Yes.

Hudson: How were the funds raised in the SCLDF?

Moorman: Well, you've asked a lot of questions here. I'm just going to talk generally for a minute. As executive director, you're in charge of supervising the legal program, and that meant not only the lawyers on the staff of the Sierra Club Legal Defense Fund, but the lawsuits that the Sierra Club had out in the field that were being handled by private attorneys on a pro bono basis or otherwise. The job also required the review of requests for new cases. I was reviewing requests for litigation authorization and seeking the approvals from the two committees. I wrote up the reports and the recommendations. So I was in a central spot for getting lawsuits approved and supervising those lawsuits once they were brought.

I was very much concerned that lawsuits not be used simply for political purposes. It sometimes happens in a conservation campaigns that the people involved feel you can further the interests of the campaign if you file a lawsuit. In order to maintain the credibility of the Sierra Club over time I thought that the club should not file lawsuits simply for those purposes. I thought the club's lawsuits had to be "tubs" that would stand on their legal bottoms, that they be suits which were meritorious regardless of a current conservation campaign.

Hudson: Were there also artistic criteria?

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<sup>1</sup>Sierra Club oral history interviewee. See series list.



Moorman: It was a professional criteria. Let me compare this policy to the lawsuits brought by the Mountain States Legal Services a few years later under the aegis of cousin Jim Watt. I've reviewed a number of his complaints, and I got the impression from that review that he filed his suits to get publicity and attention, without regard for the merits of his cases.

Hudson: Contributions?

Moorman: I think what Watt did was interesting. It's not to be sneezed at. He used lawsuits as a vehicle for building a constituency, for gaining publicity, and it gained for him the position of secretary of the interior. So, who can argue with success? But his approach was not my approach. The Sierra Club was already highly visible. It already had its constituency. It didn't need to use lawsuits for that. I feared at the time that the club's credibility would be damaged if it did that, and I wanted to build the club's credibility in the courts. I thought this would be a problem when I went to San Francisco. It turned out not to be. The leaders of the Sierra Club, the staff, the conservation leaders overwhelmingly were sensible, very sensible people. Occasionally I would get some pressure to file a poor suit for something or other, but upon resisting and stating the reasons why, I always prevailed. I was quite pleased with that. I was pleased with the cooperation I got on that issue, and I think the Sierra Club's lawsuits were respected.

One problem that I faced as executive director is that what I did in administering a legal program is different from what I did when I practiced law. For a long time--well, I guess throughout the job--I constantly had the feeling that I wasn't working. I had to spend so much time on administrative matters, lawsuit approvals, supervision, fund raising, things like that, that I didn't have time to handle lawsuits as much, as I really would have liked. I felt deprived. I never quite adjusted to it. So we decided after I was there three years to rotate the position of executive director. John Hoffman, who had come on as a staff attorney a few months after I arrived, became executive director, and let me go back to litigation.

It felt good to get back to practicing law after being executive director for a few years. When you handle lawsuits, you spend an intense amount of time on a few problems. When you administer a program, you spend much smaller periods of time on a far larger number of things. When you try to do both, they interfere with each other. When you write a brief, it requires an extended period of concentration. If that concentration is frequently disturbed, the quality of what you do suffers. If, on the other hand, you decide to spend all of your time prosecuting your cases, then you begin to neglect the flow of business at the



administrative level. You become a bottleneck, because you fail to spend five minutes here on this, twenty minutes on this, fifteen on this, and so forth. If you block time off to do your brief, that administrative flow stops.

Hudson: Analogous to being the chapter chairman of the Sierra Club and also leading a particular conservation fight.

Moorman: Exactly.

The personnel problems were also important. It turned out that Jerry Gleason, one of the initial lawyers, although a fine lawyer and a fine person, was not temperamentally suited for the Sierra Club Legal Defense Fund. Not too long after he was there, he got into a tiff with an active Sierra Club volunteer lawyer, David Pesonen<sup>1</sup>. Dave had been involved in fighting nuclear power plants on the California coast and had gotten us involved in a fight involving a proposed PG&E plant at Point Arena. He had already stopped one at Bodega Head. Well, Jerry and Dave just did not hit it off, and that caused problems. Jerry decided he'd prefer to do something else rather than engage in infighting. I felt that was the best decision for Jerry to make under the circumstances, though I regretted very much that things hadn't worked out, because I had a high regard for Jerry. I also had a high regard for Dave.

Hudson: Without going into detail about why Jerry Gleason did not fit in, if you will, how would you describe the ideal temperament for a SCLDF lawyer? You've talked about it taking a particular type of person to fit in to that kind of practice.

Moorman: That is a very good question. I wish you would remind me of it later. I want to think about it a little bit first.

Hudson: Well, I'll ask another question then, one I'd asked earlier-- financing at SCLDF. Did the money come from foundations primarily?

Moorman: First I wanted to say that we hired John Hoffman when Jerry Gleason left, and I thought that locating John Hoffman and persuading him to come to the Sierra Club Legal Defense Fund was a very important step. Getting the right people to do the right jobs was a big part of my job. Getting John Hoffman was one of the best things I did.

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<sup>1</sup>Regional Oral History Office oral history with David E. Pesonen, in process.

Financing SCLDF

- Moorman: As far as money was concerned. We got no money from membership dues. All the original money came from the Ford Foundation grant. I set about to get some additional money from some other sources and was successful in doing that. I was able to maybe double the size of the budget of the Defense Fund over the original level that was based on the grant from the Ford Foundation.
- Hudson: Was the Ford Foundation grant an annual thing?
- Moorman: We had it for at least five years, I think. I'm not sure whether we had it the full six I was there.
- Hudson: There's a checkoff on the Sierra Club membership application form where individual members can contribute money, and I just wanted to know how much of a role that had in financing the operation.
- Moorman: At the outset very little. I've been told that it's now a significant part of Sierra Club Legal Defense Fund's income. It had started to become a factor before I left. Denny Wilcher was the club's in-house fund raiser at that time, and Denny was very good about looking after the interest of the Sierra Club Legal Defense Fund. Whenever he identified a donor that was principally interested in the legal program, he would sing our praises to that donor. Through his efforts we began to get gifts from individuals. That became an important source of our income. Then the checkoff--we started to get some money from that when I was there, though it was not yet a large amount. So Denny Wilcher was very helpful.

Occasionally people would just throw money over the transom. Every now and then a big check would arrive from somewhere, and we never knew from who or why.

Larry Rockefeller was interested in the Sierra Club Legal Defense Fund. He is now a lawyer on the staff of the Natural Resources Defense Council, but in those days he was not.

- Hudson: This is the son of Laurance Rockefeller?
- Moorman: Yes, yes. He was very interested in forestry matters, as was I, and he was helpful with fund raising. One of the more interesting when I was there was the Monongahela case. This was the case where we got the court to rule that the Forest Service's Organic Act prohibited clear cutting. The case caused a tremendous stir and something of a backlash in Congress. The Organic Act was amended by the National Forest Management Act of

1976, which is another story which I want to talk to you about later. You might make a note for us to come back to the Randolph Bill, the Monongahela case, and the National Forest Management Act later.

But anyway, Larry Rockefeller thought up that case. He did the research as a law student. He read the Organic Act as not permitting clear cutting. Clear cutting was actually one of the evils which Congress was concerned about when it passed the Organic Act and created the national forests. The Sierra Club Legal Defense Fund arranged to take that case to court on behalf of the West Virginia Izaak Walton League and others.

Larry Rockefeller became quite familiar with SCLDF and was supportive. Another source of funds in those days was the MacIntosh Foundation. Mike MacIntosh, who has been an active fund raiser for environmental organizations, was very helpful to us at that time.

#### SCLDF'S Rocky Mountain Office

Moorman: I thought that John Hoffman and I, with Beatrice Laws working part time doing the coordination, was insufficient. I thought we had to increase the size of the staff, and I thought we needed funds to hire private attorneys. Without that, we weren't going to accomplish a lot. I also thought it would be good for the fund to have a Rocky Mountain office. All the public interest lawyers were on the two coasts. They were in Washington, New York, San Francisco, and L.A., and I thought the Sierra Club needed our presence in its major area of concern in the Rockies. I was also interested in getting Tony Ruckel involved with SCLDF. So Larry Rockefeller and Mike MacIntosh were helpful in getting the funds for us to do that. I was particularly pleased at being able to get Tony Ruckel into the Sierra Club Legal Defense Fund.

I really wasn't much interested in having a Washington office, but I thought we ought to have Washington lawyers. And my way of dealing with that was to retain Bruce Terris, who had started his own law firm, and Ron Wilson, who had his own practice. Do you know either of these fellows?

Hudson: I know the name. I've never met him.

Moorman: I relied more heavily on Bruce than I did Ron, though they're both fine lawyers. Bruce did a number of things for the Defense Fund which were outstanding. He was involved in the RARE case;



he was involved in the Monongahela case; and he was involved in the Prevention of Significant Deterioration case for us. He did outstanding work, and he contributed materially to our early success. However, he did not get along well with John Hoffman, so when John Hoffman was executive director, the relationship withered. I felt that was unfortunate, but, you know, *c'est la vie*. I don't think the subject of their dispute was substantive. It was not a dispute over goals or how you handle lawsuits. Rather it was a dispute over fees, a monetary thing. It was unfortunate. I think John felt that Bruce would not cooperate with him in holding down costs, and since he would not cooperate, he just couldn't use him. Let me turn this off just a second.

[Interruption]

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Moorman: Going back to when we started the Sierra Club Legal Defense Fund, one of my early goals was to raise some additional money, to get a Rocky Mountain office open, and to have the resources to hire outside attorneys like Bruce Terris for some of our big matters. I determined early on that I had a choice: I could concentrate my efforts on these things or I could spend all of my time litigating. It was clear to me if I spent my time personally litigating that I wasn't going to accomplish those other things. If I was to accomplish those other things, someone else had to do the litigating. That's why Bruce Terris was very helpful, and that's why John Hoffman was very helpful. They basically did the litigating for the Defense Fund at first while I handled all the miscellaneous other chores, though I did some litigating too.

For example, after the Mineral King decision came back from the Supreme Court, it was remanded to the District Court before Judge [William T.] Sweigert. There were a number of proceedings in the case before Judge Sweigert, and I handled those personally. Judge Sweigert was really not very vigorous in those days--he was old--but he was certainly a very able judge.

Hudson: What court are we talking about?

Moorman: This is Federal District Court in San Francisco. Sweigert handled a couple of our cases. We had a case involving the redwoods which another of our staff lawyers--a very fine lawyer, Mike Sherwood--handled. Mike had a beard, as did I, at this time. I once appeared before Judge Sweigert a day after Mike had appeared before Judge Sweigert in the redwoods case. I had motions involving Mineral King. When Mike had appeared before him, Judge Sweigert had chastised him on the length of his brief. My brief was about the same length as Mike's. When Judge Sweigert picked up the brief, he looked at me and said, "I told



you yesterday your brief was too long, and here you are with another one that's too long." It was a little irrational of the judge. I mean, even if he had instructed me the day before, this would have already been on file in the court.

During my rebuttal, as my last words, I said to Judge Sweigert, "Your Honor, I would like to say one last thing. I wish to apologize for the length of my briefs, and I assure your Honor that I will not submit an unnecessarily lengthy brief to you again." When I finished, he looked at me and he leaned up and he said, "Counsel, I wish more of them would apologize." [Laughter] Well, he ruled in my favor on that one that day, and maybe the apology did it.

### California Coastal Protection

Moorman: Another matter that I litigated personally in those early days, was a case involving the Coastal Zone Management Act. There was a big public initiative.

Hudson: Was this federal or state?

Moorman: This was state--the coastal initiative, Proposition . . . Gee, was it Prop. 21? I can't remember the number, but there was a very big campaign which the Sierra Club had helped organize to get the signatures necessary to put this coastal protection bill on the ballot [Proposition 20, 1972]. It provided for six regional coastal commissions and a central coastal commission, and it had a lot of interesting wrinkles. The real estate developers were doing everything under the sun to thwart the initiative. One of the things they did along the way was file a suit to prevent the initiative from appearing on the ballot. Phil Berry and Will Siri asked me to personally handle the club's intervention in the case. We had to scramble. As a matter of fact, there were a couple of court hearings that were coming in rapid succession. While I wrote our memorandum opposing the motion for a preliminary injunction, Phil Berry went to Sacramento and covered another hearing in the case. Then I appeared when the preliminary injunction was argued.

We managed to defeat the preliminary injunction and keep the initiative on the ballot. I felt that I was able to make a contribution. Even though there were a large number of people in the courtroom that day arguing both sides, I thought I was able to bring one important point to the court's attention which was helpful. I was the last lawyer to speak during a long day, and when it came my time to speak, no one had yet gone through the

Horn Book requirements for a preliminary injunction and shown that the real estate developers had not met those basic tests. When I went through these requirements, the judge became quite interested and asked a number of questions. Sometimes you win by sticking to basics.

Hudson: Without getting too technical, can we say what those problems were, the prospect of immediate harm . . .

Moorman: Yes, the likelihood of ultimate success on the merits is one. This involves the strength of your basic legal arguments. Another is the threat of irreparable injury. They had trouble on both one and two. The balance of the equities is a third test, which is the degree to which the proponent of the injunction will be harmed, if he does not get the injunction, as opposed to the harm which would accrue to the defendants if the injunction was granted. If the judge had granted the injunction in our case, he would have destroyed all the efforts of the people working for the initiative. The coastal initiative would have missed the election and the campaign would have been ruined. On the other hand, by not granting, the other side wasn't similarly injured because their legal issues could be reviewed with deliberation later. They had a second opportunity to win, but we didn't have a second opportunity to win.

Among other things, the developers claimed that the literature of the proponents of the initiative was deceptive because the definitions in the coastal initiative were written in such a way that they arguably included the streams up to the crest of the Sierra. They claimed this was not revealed in the explanatory documents. Well, you could read some of the definitions that way, but the mechanism for enforcing the Coastal Zone Act had no mechanism for enforcing anything outside the coastal zone. So even if some definition theoretically swept in every stream up to Tuolumne Meadows, there was nothing in the act that resulted from that.

The Sierra Club had spent enormous amounts of time and effort on the coastal initiative and had been very effective. SCLDF's role was really minor, but at a crucial moment when a legal attack was made on the whole effort, we were able to go in and fend it off. We're normally plaintiffs trying to get something. We're only occasionally interveners to prevent damage of this kind. It was personally very satisfying to me because it demonstrated how SCLDF could help the club in its political action activities with a good lawsuit.

Decision to Sue for Roadless Area Protection, 1972

Moorman: One of the most important cases that we brought in those days was the Roadless Area Review case--the RARE case. This case was handled by Bruce Terris. It involved the fate of the fifty million acres of National Forest Service land that was roadless, but was not covered by the Wilderness Act. I had been involved in this area in the Otter Creek case (West Virginia Highlands Conservancy v. Island Creek Coal Company), and I was aware that the Forest Service manual had a number of provisions for the protection of roadless areas and for their consideration for various kinds of protection. We believed that the Forest Service decision to cut roadless areas would invoke NEPA. So I had in mind a lawsuit which would combine the Forest Service manual regulatory requirements with NEPA. The goal was to force the Forest Service to stop cutting roadless areas and to force them to develop plans for their protection. The vehicle would be Forest Service procedures and EISs.

Hudson: By saying that you had in mind to start a lawsuit along those lines, does that imply you had to wait for the right set of facts to come along to spring this on the government?

Moorman: No, no.

Moorman: The de facto wilderness problem was a system-wide problem that required an overall solution.

Hudson: Sure.

Moorman: There was a huge amount of de facto wilderness. I had numerous conversations with my colleagues about what we could do to protect it. The Sierra Club's Wilderness Committee people wanted to do something about de facto wilderness. I felt that we should file a lawsuit to enjoin the Forest Service from cutting any more de facto wilderness without EISs and without compliance with their regulations under the Multiple Use-Sustained Yield Act. This seemed to some people as biting off of more than we could chew. I mean, you're just going to stop the Forest Service from managing fifty million acres?

It became a controversy within the club. There was a faction which thought that this lawsuit should not be brought. The faction was led by Dick Sill. Dick Sill was a physics professor at the University of Nevada. He thought that the Sierra Club staff was, as a generality, too assertive, that it did not defer sufficiently to the volunteer leaders of the club. As you know, one of the themes in Sierra Club history has been of a taffy pull



between Sierra Club staff and volunteer leaders over this and that.

When I was a volunteer, I always got along well with staff, and when I was staff I got along well with volunteers, and I didn't see the point of the rivalry. But anyway, Dick Sill didn't think the Sierra Club Legal Defense Fund should do this. He thought that the suit would destroy the relationship the Sierra Club had with the Forest Service. Now I think whatever the relationship the Sierra Club had with the Forest Service in the past, it had become strained by the Mineral King case, the East Meadow Creek case and some other things. But Sill was dead serious, and he had an ally in Francis Walcott.

Dick was really quite a nice fellow. He and I fussed a little bit along the way, but we were able to maintain a personal relationship. There was one occasion when I became quite angry with him, but, by and large, I liked him. I went over to visit with him once in Nevada and spent some time with him to try to better understand his views. He was a good Sierra Clubber at heart, despite the fact that he was wrong about this case and a number of other things.

A meeting was held in the Colby Library. Club leaders from all over the country came to discuss the de facto wilderness case. There was no other occasion when one of our proposed lawsuits created such interest. The meeting was formally of the Wilderness Committee or the Wilderness Classification Committee. The Committee was big. The Colby Library was filled with people that weekend. Sill, of course, was there, and Francis Walcott was there. Rupert Cutler, who was then at Michigan State getting his doctorate, was there.

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Moorman: Holly [Holway] Jones ran the meeting. Alan Smith, who is now the President of Defenders of Wildlife, was there. That was the first time I met Alan. Chuck Cluson was there. By and large, board members were not there. I do not remember whether Wayburn was there. He may have been. Anyway, there were about thirty or forty people in attendance, and I just watched them debate. After a long debate, they decided they wanted to go ahead with this lawsuit.

That meeting was interesting for another reason. In addition to club sanction from the Wilderness Committee for the RARE lawsuit, club interest developed out of that meeting for the eastern wilderness issue. I think if you traced the club's programmatic concern for eastern wilderness, it crystallized at that meeting.



So this particular meeting--I think it occurred around April of '72--was a turning point in the wilderness fight.

We were successful in getting an injunction on the roadless areas. Bruce Terris made the argument, originally scheduled for D.C., but re-moved to San Francisco at the Government's request. That led to the Forest Service's RARE II program which later became the subject of another lawsuit last year. The club's campaign to protect roadless areas really grew out of that suit. I think that case was the Sierra Club Legal Defense Fund at its best: bringing a strategic lawsuit in a programmatic area which helps crystalize an issue and helps focus the issue and allow people to work on the issue in a constructive way thereafter. I really think it was one of the very most important things we did when I was executive director.

### Clean Air Litigation

Moorman: Another example was the PSD litigation.

Hudson: Prevention of significant deterioration?

Moorman: That's correct; under the Clean Air Act. When Larry Moss was president of the Sierra Club [1973-1974], or maybe it was before he was president...Anyway, Larry was interested in the Clean Air Act and, in particular, the prevention of significant deterioration issue. PSD was being completely ignored by EPA. The Clean Air Act, as it was passed in 1972, did not include detailed provisions on PSD. You had to infer PSD from the legislative history and some miscellaneous words in the statute. Larry thought the principle was important and wanted us to bring a case to establish PSD as precedent. It seemed to me like a good place for the Sierra Club to make an important contribution to Clean Air Act jurisprudence. NRDC was bringing a lot of suits under the Clean Air Act to enforce deadlines for regulation, and such, and they were extremely important. In fact, NRDC can be credited, as much as anybody, with implementing the Clean Air Act. We did not want to duplicate what NRDC was doing.

But we thought the integrity of the Clean Air Act required that the act not be used as a license to pollute clean areas-- areas that exceeded Clear Air standards. There were a lot of people that wanted to use the Clean Air Act for that purpose. The result in the end would be uniformly mediocre air quality throughout the country.

Hudson: It ties in with the Sierra Club's lands orientation anyhow, protecting the lands.

Moorman: Sure. We won our case by way of a very peculiar decision by the Supreme Court. There was a tie (4-4) vote in the Supreme Court without opinion, which meant the lower court's decision and opinion remained in place. Since we had won in the Court of Appeals, this was OK, but our Supreme Court victory was of the narrowest kind. We had won, but the Nixon EPA [Environmental Protection Agency] would not do anything about PSD. They claimed that the Supreme Court's decision was not "definitive" and, thus, that they didn't have to obey it. It was infuriating.

Hudson: Not definitive on account of . . .

Moorman: Well, there was no opinion of the Supreme Court and it was a 4-to-4 decision. But we had won, and they refused to acknowledge it. John Quarles was the general counsel of EPA. He came to San Francisco at about this time and I invited him to our flat for dinner. At dinner, I threatened to sue his boss, EPA administrator [William] Ruckelshaus, for contempt if they did not comply with the PSD order. Quarles asked me not to do that. He said that if I did that, I would be damaging one of the best people in the administration. That was undoubtedly true. Bill Ruckelshaus is a super guy, a superior guy. I was very pleased when he was brought back to EPA. In comparison with a lot of the people in the government in the Nixon days, he stood out (as he does today in comparison to the Reagan people). But, if they wouldn't comply with a court ruling, we weren't going to be deterred merely because Ruckelshaus was generally a good guy.

Eventually they issued some weakly complying regulations and then Congress, in the '77 amendment to the Clean Air Act, dealt with the subject. Our lawsuit, though, is what kept the issue alive. PSD could have died had we not brought the suit.

#### Clear-Cutting Near Redwood National Park

Moorman: One of the nice things about the The Sierra Club Legal Defense Fund was that I got to meet a broad range of interesting people. For example, I spent a lot of time trying to figure out some way to stop clear cutting around the edges of the Redwood National Park. I went there a number of times, consulted a lot with Dr. Wayburn. Martin Litton flew me up there once. The flight from

San Francisco to Eureka with Martin Litton<sup>1</sup> was one of the wildest trips I ever took. We inspected every living redwood tree along the coast at treetop level, Martin talking all the time--I mean nonstop.

Hudson: Flew his own plane?

Moorman: Yes, his own plane. Martin has such an overpowering personality and he talks so much, I almost jumped out of the airplane long before we got back. [Laughter]

Hudson: I've only met him once. He was here in Washington a year or so ago to give a presentation.

Moorman: I liked Martin very much and thought he was a good spokesman for conservation issues, a very dedicated fellow. Dr. Wayburn, though, was the real hero of the redwoods fight. He was the member who put the most into redwood issues, and who would never give up. No matter how poor our position was, no matter what setbacks occurred, he would keep working and he would keep asking us and others to try to find ways to carry on the good fight. I admired him very much for that and did what I could to help. The law that we had to work with was not great, but we did what we could. We started off by filing a petition asking the U.S. to protect the peripheral redwoods. We took the view that the secretary of the interior had the authority to do what was necessary to protect the park, and that he had to prevent the peripheral clear cutting in order to protect the park or he risked losing what he had inside the park boundaries. Ultimately Congress expanded the park. Our legal efforts were not terribly successful, but we did get a couple of favorable legal opinions along the way, so we were some help.

#### Mineral King Litigation/Standing to Sue

Moorman: The Sierra Club had a co-party in the Mineral King case, a local group called the "Mineral King District Association." It was an association of cabin owners in the Mineral King valley. They had joined with the Sierra Club to prevent the valley from being overwhelmed by the Disney ski resort. It wasn't just the Sierra Club's case, it was their case too. Anyway, the Mineral King District Association wanted a report on what we were doing. I went to Mineral King and met with the members under the trees by their cabins and explained what was going on in the lawsuit. I

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<sup>1</sup>Sierra Club oral history interviewee. See series list.



discovered a wonderful little community. The members by and large were prepared to give up their cabins to save the valley. I learned as I talked to them that they viewed Mineral King as their place in the world. I stayed in the cabin of a woman who had met her husband there as a teenager. Their families both had cabins, as did their fathers. The various members lived in different places around California, but they all came together at Mineral King each summer and renewed their friendships. Mineral King was incredibly important to these people. It was their "place."

Hudson: If you had these people, how come standing was such a bitter issue in that case? Was it just standing as to the Sierra Club being a part of it?

Moorman: Having them helped. The issue was whether or not an interest other than an economic interest could be a basis for a lawsuit. Though they were adjacent to the proposed development and closer to the problem than the Sierra Club, the Mineral King District Association's members' interests were not truly economic. Their interest was aesthetic, recreational, etc., as was the Sierra Club's. The issue was whether an interest other than an economic interest could be the basis for standing. The Supreme Court held that it could.

But going to meet the Mineral King people, hiking around in Mineral King and actually seeing it and being able to talk to the cabin owners was enriching. One older woman came up to me after I had delivered my little talk and said, "I sure do like the sound of your voice." When she said that, I felt like a preacher from the old days.

Judge Sherwin once asked me to go out to Nebraska with him. The local chapter of the Sierra Club there was fighting a power plant the Nebraska Public Power Co-op wanted to build. Nebraska has this huge statewide public power cooperative. It's like TVA [Tennessee Valley Authority]. The chapter was composed largely of farm families centered on Hershey, Nebraska. The Huebners were the leaders. They were at the edge of the sand hill country. When we were flying over the sand hills, I saw a line of white pelicans flying over a pond. The white pelicans will fly in a line low over the water to herd fish into a shallows where they can be scooped up. I knew they fished in this cooperative fashion, but I had not seen it before.

The chapter held a big dinner in a church basement for Judge Sherwin, and we got to meet with everybody. Tony Ruckel was working on their case. Getting opportunities to meet such people was one of the joys of the job.



[Interruption]

Hudson: I have a question. If we can go back for a moment to the Mineral King case, one of the most famous aspects of that case was Justice [William O.] Douglas's dissenting opinion. Or I think it was a concurring opinion. I don't really recall.

Moorman: Dissenting opinion. Do trees have . . .

Hudson: Do trees have standing or should they have standing? My question is, Did he think of that on his own or did somebody put that bug in his ear?

Moorman: He based that on a law review article by Christopher Stone, a USC [University of Southern California] professor. The article and Stone's idea that trees should have standing had created a bit of a stir. [Southern California Law Review, Vol. 45, No. 2, Spring 1972.]

Douglas had read the article, and he was taken by it and used it. I frankly did not think it was a very good idea.

Hudson: Why?

Moorman: Well, it's a charming idea to consider the non-human elements of the world as having standing. But if they have standing, how are they going to exercise it? Are the trees going to file lawsuits themselves? No, of course not. People, we know, will do that. What people? The people the trees ask to file suits for them? Well, we know not that. Then who is going to speak for them? We know that trees can't talk, can't write briefs and can't engage lawyers. Whatever we think of trees, we cannot assign them the qualities of humans. To do so is referred to as the "pathetic fallacy" in literature. If despite all this trees have standing, then the courts must decide who speaks for the trees, possibly by appointing guardians ad litem. Who are they to be? There is no particular reason why it would be the Sierra Club. Anyone could come forward and argue, "Appoint me as the spokesman for Mineral King."

In other words, you do not solve anything by the Christopher Stone/Justice Douglas formulation. You have to figure out who is going to appear in court to represent the inanimate object, and that brings you right back to the issues of standing. As only people can actually appear in court, the question is: what people and under what circumstances are going to be allowed to appear?

I had a case once where I had a wildlife biologist as an expert. The lawyer on the other side, trying to score points

with the judge, said to my witness, "Mr. Barrett, you keep talking about wildlife values, wildlife values. I'm interested in people values. What about people values?" Reg responded, quick as a whip, "All values are people values, including wildlife values. Value is an economic term. Only people have economies." He said, "You can't use the word 'value' in association with wildlife unless you're talking about wildlife's value to people. When I refer to 'wildlife values,' I'm referring to the value of wildlife to people." I happen to believe the entire natural world is valuable to people. There's really nothing to argue about in court except people's interests. You certainly can't go to court to enjoin a bear from getting into your garbage can. Nor can Mineral King sue the bears or the people. We kid ourselves if we don't realize these disputes are between people.

Hudson: Secretary Watt or some surrogate or other of his in the last year or so came up with what may be a variant of this guardian ad litem problem that you've raised: if the Sierra Club is so interested in saving certain lands or wilderness lands, they ought to buy them and manage them themselves. They were stating this in all seriousness or something very similar to that idea, which was totally absurd anyhow just from a financial point of view as much as anything else. Do you see a relation there?

Moorman: Well, no, because I think the world is an interconnected place, and it cannot be simply a matter of private property or what I do on my property as opposed to what you do on your property.

Hudson: But the question of who will speak for the trees.

Moorman: Yes, and my interest in the trees cannot be defined simply by classical property considerations. I believe we all have an interest in how others deal with nature on their property or off our property.— I would not accept a scheme in which those who are interested in nature get some of the property and they can protect nature on that property, and those who aren't interested in nature get other property and are allowed to screw it up if they want to. I don't see anything good in that. I suppose that's what we have now and the results are sub-optimal.

#### Key Staff and Volunteers in Defense Fund Efforts

Hudson: You suggested raising a question of the relationship between the RARE suit and the genesis of the National Forest Management Act.

Moorman: Yes, I'll take that up next time. I want to say one other thing today. I wanted to mention some people that were very helpful to me. First of all, Don Harris and Fred Fisher were absolutely crucial to the early success of the Sierra Club Legal Defense Fund. I relied on them very heavily. They differ in temperament. Don Harris was chairman. He was very fatherly to me. He's a man of very good judgment.

Hudson: Chairman of what?

Moorman: Sierra Club Legal Defense Fund.

Hudson: The board.

Moorman: Yes. And Fred Fisher, his partner, was vice-chairman. He's a person of very sharp intellect and quite a bit of energy, and he was always prepared to help me out on problems. They both gave an enormous amount of time to the Sierra Club Legal Defense Fund. They were a tremendous support to me. I relied on them very heavily, and frankly, I don't believe that I could have done much of anything without the support of those two people.

Phil Berry, the vice president for legal affairs of the Sierra Club, was always supportive, enthusiastic and helpful. Mike McCloskey, the executive director of the Sierra Club, was always very cooperative. He was very generous in giving me his time whenever I needed it. We collaborated on a number of things. Denny Wilcher, whom I mentioned earlier, was helpful to me in raising funds while we were there. Denny was someone I was really quite fond of, and he was very helpful.

There were a lot of people on the Sierra Club's staff who were helpful--people like Larry E. Moss, who was the Los Angeles rep in those days. He was a lot of fun to work with. Brant Calkin was helpful. John McComb was helpful. Carl Pope, Doug Scott, Chuck Cluson--all of these people were very helpful. Gordon Robinson, the club's forester was always helpful. Among Sierra Club board members I should mention are Dr. Wayburn. He was very supportive. And Dick Leonard,<sup>1</sup> who had retired from the Board but was active at the Sierra Club Foundation. Though I didn't deal with him often, on a couple of occasions he was very helpful to me. Will Siri was helpful--all these people of divergent interests and many others were all helpful. I can't name them all. I mean, there were so many, and I had so many good experiences with these people.

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<sup>1</sup>Sierra Club oral history series interviewees. See series list.



The staff of the Sierra Club Legal Defense Fund was wonderful and redoubtable. I should mention one staffer, too, that I haven't mentioned up to now. I think I have mentioned most of them. I've mentioned John Hoffman, Tony Ruckel, Beatrice Laws and Mike Sherwood, who did so much good work, but it doesn't hurt to mention them again. I also want to mention Cynthia Wayburn, who was Dr. Wayburn's daughter, worked with us for a while as a paralegal, and Francia Welker, who first started as a law student at the University of San Francisco.

Relationship Between SCLDF & Sierra Club

[Interview 4: March 12, 1984]##

Moorman: What we planned to take up this time, Ted . . .

Hudson: There are a couple of loose ends to cover.

Moorman: Go ahead with the loose ends.

Hudson: OK. In the last session you referred, in an aside, to the election in 1973 of Larry Moss--Larry I. Moss--as president to the club and then said you wanted to say something about that and never got back to it. So, this is an opportunity.

Moorman: Oh, it is a minor point. I made it a firm rule not to become involved in Sierra Club politics, but I violated that rule once and I may have influenced the election of Larry I. Moss as president of the Sierra Club. Before the board met to elect the president that time, they met at the West Point Club up on Mount Tamalpais to go over issues out of the spotlight of the public meeting. The clubhouse used to be an inn on the old Mount Tam Railroad. The tracks were torn up around 1929.

Anyway, the board was meeting there in retreat. I was invited to make a presentation and hang around for supper. While there, I became aware that the members were politicking over who the next president would be. Apparently the board was deadlocked between Larry Moss and Kent Gill. One of the new board members asked me my opinion as to who should be elected. I said I thought both Gill and Moss were qualified to be president, but that Gill had just come on the board and would have another shot at it. Larry had served on the board for some time and this was his last chance, and, that under the circumstances, I would vote for Larry. The board member that I talked had been leaning toward Kent, but ended up voting for Larry and told me later that I had changed her vote. That was the only time I can remember



having exercised any influence in Sierra Club politics while I was at SCLDF.

I mention the story because it's the exception that proves the rule. I stayed out of club politics, but when you mentioned Larry Moss, it occurred to me that I had been at this session at the West Point Club and may have influenced that election.

Is there another loose end, Ted?

Hudson: Well that raises another question.

Moorman: Sure.

Hudson: One that I had been thinking about anyhow relating to the relationship between SCLDF and the conservation/activist side of the Sierra Club. You referred obliquely to it during discussion of one of the cases: that the RARE case enabled further activism to improve forestry management and designate more wilderness and that sort of thing. Was there a conscious coordination of legislative activities and legal activities between SCLDF and the rest of the club?

Moorman: The Defense Fund provided a service to the club, both the national club and the chapters, in the form of lawyers to handle lawsuits and administrative appeals. Those services were not always provided by Defense Fund staff. Sometimes outside lawyers were retained and paid. The second function was to provide a certain degree of quality control through review of proposed lawsuits by pro bono lawyers attached to the chapters and some degree of oversight of chapter lawsuits after their approval.

One consequence was that much of the Defense Fund's work was oriented toward specific campaigns which specific chapters or groups of chapters were interested in, and they tended not to be oriented toward the national legislative campaigns of the club. We usually did not make an effort to integrate these legal efforts with the legislative efforts going on in Congress. It would have been hard to do. Litigation has its rhythm, and legislation has its rhythm, and opportunities to keep them in sync with each other don't come up very often. You just can't keep them in harness together. We were particularly concerned not to file lawsuits or conduct litigation simply to obtain publicity for the legislative wars. Furthermore, the legislative program is one of the club's functions and the club's staff was expert in that field. We were not. The two programs worked together in a synergistic way, but were not synchronized.

Hudson: Legislation often does wait on litigation and vice versa.

Moorman: True, but they do affect each other. Sometimes when you win or lose a lawsuit, it has an effect on your legislation--sometimes a bad effect, sometimes a good effect. If you stir up a backlash with a court victory, that makes things harder for you on the Hill.

Hudson: Like they have with the Clean Air and the Endangered Species Act.

Moorman: Right. Sometimes, you know, the legislation gives you litigation opportunities that you did not otherwise have. Sometimes you file a lawsuit to implement legislation, force the regulations out, a variety of things like that. But they're essentially two different programs, and each has its own logic and rhythm, and they were not coordinated that closely.

Hudson: Well that was my last loose end, I think. So we wanted to talk about the second portion of your SCLDF career.

#### Admiralty Island Timber Sale Litigation

Moorman: After I had been executive director for about three years, I was chafing at the administrative duties of the job. We decided to rotate the executive director's job around among the lawyers so no one would be stuck with those chores at all times. So, after some persuasion, John Hoffman agreed to be the executive director for a while and let me handle some lawsuits.

There was one suit in particular that I wanted to handle, which I knew was going to take a lot of time. That was the Admiralty Island case. I also wanted to do a number of things involving the national forest roadless areas and wilderness areas. So John Hoffman and I swapped jobs.

The Forest Service had made a huge timber sale in the Tongass National Forest to Champion International. It was the largest timber sale they had ever made, eight billion board feet of timber. A million acres of land were involved. A substantial piece of that timber sale was on Admiralty Island [in southeastern Alaska]. There was another big chunk of land across Stevens Passage on the mainland and another chunk up at Yakutat, north of Glacier Bay, that was also of concern, but Admiralty Island was the big concern. Admiralty Island was a large, wild island with a wonderful population of brown bears and a special place for many reasons.

The club had brought its lawsuit to block the timber sale several years prior to this time. The case had been tried by Warren "Skip" Matthews, an Anchorage attorney. Joined with the Sierra Club was the Sitka Conservation Society and a Karl Lane, bear hunter. The trial had been lost and was on appeal. The appeal had been argued in the Ninth Circuit Court of Appeals and we were waiting for a decision. Angus MacBeth, a lawyer at the Natural Resources Defense Council, had written the appellate brief, and he had done an excellent job.

After briefing and argument, but before decision, an interesting event occurred. A wildlife report prepared by two wildlife biologists hired by Champion International came to light. One of the biologists, Starker Leopold, was well known. Most of the work had been done by his understudy, Reginald Barrett. The report revealed that the cutting of timber in the area would be very damaging to wildlife. It would be especially damaging to deer for reasons peculiar to the Tongass National Forest. The heavy timber was required for shelter for the deer from the heavy snows of that area. Normally deer thrive in areas that had been cut. In southeast Alaska, however, once you cut the timber down, the heavy snows cover the browse and deprive deer of food in the long winter. So, the mature forest was necessary for the survival of the deer herd. There were other problems identified with clearcutting's impact on the salmon streams. Most of the timbered area were along the salmon streams. Clearcutting damaged the spawning beds. There were a number of other wildlife problems.

In the case we argued that the Forest Service had violated the Multiple Use-Sustained Yield Act by giving no consideration to wildlife preservation when it let this massive sale. The forest included major wildlife resources, and we argued that the Forest Service could not legally ignore the degradation of those wildlife resources. The Leopold-Barrett report confirmed our view of things. So, we submitted the Leopold-Barrett report to the court of appeals as newly discovered evidence which entitled us to a new trial. The court of appeals remanded to the district court in Alaska to determine that issue. Taking that opening, we did some additional discovery and found something which astonished us. The Forest Service gave us a file of documents which they had failed to give Skip Matthews before the trial. That file contained a number of things which were startling.

One of the claims the Sierra Club had made--and this was something that had been worked up by Gordon Robinson, the club's forester--was that the Forest Service had consciously sold all of the timber in the million-acre sale area to Champion International to be cut in a fifty-year period. However, the rotation period for timber in that forest, as stated in the



service's professional timber management studies, was over a hundred years. Consequently, a question was raised as to whether proper sustained yield management was being practiced. Gordon's point was that since all the timber was going to be cut down in fifty years, the sustained yield requirement was violated. The Forest Service denied this. They denied vehemently that they were selling all the timber in the sale area, and they insisted they were in compliance with sustained yield principles. They claimed there was a lot more timber present than they had sold.

Well, one of the documents in the discovered file was a side agreement between the Forest Service and Champion International they hadn't told us about. Champion had been fearful that the sale would not keep the mill it planned to build in Juneau busy. They had waived about going through with the sale. To induce Champion to sign off on the big sale, the regional forester gave them an assurance of more timber. In effect, the service provided that if any timber was identified by Champion in the sale area that was not included in the big sale, the Forest Service would hold special timber sales for that timber. Because Champion's mill in Juneau would be closest to these sales, Champion would be able to underbid everybody and get the rest of the timber. In other words, the Forest Service had agreed, and it was quite clear from the letter that it was intended, that if their big sale didn't sell every stick of timber in the million acres sale area, the Forest Service would go out of its way to hold additional timber sales to make sure every stick of timber was in fact sold. It was a very damning document to the Forest Service. A lot of other interesting things turned up.

Hudson: How big was Admiralty Island compared with the sale?

Moorman: Admiralty Island itself is about a million acres, but all of Admiralty Island was not included within the timber sale.

Hudson: It sounds like a pretty good proportion of the island itself was being...

Moorman: About half the island was included within the sale area. The bays with the heavy timber were included.

Hudson: Some of the island has no trees at all, I suppose, at the higher elevations.

Moorman: No usable timber. Little scrubby stuff. The timber varies greatly in its quality. One of the interesting things about the file was that it included no documents which indicated they'd given any serious consideration to the impact of the sale on wildlife. In fact, most of their documents which concerned wildlife came from the press relations office of the Forest



Service. The earliest document we found that mentioned wildlife was one from the public relations office laying out the campaign to get public support for the timber sale. It said such things as, "We can make the point that cutting is good for wildlife," and things like that. That's basically all the consideration they had given to wildlife.

Armed with this, I took some depositions of Forest Service people. It turned out that Sigurd Olson, Jr., the son of the Sigurd Olson, who had written The Singing Wilderness, etc., and who was one of the founders of the Wilderness Society, was the Forest Service's regional wildlife biologist. I took his deposition first.

I asked him a series of questions about the Tongass National Forest's wildlife values: how important were they? how did they compare with those of other National Forests?; things like that. I got the answers I thought I would get: that the wildlife values of the Tongass National Forest are very important and that there is no other unit in the entire national forest system where the wildlife values were as great. Then I asked him what consideration he had given to the impact of the Champion sale on wildlife. He said he had never been given an opportunity to study that question! He had never been asked that question by the Forest Service. When I asked him who had studied this question, the answer was no one. This put the Forest Service behind the eight ball. They never were able to undo this damage.

Not even Arthur Greeley [associate chief of the Forest Service, 1966-1971], who was the son of a former chief of the Forest Service. His father, [William B.] Greeley, was a famous chief forester who, in the twenties, may have been responsible for the idea of the large Alaska timber sales. When I asked Arthur Greeley why he had never asked Sigurd Olson, his principal wildlife specialist, about the impact on wildlife of this largest of timber sales, he gave one of the lamest answers I've ever heard. He said that Mr. Olson was not always aware of the reasons why he, Mr. Greeley, had asked him certain questions. Thus, Greeley claimed to have gotten Olson's views without revealing to Olson that that was what he was doing.

Subsequently, we had a second trial. Warren Matthews, who is now on the Supreme Court of Alaska, helped me with the trial. I spent about three weeks in Anchorage when we tried the case. A couple of interesting things happened at the trial.

First, Reginald Barrett agreed to come all the way from Darwin, Australia, to testify. It turned out that Reginald Barrett looks just like Mark Trail. [Laughter] When you get a witness blind, you never know what they will be like. With Reg I

was lucky. He was a fantastic witness. I mentioned earlier his testimony about "wildlife values" as an example.

Gordon Robinson assisted with the trial, and was very helpful. Gordon had uncovered that when the Forest Service had scientifically measured the forest to determine the amount of timber present, it had used a different yardstick than when it sold the timber to Champion. Despite this, the service had pretended the yardsticks were the same. By using the same numbers from different yardsticks, the service had slipped in 20-25 percent more timber to Champion. By yardstick, I mean board-foot measuring systems. A log is tapered cylinder. A board foot is a foot, by a foot, by an inch. When you want to figure out how much board footage you have in a tapered cylinder, there are various systems that foresters have developed for that purpose. Each system produces a different result. The research foresters who had prepared the forest management plans for the Tongass used a specific board-footage system to measure the merchantable wood available. The contract with Champion International used a different board-footage system. The Forest Service pretended that they were the same system for purposes of their press releases and discussions with citizens.

During the course of the trial I was able to point this out vividly with an exhibit the Forest Service introduced. The exhibit was a bar graph with four bars on it which indicated the amount of board footage in the forest for four different purposes. Gordon Robinson reminded me to ask the Forest Service witness if all the bars related back to the same board-footage system. When I asked the question, I got an evasive answer, so I kept at it and finally the forest officer on the stand admitted that one of the bars was on one system of measurement, two other bars were on a second system, and he didn't know about the fourth bar. The Justice Department attorney, Mark Wine, was embarrassed. He withdrew the exhibit and apologized to the court.

We had an indecisive judge, Judge Plummer. He was a retired judge, and he had become very indecisive. Following our trial, he never decided the case. He sat on his decision for months. Finally, Champion International just threw in the towel. They decided too much time had gone by; that they were not able to shake the Sierra Club off; that the economics had become questionable; that the publicity was bad, etc. Their lawyer called me one day and said, "Well, Jim, you never got a decision from Judge Plummer, but you've won. Champion is abandoning the timber sale and the mill in Juneau." It was unexpected but gratifying.

Land Dispute With Forest Service in California

Moorman: During this time, I did a number of other things concerning the national forests. I'll mention a couple of them briefly. I spent a lot of time working with the Southern Pacific Land Company to bring about some land exchanges with the Forest Service in California.

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Moorman: Southern Pacific owns a lot of land in California. At that time it was the largest private landowner in the state. A lot of that land is in checkerboard patterns from the old railroad land grants. A lot of the checkerboard land is within national forests--some of it in prime places. For example, Southern Pacific owned five sections on Mount Shasta, and they had a lot of land in the various parts of the Sierra. They had planned some timber sales in a roadless area, the Granite Chief Area near Lake Tahoe. They had a number of sections in the Tahoe basin. Many members of the club were interested in Granite Chief. S.P. was prepared to satisfy the club through land exchanges with the Forest Service. They agreed to exchange land on an equal value basis. They were prepared to take, say, one section with high value timber on it for their five sections on Mount Shasta.

I spent a lot of time fussing around with this with the Forest Service. The Forest Service was determined not to cooperate. The Regional Forester, Doug Leisz, was very hostile, and he evaded us at every turn. We tried to get Bizz [Harold T.] Johnson, the congressman, into the act. We did a lot of things. It was like negotiations with the Russians. The Forest Service just didn't want to give up any timber for mere rocks. They would have none of that.

The Forest Service believed they were going to get all the Southern Pacific land one day in any event. They figured they'd either buy it when the price was cheap or when Southern Pacific, as all the railroads do, went under. It would come on the market and they'd get it, if not this decade, the next decade, or the decade thereafter. It looked like the "long view," but was actually shortsighted on their part. The federal government has a very large land holding in the state of California. It seems to me that expansion of the federal land base in California is not going to happen on the scale they were thinking of. The thing the federal government should do is acquire land in special places, key land. Here they had a golden opportunity to do that. But no matter how hard we tried, the Forest Service managed to evade us.



Role in Forest Management Legislation

- Moorman: Another thing that I worked on... Did I mention the Monongahela case last time?
- Hudson: I believe so, but I...
- Moorman: We only touched on it briefly. The Sierra Club Legal Defense Fund brought a case which... Did I talk about Larry Rockefeller?
- Hudson: Yes. I'll stop you if it sounds too familiar.
- Moorman: Larry discovered that the Organic Act which governed the Forest Service was originally designed to prevent clearcutting. We brought a suit involving the Monongahela National Forest in West Virginia for the Sierra Club, the West Virginia Izaak Walton League, and local concerned citizens, to stop clearcutting sales. The court agreed with us and stopped the sales. Bruce Terris again was involved. After the injunction, all hell broke loose. We had a tremendous backlash. That led to legislative activity, in which I became involved.

Senator Jennings Randolph's (Democrat, W.Va.) office wanted a timber management bill drafted to stop clearcutting. I agreed to assist. I made several trips to Washington, spent a lot of time in the senator's office, especially with a very able young fellow by the name of Bill Davis, who was one of the senator's assistants. I drafted a bill which became known as the Randolph Bill. Tom Barlow of NRDC also assisted. I also drafted some speeches for the senator including the one he gave when he introduced the "Randolph Bill" in the Senate. I don't think any part of the Randolph Bill became law, but the National Forest Management Act was eventually passed in 1976 because of the spur of the Randolph Bill. Senators [Hubert] Humphrey and [Herman] Talmadge were determined take the issue away from Randolph. They drafted the National Forest Management Act and pushed it through. I attended a number of the Agricultural Committee mark-up sessions. This was particularly interesting for me as I had done nothing like this before.

There were three sides contending in the mark-up: There was the Forest Service side, and Talmadge and Humphrey were visibly present to do what the Forest Service wanted. Then there was the timber industry side; that was led by Senator McClure of Idaho. And there was the conservation side, which was led by Senator Randolph. It was very instructive to see the prestige that Chief McGuire had with Talmadge and Humphrey. Whatever question came up, Talmadge would turn his chair around to the chief, who was



sitting behind him, and say, "Tell me what we want on this, Chief."

Hudson: Talmadge was Chairman of Agriculture?

Moorman: Yes, that's right. At one point--I've forgotten what the issue was--when there were no Democrat members of the committee in the room except Talmadge, McClure thought he saw his moment. He put forward some industry position and asked for a vote. Talmadge looked at him and said, "Oh, so the Senator from Idaho would like a vote?" McClure said, "Yes." "All right, let's have a vote," Talmadge said. As the clerk called out the names of the absent Democratic senators, one after another Talmadge voted their proxies. Talmadge was letting it be known in a not too subtle fashion that he, Talmadge, held all the cards. If anybody wanted more votes, they were perfectly welcome to have them. Humphrey's performance was also interesting. Humphrey was dashing in and out all the time. He would sit for a few minutes and listen to the debate. The committee would be stuck on some point. He would propose a solution, and the rest would all think it was just the thing and adopt it, and Humphrey would dash out of the room again. Humphrey was, I think, the intellectual giant of the senate in those days. Unfortunately, he was not on our side in that fight, but his quickness and his grasp were quite impressive.

We didn't get the Randolph Bill passed, but we actually brought about an important reform in timber management. In any event, playing a role in that legislation was very interesting to me.

#### Administrative Appeals on Roadless Areas

Moorman: Another thing I did at that time was administrative appeals involving roadless areas. Cynthia Wayburn helped me on these. I worked with various people in the club on the appeals. I did one with Larry E. Moss, who was the club's Los Angeles rep. He had a roadless area near Kings Canyon National Park that he wanted protected. I worked up a petition on that. Brant Calkin over in New Mexico was very much concerned with Forest Service cutting plans on Mount Taylor. We worked up an administrative appeal on that. Doug Scott was up in Seattle and could whip out a good administrative appeal himself without much help. He and I collaborated on a number. One in particular I should mention involved Standing Indian Mountain in North Carolina. Are you familiar with Standing Indian?

Hudson: I may have heard the name.

Moorman: It's in North Carolina, just across the Georgia line. The Appalachian Trail goes across Standing Indian Mountain.

Hudson: I started a Sierra Club national outing there in '79. Now the name comes back. Standing Indian Gap.

Moorman: The Georgia Conservancy was interested in the timber cutting plans there. They got in touch with me. Brenda and I went home to Rutherfordton, North Carolina, for a summer vacation... I guess it was '75. It was the summer before the election, the year Carter was elected. Was that '75 or '76?

Hudson: He was elected in '76.

Moorman: It must have been in the early summer, like June of '76. I drove over to Standing Indian from Rutherfordton and met with Georgia Conservancy people who came up from Atlanta. I met Bob Kerr, who's currently the president of the Georgia Conservancy, the then-president Lucy Smethurst, as well as Barbara Walmsley and some others.

We climbed Standing Indian Mountain, and they told me about their problems with the Forest Service. I later went to Atlanta and worked up an administrative appeal for the conservancy. An Atlanta lawyer, Paul Caidenhead, helped. I also went to the annual meeting of the Georgia Conservancy at Calloway Gardens, Georgia, where I met Barbara Blum and renewed an acquaintanceship with Ogden Doremas. Ogden was an older gentleman who was very interested in environmental law. He lived in Metter, Georgia. He's a very charming fellow, long interested in environmental matters, whom I had met at professional gatherings over the years.

All of these people were interested in Jimmy Carter's election. Jimmy Carter was one of the founders of the Georgia Conservancy, and they all knew him, and a lot of them were working on his campaign. I was enlisted to help out on his campaign in San Francisco among other things. I worked pretty hard for Carter, though I did not do anything very important. But I was enlisted. Those contacts that I made later helped me get the appointment as assistant attorney general for land and natural resources. That is why I mentioned it in such detail.

Anyway, for a while I spent most of my time on miscellaneous national forest appeals involving roadless areas or clearcutting. We started a case involving the GO Road in northern California. Francia Welker helped on the GO Road case. That's a case that's

still going on. I saw an opinion on the GO Road case about a year ago. The GO Road is a big logging road.

Hudson: What do the initials stand for?

Moorman: The O stands for Orleans. The G, I think, stands for Gasquet. Those are two towns in northern California. It's a big logging road through a roadless area. I was also involved in follow-on litigation involving Admiralty Island. The case involved timber claims by native corporations from Sitka and Juneau. The Juneau corporation was called Gold Belt, Inc. And the Sitka one was called Shee-Atika, Inc. They were entitled to a certain amount of land under the Alaska Native Claim Settlement Act, and they decided they wanted it on Admiralty Island, where we had just pushed Champion out. Luckily the local, Admiralty, native village of Angoon, which had its own corporation, Kootznawoo, Inc., didn't want their cousins from Juneau and Sitka in their territory. A young Indian, Sterling Bolima, was active in getting the Sierra Club involved.

As a consequence, I went to Angoon. It's a very interesting place. When I was in Alaska and mentioned I was going to Angoon, I got some funny looks. Apparently, a lot of Alaskans have superstitious attitudes about Angoon. Angoon is a place where some Alaskans believe that witchcraft is still practiced and that the Indian medicine practices are still alive. I was cautioned that it was a dangerous place to go, that odd things happen to people in Angoon, etc., etc., which made it even more interesting for me.

At about that time (end of '75 or early '76), I was invited to apply for the job of executive director of the Wilderness Society, which was then vacant. Stewart Brandborg had departed. I wanted that job very badly and was quite disappointed when I did not get it.

Dick Leonard invited me over to his office at that time. He was on the board of the Wilderness Society. He asked me if I was disappointed by not getting the Wilderness Society job, and I said I was. He said I really oughtn't be. He said that the exercise of applying for the position had been useful. It had caused other people to think of certain qualifications I had, and that in the long run, things would work out. I was touched that Dick Leonard went out of his way to be kind to me. And it wasn't long after that I became assistant attorney general for the land and natural resources. I'm fairly well convinced that if I had been executive director of the Wilderness Society, that opportunity would not have come my way.



Legislative Drafting by SCLDF

Hudson: Before we leave SCLDF, there was a question that I had been wanting to ask and you sort of answered it during the discussion of the Randolph Bill and the Forest Management Act, and that is, was SCLDF called upon to perform drafting services, legislative drafting, on any sort of regular basis? You did do it in the one instance. I just wonder about other occasions.

Moorman: Not on a regular basis. If you were working on something and had developed expertise, then when the time came, you might be called on for that purpose. To be effective with the legislative process, you have to follow it closely; you have to be involved to be able to draft bills and amendments for the Hill on a regular basis. It's easy to draft a bill as a starting place for something, but as things go along and new versions are called for, you have to have your finger on the pulse to contribute. Sierra Club Legal Defense Fund didn't become involved very often. In my entire time at Sierra Club Legal Defense Fund, I didn't spend 2 percent on legislative matters, really. And I spent more than most. It was a very, very infinitesimal part of the work. Also, our tax exemption restricted us, and we made a deliberate choice to stay away from legislation. Even when I was working on the Randolph Bill, I didn't do any lobbying in the classic sense. All the work I did was directly for Senator Randolph. He solicited it. I never went around trying to influence congressmen. Randolph recruited me to be a resource for him. This reminds me of an anecdote involving Dr. Wayburn and Nat Reed.

I was asked to consult from time to time on the legislation the club was developing for the protection of public interest lands in Alaska. I didn't do any lobbying, but I reviewed drafts of legislation and make suggestions, etc.

Dr. Wayburn was very much involved in these efforts. In the midst of all this, he invited me to his home for dinner with Nat Reed, the assistant secretary of the interior for fish and wildlife and parks. Nat was an incredibly forceful assistant secretary and at times seemed to dominate the Department of Interior. He was in the lead at Interior in developing public interest initiatives. He had come to San Francisco with some of his staff and Dr. Wayburn had taken advantage of the opportunity to invite him and two of his staff to dinner.

Well, the dinner was quite a lot of fun. No one can tell stories and gossip better than Reed. After dessert, Wayburn told Reed he wanted to show him on his large map the specific areas in Alaska the club was concerned about protecting. The table was



cleared and Dr. Wayburn brought out a roll of maps and spread them on the table and began talking. Reed bent over and examined the top map for a few minutes and then stood erect and announced that the Interior Department was far ahead of the Sierra Club in this matter. He said they had identified a far more comprehensive and significant set of lands for public interest protection. Reed was having a bit of fun ribbing Dr. Wayburn. Wayburn had asked him to be specific and Reed said it was confidential, but that Wayburn would learn in due course, etc. Dr. Wayburn then allowed the map we had all been looking at to roll up, revealing underneath a purloined copy of Nat Reed's own map. Dr. Wayburn said, "Is this what you mean, Nat?" Reed examined the second map, saw that it was his own map of selections and went cold. Wayburn had done this quite dramatically. Just as Reed was saying he couldn't tell, Wayburn moved a finger and revealed he already knew. Reed was nonplussed, then annoyed. The party was over. He left shortly thereafter in a foul mood. Wayburn and I huddled briefly on the question of whether Wayburn had overplayed his hand and decided only time would tell.

#### SCLDF'S Clients

- Hudson: I have another generic question about the Legal Defense Fund. I've often heard that the fund is considered an independent public interest law firm that has the name Sierra Club. Did you represent other folks than Sierra Club on occasion?
- Moorman: It is a separate corporate entity. The Sierra Club maintains the right to take the name Sierra Club back from the Defense Fund, but it has a separate board and a separate corporate structure. Yes, our lawyers did represent others. Oftentimes representation was in conjunction with the Sierra Club. In the Admiralty case I represented the Sitka Conservation Society and Karl Lane as well as the club. I made it a point when I went to Juneau to go visit with Karl Lane. I also went over to Sitka and met with the Sitka Conservation Society, and I kept them fully informed and solicited their views on things as we went along. When we talked about the Mineral King case, I discussed a client in addition to the Sierra Club, the Mineral King District Association. I went to Mineral King District Association meetings and kept them informed.
- Hudson: Those are cases where Sierra Club was also a party...
- Moorman: That's right.

Hudson: ...as opposed to a case where Sierra Club was not a party.

Moorman: Well, in the administrative appeal, for example, on Standing Indian Mountain, the Georgia Conservancy was the party. I don't believe the Sierra Club was actually a party to that administrative appeal. If it was, the Sierra Club was there as a tagalong to the Georgia Conservancy. It was a Georgia Conservancy matter. So I would say that the answer to your question was, yes, occasionally we handled things in which some group other than the Sierra Club was the driving force, though we never handled anything which the Sierra Club would not have been comfortable being involved in.

I guess that brings us to the Land and Natural Resources Division.

Hudson: I think we're about to the end of that tape, aren't we?

Moorman: Well, we have a minute left. I shall report on what I've already stated to you that I got involved with the Georgia Conservancy and through the Georgia Conservancy, became involved in Jimmy Carter's campaign. One of my friends in San Francisco was Nick Yost. Nick, at that time, worked for the State of California. He was head of the Environmental Section of the Attorney General's Office, an office of about fifteen lawyers that brought environmental protection cases of various kinds. He also was a big fan of Jimmy Carter's, and he organized "Conservationists for Carter" which I became active in.

One of our great frustrations at that time was that we couldn't make effective contact with Carter's California campaign. I can't remember the name of the guy who was the state campaign manager for Carter. If you said his name I'd remember it. But he was a very elusive guy and you could never get in touch with him. It was a shame. Carter came close to carrying California, and had he been better able to coordinate efforts, I think Carter might have carried the state.

V ASSISTANT ATTORNEY GENERAL FOR LAND AND NATURAL RESOURCES,  
1977-1981

Joining the Carter Administration##

Hudson: Jim, I'd like to know how you managed to get a job in the Carter administration.

Moorman: Well, it's a bit of a mystery to me even to this day. As I mentioned to you before, I had done a considerable amount of work for Carter, but it was at a low level and not the kind of work which would lead to the kind of job I got. So I was very surprised when I received a phone call sometime after the election--I guess it was in December sometime--from John Harmon. John was the new assistant attorney general for the Office of Legal Counsel. He was a former law clerk of both Judge Bell and Justice [Earl] Warren. He was very close to Judge Bell and he was helping Judge Bell put his new Justice Department team together. He asked me if I would be interested in the Lands Division job.

Hudson: For the life of me I can't think of Bell's first name.

Moorman: Griffin.

Hudson: Griffin, sure.

Moorman: Griffin Bell. Griffin Payette Bell. John, who turned out to be a wonderful colleague at the Justice Department, told me that Judge Bell had inquired of a Georgia friend who knew something about environmental law, Ogden Doremas. Well, I had recently seen Ogden at Calloway Gardens at the Georgia Conservancy's annual meeting. Harmon said Ogden had given Bell several names for the Lands Division and mine was one of the names, and would I be interested? And I said, "Yes, I would be very interested.

What do I do?" He said to send him my resume and that he would arrange an interview for me with Judge Bell at the proper time. There was no job in the government that I would have liked to fill more than assistant attorney general for land and natural resources. I had served in the division. I was very fond of the Justice Department and of the Lands Division. I was overwhelmed by this opportunity.

It had never occurred to me that I'd ever have a serious chance to get the position, and I hadn't made any efforts to put my name forward. But once I was on the short list which the attorney general was going to consider, I then did what I thought was appropriate to lobby for the job. I called everybody that I knew that I thought might be able to help me in one way or another to assist me to get the job. I started a little campaign for support.

When I came back to meet Judge Bell in January, it was bitterly cold. I met with Judge Bell, John Harmon, and also with Michael Egan. Mike Egan was a Georgian who had been appointed to the job of associate attorney general. He was a former Republican member of the Georgia legislature. The word was that he had been very helpful to Governor Carter. Luckily, Egan was a good friend of Barbara Blum's and all the other Georgians that I knew from the Georgia Conservancy. I had a real leg up on everybody else on the short list because of the good fortune of having done work for the Georgia Conservancy. I now knew a number of key Georgians, and they would vouch for me as a solid person. But not only that, I had managed to do some actual legal work for them. The Atlanta lawyer who worked with me on Standing Indian, Paul Caidenhead, was a lawyer Judge Bell respected. He had reviewed the documents I had prepared for the Forest Service, and so he could say to Mike Egan and Judge Bell that this fellow, Moorman, does good legal work.

Hudson: Did it help that you're not exactly a Yankee.

Moorman: I don't know. If so, I think that my beard may have offset that fact. [Laughter] Judge Bell is a wonderful person, but a little on the conservative side. When he met me, he wasn't quite sure I was a solid citizen. I believe he ultimately delegated the decision to Mike Egan, the man I was to report to. I am sure Bell relied heavily on Egan's judgment. I know who two of the other candidates were. One of them was Nick Yost; he became the Counsel to the Council on Environmental Quality. And another was David Sive.

Hudson: Really?



Moorman: Yes. The person who had first sent me off to the Lands Division, if you'll think back. Sive gave me the original introduction to Eddie Weisel, Jr.

The Lands Division's assistant attorney general is a position which had not always been treated as important over the years. The people appointed to the job often didn't know anything about the work of the Lands Division. Presidents would have never appointed a non-tax lawyer as head of the Tax Division or someone who was not an anti-trust lawyer to head the Anti-Trust Division, but they didn't seem to mind at all appointing lawyers who knew nothing about environmental law or natural resource law to head the Lands Division. Clyde Martz had been qualified for the job, but a number had not been. This was a very important point, because coming from something like the Sierra Club Legal Defense Fund, the question arose as to my qualifications, vis-a-vis the more establishment lawyers that had had the position in the past. I was able to point out that I knew a lot about the substantive work of the division, whereas many of my predecessors, even some who were distinguished, such as Ramsey Clark or David Baselon...

Hudson: Really?

Moorman: Yes. Neither of those gentlemen had known much about the work of the division when appointed. I had been in the division, and I was a professional environmental and natural resource lawyer. So that was useful.

Hudson: Did you set a precedent that applied to your successor, Carol Dinkens?

Moorman: Yes, she was a professional environmental lawyer.

Hudson: I have a question about the selection process. In the Carter administration, was the cabinet official largely responsible for selecting the sub-cabinet people, which I think is at least partly a contrast with the Reagan administration, where Watt was not given the entire appointment authority over his own department, I believe?

Moorman: Certainly Judge Bell had the biggest say at the Justice Department. And I think this was true, by and large, throughout the Carter Cabinet. Carter, though, did play a role with regard to my position, though not with regard to me personally. Early on, before I was appointed, Judge Bell had considered a couple of lawyers who were cut more from the mold of prior appointments to the position. There was a lawyer from a commercial law firm in Texas that I knew he considered and some others. But when they got to me, those people were completely out of the running.

Everyone that was considered in the final round were environmental lawyers like myself: Sive, Yost, and myself, for example. Something had happened. I believe that something was that Carter had requested of Bell that he appoint an environmentalist to the position. I think that may actually have stemmed from something Mike McCloskey told Carter.

McCloskey was invited to Plains, Georgia, to meet Carter after the election along with some other prominent national environmental leaders. Before he went, Mike solicited the views of a number of us as to what he should say. One of the things which came up in that meeting was that various positions around the government outside the Department of the Interior and EPA were important to environmentalists, including the assistant attorney general for land and natural resources. When Mike reported on his meeting after he came back from Plains, he mentioned that he had gotten that point in and Carter had made a little note.

Putting two and two together, Bell first considered a more routine appointment. Mike McCloskey made the point to Jimmy Carter, and Carter made a note. Did Jimmy Carter then say to Bell, 'Find an environmentalist?' I think he must have. I think that must have been the thing which caused Judge Bell to call Ogden Doremas and say, 'You're an environmental lawyer, Ogden. Tell me some people who I can consider, etc.'" This is a speculation on my part, but I believe it to be an educated speculation. Carter was interested in the kind of people that got appointed to these jobs. Carter expressed his viewpoint in a general way to his cabinet officers, but by and large left to the cabinet officers the picking of the people.

Hudson: I remember, before Cecil Andrus's selection as Interior secretary, there was speculation of an environmental agenda, a list of ten or a dozen potential candidates that were acceptable to environmentalists. And I think Mike McCloskey was one of them that would have been suitable for Interior secretary, and I don't believe Andrus was on the list, as it turned out. But do you have any recollection of that and how it came about?

Moorman: Yes, I remember that. And I also remember that nobody had a shot at it except Cecil Andrus. Carter had met Cecil Andrus through the Governors' Conferences and liked him and had always had in mind that Cecil Andrus was going to be his secretary of the interior. There just wasn't any other candidate in Carter's mind.

When I came back and interviewed with Bell and Egan, they offered me the job, and I agreed immediately to take it. I went back to San Francisco . . .

Hudson: Did you meet the president-elect during any of this?

Moorman: No, no. You know, Carter showed an amazing indifference to his appointees--an amazing indifference, to a fault I should say. I bet you he didn't bother to meet or know 75 percent of his appointees in his sub-cabinet--at least 75 percent. I bet it was higher than that.

Hudson: During the whole administration or just . . .

Moorman: He didn't show a whole lot of interest in them throughout. For the first year and a half or so, nobody ever got invited to the White House for anything, even for social functions. After a while someone told Carter he was creating a morale problem. Then we got invitations to some functions. That was nice. Brenda and I went to a Christmas function when Margaret Thatcher was here. As things went on you began to be treated better and better. At one function, Bill Clinton, the Governor of Arkansas, sat next to Brenda and we were impressed and became fans of Clinton. But the first year and a half, good gosh, as far as the White House was concerned, we didn't exist.

After I got the offer and accepted it, I went back to San Francisco. The first minute I was back in my office, the phone rang and Mike Egan was on the line. Mike asked if I could get on an airplane and come right back to Washington? I asked what the matter was and he said there was a proposed amendment to the Clean Air Act which would remove the Lands Division's jurisdiction over EPA cases and give it directly to EPA. The Lands Division was about to lose half of its business. He didn't know what it was all about, but thought it was moving pretty fast. He wanted to know if I would come right back to D.C. to see what I could do. I agreed and the next day went back to Washington.

My predecessor, Peter Taft of Los Angeles, a very able lawyer, was still in the job. Some bad blood had developed during Peter's time between EPA and the Lands Division. EPA felt the Lands Division wasn't providing the service they needed. It took Justice too long to file cases, they didn't take the cases seriously, they sent inexperienced lawyers to court, they left EPA at the mercy of the priorities of the various U.S. Attorneys, etc. There were a lot of complaints. I spent several days talking to as many people as I could, people like Dick Ayres at NRDC; anybody that I could find who knew anything about this situation. And I found out that the amendment was a serious thing.

A Hill staffer, Jeffrey Schwartz, was behind the amendment. Jeffrey is an expert on the Clean Air Act and is today an



environmental consultant here in town. We're friends, and I get him to help me on matters occasionally. Jeff Schwartz then worked for Congressman Paul Rogers who was chairman of a subcommittee with jurisdiction over the Clean Air Act. In an earlier incarnation as a staff attorney in the General Counsel's office at EPA, Jeffrey had worked very hard on an air pollution case only to watch what he believed to be an incompetent Justice Department lawyer lose the case in the Court. Jeffrey vowed to do something about that, and he was on the verge of accomplishing that something.

I prepared a memorandum for Judge Bell and Mike Egan spelling out EPA's problems with the Justice Department. I also included what the knowledgeable environmentalists around town wanted Justice to do. Essentially, they wanted more resources for EPA cases and some sharing of authority. I also told them we were going to lose if we didn't give EPA satisfaction. Peter Taft had taken the wrong tack on this. When the Lands Division had been criticized by Schwartz, etc., he had written a stirring defense of the Lands Division which was well written, but also pointed out a lot of EPA's faults. That had just poured gasoline on the fire. He was making matters worse. He may have been right about what he said, but it was the wrong time for him to make his point. He was demonstrating that DOJ [Department of Justice] and EPA didn't get along, etc.

Bell readily agreed to give EPA what it wanted. Mike Egan suggested that he call Barbara Blum, who had been appointed Deputy Administrator of EPA, to see if DOJ and EPA could come up with a peace treaty. EPA agreed and that resulted eventually in a memorandum of understanding that I negotiated with Tom Jorling. Tom Jorling was EPA's new assistant administrator for water and solid waste programs. Jorling used to work for the Senate Environment and Public Works Committee. He was one of the behind-the-scenes authors of the Clean Air Act and the Clean Water Act, and one of the savviest guys around. He had gone to teach at Williams College but had come back to be assistant administrator for Doug Costle. Jorling and I negotiated the memorandum of understanding which set forth what DOJ was going to do for EPA.

Leon Billings, a staffer for the Environment and Senate Public Works Committee, told me later that Senator Randolph's support of my appointment saved DOJ from Schwartz's amendment. Randolph was chairman of the Environment & Public Works Committee, the committee which had jurisdiction on the Senate side. The number two Senator, Edmund Muskie, was pushing the amendment, but Randolph used the memorandum of understanding I negotiated with Jorling to save DOJ litigation authority.



I guess I actually got back here to start work in April of '77. Peter Taft was still here. Bell liked Peter and there was some reluctance on this part to tell him to go, so I was at first taken on as a consultant. I was on the payroll, but off in an odd room up on the seventh floor.

Hudson: You hadn't been confirmed by the Senate?

Moorman: Oh, no, I hadn't been confirmed at all. I started out as a consultant stuck up on the seventh floor. The Lands Division is on the second floor. So I spent about two weeks in a funny limbo.

Hudson: Is this standard practice at the beginning of administrations?

Moorman: I don't think so. It was very awkward because Taft was still here as assistant attorney general. They wanted him to go, but he was slow taking the hint. I think bringing me into the building was a way of suggesting that Taft resign. He finally left, much to my relief, and Bell appointed me as acting assistant attorney general. I was not confirmed, oh, until September. So I was acting for four months. My biggest problem was Senator [William Lloyd] Scott from Virginia. Do you remember the dumbest Senator?

Hudson: Junket Scott?

Moorman: Junket Scott. Scott, you know, called a press conference to rebut an article in an obscure magazine that said he was the dumbest of the senators. Well, Scott was determined to thwart my nomination.

Hudson: Why?

Moorman: I had some opposition, mostly from the timber industry. Lobbyists for the timber industry went to see Mike Egan to complain about my appointment. They took the view that I would throw cases when the Forest Service was sued by environmentalists--such a crude suggestion. People sometimes attribute to their opponents their own faults. It's the kind of thing they would think of. It was unimaginable to me that I would do what they feared. Egan didn't buy their complaints, but told them he'd keep a close eye on me. That didn't satisfy them. They recruited Scott to oppose me actively. Scott claimed I had a conflict of interest. He wasn't a particularly articulate fellow, and he wasn't particularly smart, but he had some support from other Republicans, like Senator Laxalt, who was also on the Judiciary Committee.

Hudson: You had to clear the Judiciary Committee?

Moorman: Yes.

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Confirmation as Assistant Attorney General

Moorman: Bell took me to meet Senator [James O.] Eastland, the then chairman. I remember that well. Bell wrote about this in his book about his tenure at the Justice Department. He wondered how Eastland was going to react to my beard, but Eastland was sitting with one of his constituents who also had a beard. So Bell relaxed. Eastland didn't say anything, which made me nervous. Bell would talk, and he'd talk a little more. Bell was a chatty fellow by nature. He paused to let Eastland say something, but Eastland never said anything. Bell would talk some more then pause and talk some more. Finally Eastland said something. Eastland looked at me and pointed at Judge Bell and said, "If he's for you, I'm for you." That's all Eastland said. I didn't know what to say. There was a pause, so I said, "Me too." [Laughter] Everybody in the room laughed and that was the end of the meeting.

There was a fellow on Eastland's staff who was in charge of getting appointments confirmed. Justice has a lot of appointments requiring confirmation. Judges, the Justice Department sub-cabinet, the U.S. attorneys and the U.S. marshalls--a cast of thousands. I kept getting pushed to the back of the line. Eastland couldn't get a majority of the Democrats to attend the Judiciary meetings that summer. Kennedy and the other Democrats never came to meetings. [Hugh] Scott and [Paul] Laxalt made sure they always had enough Republicans to beat me if I came up for a vote. Eastland made sure I didn't come up so I wouldn't get voted down. I was left hanging. Whenever I talked to Eastland's staffer he would say, "Now, Jim, I know it's hard, but don't worry--the chairman has never lost a nominee." Eastland was a true friend of the Department of Justice and, on appointments, he was very loyal. He knew how to play the game, and he would get me in when the time was right. I was not to worry, just keep calm, and don't talk to the press.

Until I was confirmed I was to say nothing to the press. That was advice I got not only from the Judiciary Committee, but also from the legislative people at the Justice Department. To any query from the press, I was to say that it would be "inappropriate" to discuss whatever it was before the committee acted. When you see where a nominee has used the term "inappropriate" to a press question, you know that's the lingo some committee wants to hear. It wasn't much of a problem really, because assistant attorneys general for land and natural

resources are not hounded by the press. But the wait was nerve-racking. I had to make decisions as I went along. Controversial things came up. The longer I was left exposed, the greater the risk that I'd make some misstep that would sink me.

Finally, Scott and Laxalt made a mistake. They sought to "table" my nomination. They let it be known that they were going to move to table at the next Judiciary Committee meeting. That was sufficient to motivate the Democrats to come to the meeting. Kennedy, DeConcini and the other Democrats came to the meeting, and voted me out.

There was another little wrinkle in the confirmation process that caused a problem. The senators from your home state had to return a "blue slip" before the Judiciary Committee would hold hearings on your appointment. Senator Hayakawa wouldn't turn his blue slip on me in to the committee. I spent a lot of time working with Hayakawa's staff to resolve this. Glenn Taylor, who had been with me at Justice before, knew someone on Hayakawa's staff, and made a call for me. Hayakawa was principally concerned about employees who were past retirement age, but still working in the division on discretionary appointments. I have some suspicions about this. Finally I got a meeting with him and was able to satisfy his concerns, and he sent in his blue slip.

I got him to come and introduce me at my hearings, but he introduced me as Mr. Moreland. Then he sat with the committee (which he was not a member of) and asked me questions. His questions were very curious. Senator Hayakawa, who had just introduced me as Mr. Moreland, asked me why should I represent the EPA against the people? Wouldn't it be more appropriate, he asked, for the Justice Department to represent the people being harassed by EPA? [Laughter] That question was so dumb I couldn't believe a U.S. Senator could ask it.

Scott asked me "conflict of interest" questions. And he kept asking me if I intended to go back to the Sierra Club after I finished with the Justice Department. And I refused to take the position that I wouldn't go back. I stated what was true: that I had no present intention of going back to the Sierra Club. But I didn't think it made any difference, because someone from the Sierra Club shouldn't be disqualified from being a government official any more than anybody else.

Senator DeConcini, who chaired the hearings, was very helpful. He helped me over some of the rough spots when the Republicans hit me with harsh questions. Sometimes he would chime in and answer the questions for me. I was . . .

Hudson: This is the subcommittee hearing?



Moorman: No, this was a full Judiciary Committee hearing.

Hudson: Were you briefed and drilled like Watt briefed and drilled Hickel? That kind of routine?

Moorman: Nobody on the Justice legislative staff could brief and drill me because I knew the subject matter and they didn't. I had to prepare myself. I found out what questions were going to come up by checking with Eastland's staff. Phil Maudeline at the Justice Department helped me with procedure. I would work with Phil to develop the right tone of voice for my answers. Along the way I got a letter from one of the senators asking me a lot of tough questions. I showed the letter and my draft answers to Egan and Maudeline to make sure I had the benefit of their wisdom on how not to offend anybody.

#### Strengthening the Lands Division

Moorman: Let me go on to the Lands Division. The division was in tough shape when I became assistant attorney general. It had been the low profile division of the department for years. It didn't get the publicity of the Anti-Trust Division, the Criminal Division, or Civil Rights Division got.

Lands was the smallest division, though the number of cases on its docket was the largest of any of the divisions. The Lands Division in the sixties had four missions. It handled the Interior Department's public land cases. It did all of the Indian law cases. It also did the land acquisition cases for the government, that is, condemnation cases. And then it had done all of the inverse condemnation cases, that is, cases where people sued the government in the court of claims claiming that their property had been taken by some government action or activity. People near airfields would sue claiming airplane overflights took the value of their houses, and such things. Different from but similar to condemnation, so-called "inverse condemnation." The Division had some other miscellaneous things it did: law of the sea stuff; boundary disputes between the United States and the states on the continental shelf; and a miscellany of other jurisdictions.

In the seventies, the environmental revolution took place. Jurisdiction over the new environmental statutes ended up in the Lands Division. The Clean Air Act, the Clean Water Act, NEPA, just a whole raft of other statutes. Well, the Lands Division had not staffed up to respond to this challenge. The Lands Division was not in the same budget loop with EPA. It has



different appropriation committees, different substantive committees, different examiners at OMB [Office of Management and Budget]. When these acts were passed, despite their enforcement requirements and other burdens on the Justice Department, the Lands Division was left out of the allocation of resources and got nothing to do this work. Deputy Assistant Attorney General Walter Keichel had the greatest influence on the division in these years.

Hudson: Spelled like the old senator?

Moorman: No, that's a little different. That's Senator Kuchel. Keichel is spelled K-E-I-C-H-E-L, I think. Walter had just left when I got there. He had been the sole deputy assistant attorney general for the entire time since I had left the division as a staff attorney until just before I had returned as assistant attorney general. Assistant attorneys general had come and gone, but he remained. He was very conservative and was reluctant to ask for manpower or do anything innovative. They had established one section of about fourteen lawyers, the Pollution Control Section, to handle all the work of EPA. It was grossly inadequate. That was one of the things which had caused the big flap with EPA. And the division's other case loads had also grown. Parkland acquisition had grown enormously in that period. The division had thousands of condemnation cases all over the country from the Redwood National Park to the Big Cypress to what have you. The division staff was just sinking under the mass of cases. Furthermore, nothing had been done in years to modernize the place. There wasn't a single word processor in the division. Oh, there was one, but it was in the section that had the least work. The docket, now over 20,000 cases, was still kept by hand on index files. There was no computer assistance for litigation. The place was antiquated and overworked.

I set about to strengthen the division. First I had to make some personnel changes and then get some new resources. Additional resources was part of the deal with EPA set out in the memorandum of understanding. Also, part the deal, but not mentioned in the memorandum of understanding, was a new section chief for the Pollution Control Section. The man who had the job, Al Giorzey, was a good lawyer, but EPA and he didn't get along. It was a personality thing, a chemistry thing. So I asked Al if he would take another position. He agreed. Angus MacBeth was then invited to take over the section. Angus had left NRDC and was in the U.S. Attorney's Office for the Southern District of New York. Angus agreed to come.

I learned that any change you make in a bureaucracy creates a morale problem. Some attorneys in the Pollution Control Section thought the memorandum of understanding with EPA and the

arrival of Angus represented a devastating defeat. They were unable to see these steps as improvements. In time the section came to see Angus as a tremendous leader and the memorandum of understanding as a positive development. It took time. Congress and OMB provided us with additional slots and that began to build the Pollution Control Section up to the point where it could actually do its job.

- Hudson: Was there an increase in the number of political appointments in the Carter administration? Would you consider MacBeth a political appointment?
- Moorman: Oh, no. MacBeth was not a political appointment. He had no role in politics. He was already in the Justice Department.
- Hudson: Oh, he was.
- Moorman: He was in the U.S. Attorney's Office for the Southern District of New York.
- Hudson: Oh, I thought you said NRDC.
- Moorman: He had left NRDC and joined the Justice Department. Angus was not a political appointment. Angus was a professional appointment.
- Hudson: I asked the question because, well, I came into the government during the Carter administration, also, as a civil servant. The perception from within the civil service now that Reagan has been in for a few years is that the number of political appointees has increased tremendously between those two administrations. I just wondered what the contrast was between the Nixon/Ford administration and the Carter.
- Moorman: Well, in the Lands Division, certainly, you would have had to say that it increased a bit. I brought Sandy Sagalkin in as my principal deputy. He was in the Attorney General's office of the State of Alaska. Sagalkin was not much of a political appointment either. He was a professional environmental/natural resource lawyer from the State of Alaska, and he was my personal choice. I was given a free hand in personnel matters, so none of these appointments were political in the classic sense. I wanted Sandy because I had worked with Sandy and knew without question that he was a good lawyer and someone I could work with. I wanted him to look after the Interior Department side of matters at the division. I wanted Angus to look after the EPA side. These two appointments were very important from the standpoint of having professionals I could rely on to do the job. They weren't political but may have been perceived as political.

Hudson: As distinct from civil service.

Moorman: Yes, though they got civil service appointments.

Hudson: Schedule A or schedule C?

Moorman: Sandy was a schedule C, but Angus was a schedule A, I guess. That got changed somewhere along the way when the Senior Executive Service, or SES, came into being. Angus eventually was promoted to deputy assistant attorney general. Before it was over, we had three sections to handle EPA stuff. We had a special Hazardous Waste Section, which I recruited Tony Roisman to head; an Environmental Enforcement Section for Clean Air Act and Clean Water Act cases, headed by Steve Ramsey. The third Section, Environmental Defense was designed to defend EPA when EPA was sued for this or that. The name Pollution Control Section disappeared. The number of lawyers involved in EPA matters tripled.

The Hazardous Waste Section was organized to bring cases in this area for the first time. You may recall that sometime during the Carter administration there was a big flap over hazardous waste sites. Tom Jorling, in testimony on the Hill, made a statement that there were thirty thousand hazardous waste sites around the country, and all hell broke loose. Unfortunately, having created the uproar, EPA had no program to deal with the waste sites. EPA asked me if there was any kind of lawsuit we could file to force those responsible to clean up a site. We thought you could file cases under Section 7003 of RCRA, which was a special codification of common law of nuisance principles applied to hazardous waste sites. Shortly after we told EPA what we could do, Barbara Blum gave a speech and said EPA and DOJ were going to file fifty hazardous waste site cases. Well, of course, we were not prepared to do any such thing. But we set up a program with EPA and managed eventually to get about fifty cases filed. The Hazardous Waste Section, led by Tony Roisman, did it. But it was controversial. The idea of fifty suits, as a quota, drew criticism and Tony, because he was effective, drew criticism.

#### Policy, Legislation and Special Litigation Section

Moorman: The Lands Division had a legislative office. It consisted of one person who didn't do anything of much use. The Lands Division commented on all the proposed legislation that might impinge on the environment or natural resources. The comments went to OMB,



where an OMB staffer read them and put them in a file. The legislative lawyer prepared these comments. That's all he did.

Hudson: It's a full-time job. I've done that for the Interior.

Moorman: Yes, it was a full-time job, commenting on legislation, but it didn't accomplish anything. The Lands Division's comments were not a matter of great importance. It's not what it is over at the Interior Department. These bills didn't substantively affect the Lands Division. We were just on the list. However, much to my surprise, I learned that Jim Schlesinger also read our comments and took them seriously, because he tried to get me fired over one of my comments.

Hudson: Secretary of Energy Schlesinger?

Moorman: Yes. It's an interesting story. If you'll make a note of, I'll come back to it. Having one person simply comment on all the bills that went through the office didn't get us much. So I hired Vance Hughes to create a section--Policy, Legislation, and Special Litigation--to do something worth doing. "PL&SL" eventually had about seven or eight attorneys. This section worked on budgetary matters for the division, developed special projects, and handled legislative issues in a more creative sense than merely making routine comments on bills. In an era of budgetary cutbacks, PL&SL helped me get the budget of the Lands Division increased. That was a lot of work. We pulled every maneuver we could think of manipulating OMB and the budget types in the Justice Department. There was an article around this time in the Washingtonian magazine about the different maneuvers bureaucrats pull to beat OMB. Vance and I were proud of ourselves because we had pulled one that wasn't in the Washingtonian when we created the Wildlife Law Section.

OMB did help me create PL&SL. That was only thing OMB ever cooperated on--that and word processors. OMB realized we needed word processors and provided the funds for about thirty, which greatly increased the efficiency of the division. Going back to PL&SL, OMB wanted me to have two policy analysts in the division. I didn't know what a policy analyst was at that time. I now know what a policy analyst is, because I'm on the board of Visitors of the Institute of Policy Sciences and Public Affairs at Duke University which trains policy analysts. But at that time I didn't know what they were. I literally did not know what policy analysts did. But I readily agreed to positions for policy analysts because I had my own idea as to what a policy analyst was. They didn't do the kind of analysis that OMB likes. I hired people to do analysis the way an environmental activist would do it. One of the people I got was Kris Hall. Do you know Kris Hall? She's now with the Environmental Defense Fund. I



also hired Durwood Zaelke. I got people like Kris and Durwood to work up projects for the Division. OMB eventually caught on and got sore about it.

One of the projects they worked on was how to bring hazardous waste lawsuits. They devised the strategy for suits under Section 7003. When the flap arose when Tom Jorling declared there were 30,000 hazardous waste sites, reporters started calling EPA officials and asking them what they were going to do about it. Doug Costle and Barbara Blum started calling meetings to figure out what to do about it. When they called these meetings, I already had a report prepared by the PL&SL section setting out what we could do. I had a good 150-page memorandum going into all the legal problems. When I told Barbara Blum, she wanted the memorandum. I would not give it to her immediately. She wanted to know why. I said it still needed some work, but we were ready for some preliminary discussions. The truth was, I wanted some understandings about our mutual roles. I wanted a joint program in which Justice would have a role. Obviously, EPA was going to be the leader. But I wanted the division in a task force and I wanted our people to get some credit. She agreed. She was very easy to work with. However, when she gave her speech and said we were going to file fifty suits, it made life tough.

After Barbara made the statement that she wanted fifty cases filed the first year, that number became something we were frequently criticized about. Opponents were saying we had a quota system on cases.

PL&SL also worked up a wildlife law project for me, and I hired Ken Berlin to put it into being. When we were developing the hazardous waste program and a wildlife law program, OMB woke up and decided that they had created a monster when they had given me these policy analysts. I was using the policy analysts to figure out ways to get more money and more resources and to establish new programs. Their idea was to use policy analysts to figure out ways to narrow and slim things down. But the wildlife law program was the kind of thing the Lands Division should have been doing all along. Wildlife enforcement cases were not being handled effectively at the federal level. The Fish and Wildlife Service or the Customs Service would send a case now and then to one of the U.S. Attorneys' Offices, and that U.S. attorney would do his best. But each U.S. attorney had to reinvent the wheel every time one would get one of these cases.

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Moorman: Unless an area of law has a team somewhere in the main Justice Department to develop expertise and assist the U.S. attorneys with regard to briefs and the up-to-the-minute information, the U.S. Attorneys' performance, outside their bread and butter areas, are spotty.

After setting up a section whose sole focus was wildlife law, the section quickly began to work up much better and more important cases. They were able to work with the agencies to help them put together a coordinated program. Customs, Fish and Wildlife, Commerce and Agriculture weren't working together on law enforcement. Ken Berlin got these people together, coordinated their case development and created a lot of excitement. For the first time, the U.S. had a unified enforcement program in this area.

A big emphasis was put on cracking down on the illegal importation of endangered species. This is an area which is quite important, involving a scandalous multimillion dollar trade. The customs people were demoralized because no one else was taking an interest in it. Whenever the Agriculture Department confiscated a rare parrot or something, they would immediately arrange to have the bird killed, ground up, and disposed of. They were afraid that parrot fever or something was going to spread to chickens. So they destroyed the evidence, you might say.

Hudson: Was this the Lacey Act?

Moorman: Yes, Lacey Act cases. We brought a lot of Lacey Act cases. Ken put together teams with both agents and lawyers to make these cases. That was a terribly exciting thing.

Hudson: You said that you wanted to get back to Secretary Schlesinger-- who was the Secretary of Energy, I guess, during the Carter administration--that he actually made an attempt to have you dismissed as the Assistant Attorney General.

Moorman: Yes, but let's defer that one till next time too. It's going to take me a little while to tell that story.

Hudson: OK. And from what you've said, it seems like you interacted regularly with Barbara Blum at EPA. Could you get in, briefly, a bit of a discussion of her and her background? I understand she was just a housewife in Atlanta or someplace nearby that got involved in a local environmental controversy and built it up from there. Is that true?

Moorman: Well, I think to describe Barbara Blum as "just a housewife" is wrong. She was a housewife and being a housewife is honorable.

Many able women are housewives, and Barbara proved they can do other things as well as anyone else. Barbara Blum is a bright, charming, attractive and energetic woman. I think she originally came from Nebraska. She lived in New York, Long Island, I believe, where she may have run a business before she had her children.

When she was in Georgia she organized an environmental lobbying organization, the name of which I knew at one time, but no longer do. She was the leading lobbyist of the Georgia legislature for all the environmentalists in the State of Georgia. She was very effective. And, of course, it was in that capacity that she knew Jimmy Carter, and Mike Egan, who was in the legislature, and worked with the Georgia Conservancy and was part of that scene. She had excellent political sense. She liked to get things moving. She was a very good deputy administrator. It was a good EPA. Costle liked her and gave her important duties, and she did them well.

Tom Jorling, the assistant administrator for water and solid waste programs, was extremely capable. David Hawkins, the assistant administrator for air programs, was a leading expert on the Clean Air Act in the country. Jelleneck was in charge of toxic substances and was extremely knowledgeable. Bill Drayton, assistant administrator for policy and planning, was a very knowledgeable and able guy. The general counsel, Jody Bernstein, was an extremely able woman who had formerly been with the Federal Trade Commission. By and large, Costle put together a great crew.

One of the sad things about the Reagan administration was the people that they put in that Agency to replace that fine crew of people that Carter had there. The Anne Gorsuch EPA was an insult. It was, I guess, an indication by Reagan of his contempt for environmental protection. To put people of their ilk--I think that's the proper term to describe them, ilk--in that agency. The contrast, between those people as compared to their predecessors, was startling.

Work of the Land and Natural Resources Division##

[Interview 5: April 26, 1984]

Hudson: OK. We've talked quite a good deal about your time in the Lands Division at the Justice Department during the Carter administration, but we haven't talked about exactly what the



Lands Division is. Just, maybe we should cover some of these basics for a little while.

Moorman: The Land and Natural Resources Division, Ted, is that division of the Department of Justice which handles the litigation of the Environmental Protection Agency, the Department of Interior, the Forest Service, and the Corps of Army Engineers. It also does all the land condemnation work for the federal government, the largest part of which, during my time, was parkland acquisition, but also included miscellaneous acquisitions, such as salt domes for the Strategic Petroleum Reserve, and things like that. The division also has certain Indian work. It represents the U.S. in its capacity as Trustee for Indian Tribes and also responds to certain Indian claims. It handles a miscellany of real estate matters which aren't of particular interest here. The docket is very large. There were over 20,000 cases when I was there. The division is one of the six large divisions of the Department of Justice, together with the Criminal Division, the Tax Division, Antitrust Division, Civil Division, Civil Rights Division.

Hudson: We talked about turf defending within EPA in the last session a little bit. I wonder if there was any of that at Justice, any competition for cases between the Lands Division, for example, and Civil Division, or even the Civil Rights Division, with the Indians.

Moorman: Well, there were some problems of this kind. They weren't particularly important. The Civil Rights Division handles cases under the Indian Civil Rights Act. As it turns out, most of the Indian tribal governments consider that civil rights law an anathema. Civil rights cases against tribal governments are viewed by most Indian leaders as harassment by malcontents. The Indian leaders are far more interested in resources: fishing rights, water rights, reconstituting the Indian "land base," as they refer to it, and their relationship with the larger society over coal and things like that. The work of the Lands Division on behalf of the tribes was in this crucial resource area. The Civil Rights Division handled cases for individual Indians against their tribal governments. So there was some tension there.

A proposal was made by a prominent Indian advocate when I first came to the Lands Division that Lands take the Indian civil rights jurisdiction from the Civil Rights Division. The idea was to squelch the Indian civil rights cases. I decided to leave well enough alone.

The Civil Division is overwhelmed with work. It has a case load comparable to the Lands Division but in many ways more difficult to handle. It's more disparate, there are more



agencies, and one thing or another. It's understaffed. They were not looking for additional business, so we didn't have to worry about a grab from them. But something had happened before I got there in the Nixon or Ford administration, that I didn't like. It was arranged that the Civil Division handle the Tennessee Tombigbee NEPA case instead of the Lands Division. I don't know how that happened, but I was told by people in the Lands Division it was arranged politically because Senator Stennis thought the Lands Division would be too militant. Whether that was true or not, I never found out. The case was too far along to disturb, so I let it be.

Hudson: It wasn't a case of it being a civil engineering project partly?

Moorman: No. Some other little conflicts came up. Funny little things came up all the time. The Advisory Council on Historic Preservation came to me and demanded that I sue the Navy over the Sequoia. The Sequoia was the . . .

Hudson: President's yacht.

Moorman: Yes, which the Carters had the Navy sell. The advisory council believed the Navy had to handle any sale in accordance with the procedures of the National Historic Preservation Act. I served as the attorney general's representative to the advisory council; he was by law a member of the council. The problem was that if I sued the navy, I would also have to defend the navy because I defended all suits against government agencies involving the National Historic Preservation Act.

A similar issue came up also with the Environmental Protection Agency. EPA wanted to file suit to enforce the Clean Air Act and the Clean Water Act against the Department of Defense. And, of course, my problem was that if I filed such a suit, I would also have to defend it. The Congress had indicated in the legislative history of the Water Act, I believe it was, that such enforcement suits were be allowable. The Office of Legal Counsel, another office of the Department of Justice to whom I referred this question, was strongly of the view that there is only one United States and that conflicts of that kind had to be resolved in the family. But we had, oh, six or seven months of discussions with EPA about the issue of whether or not we could sue the Defense Department.

Ultimately President Carter issued an executive order on compliance with pollution control laws that applied to all the executive agencies with an internal dispute resolution mechanism in it.

An interesting conflict came up in the snail darter case. The snail darter case did not come up through the Lands Division. TVA handles its own litigation. But when the case got to the Supreme Court level, the case fell under the jurisdiction of the Solicitor General's Office at the Department of Justice. A big fight broke out between the Interior Department and the TVA as to what was to be in the brief. The Interior Department did not like the brief supporting the Tellico Dam decision that the solicitor general was going to submit to the Supreme Court. Cecil Andrus complained directly to Griffin Bell about it.

Hudson: Well, of course, Fish and Wildlife Service was his connection.

Moorman: That's right. They administer the Endangered Species Act. The solicitor general had submitted a draft of its brief or had a meeting with someone at the Interior Department early on, and there were notes in the file indicating concurrence by Interior in the TVA/Solicitor General's Office position. However, it seems that the person at Interior who concurred didn't understand what he was concurring in or had made a mistake. Certainly the issue hadn't reached the higher levels of the Interior Department at the time of the early concurrence.

Griffin Bell had brought Judge Wade McCree into the department to be Solicitor General and was always careful not to issue any direct orders to the S.G. on how to handle cases. He followed the tradition of giving the S.G. independence. But Bell decided he wanted to control this case himself, so he said he would personally argue the snail darter case. McCree instantly deferred to Bell. Once it was his case, Bell said he would append a memorandum to the brief in the Supreme Court setting forth the Interior Department's separate views so the Supreme Court would have both Interior's and TVA's views. I was consulted by the attorney general on a few points, even though the case hadn't come up through my division. I felt Bell wanted me to show visible support for him, since it was so controversial, so I did. Unfortunately for Judge Bell, the time he set aside to prepare for the case was disrupted when Jimmy Carter called him away to Camp David for two days. It was the very time he had planned to use to study and prepare for his argument. So he was not as well prepared as he should have been and could have been when he went before the court. It was not his fault. He just got preempted by the president. He didn't make his most outstanding argument, but it was an interesting argument. There was a touch of drama when he brought out a little snail darter in a bottle which he showed to the court.

The Supreme Court made it clear during the course of that argument that they did not approve of the government appearing before the court with two voices. They did not approve of the

appending of the Interior Department's position to the brief of the United States. They indicated that it was the role of the Justice Department to harmonize the views of the government and present the court with the position of the United States.

- Hudson: Was the government offered an appeals deadline? Or what time constraint was there to prevent the government from coming up with one unified position? Or was it just totally irreconcilable?
- Moorman: Andrus was making such a fuss about TVA's position that Judge Bell tried to resolve it by saying, "OK, I'll present both your position and TVA's position to the Court." And he did that, making TVA's the principal position in the brief but attaching Interior's as a supplement.

While I am talking about that case, I have to say that Thurgood Marshall asked one of the oddest questions I've ever heard a judge ask. He asked Judge Bell what the Supreme Court should do if they found a snail darter in the basement of the Supreme Court. Judge Bell, who was almost never at a loss for words, was nonplussed by that question, as well he should have been. If he had had a chance to study the act in detail I suppose he could have quipped, "You should ask the Interior Department to designate the basement critical habitat."

#### Role of an Assistant Attorney General

- Hudson: What does an assistant attorney general do? I imagine that there's a general supervisory role over litigation and choosing what cases are recommended to the attorney general, what cases to appeal or defend.
- Moorman: I had general supervision over those 28,000 cases on the docket that I mentioned. Obviously I did nothing on most of them. What did I do? I spent some time handling interesting cases. I had an interesting Forest Service case which I argued in the Supreme Court, involving the Forest Service's in-stream water rights for fish purposes, etc. I argued a case involving national monuments when Alaska attempted to enjoin Carter's effort to create national monuments in Alaska. Things like that.

I spent a lot of time dealing with "hot" problems. The first year I was there, I spent an enormous amount of time on the Pacific Northwest salmon fishery problem involving Indian fishing rights. I also spent much time on the Maine Indians' land claim. These were issues which had a lot of political implications.



I also became involved in fights between agencies. I got in the middle of a big fight between the Corps of Engineers and EPA over the interpretation of Section 404 of the Clean Water Act involving the discharge of dredge and fill material into the waters of the U.S. The fight developed out of one of our lawsuits involving Section 404.

I spent a good bit of time generally supervising the division, working with the different sections on their problems. I also reviewed appellate briefs. I tried to review all the appellate briefs. I spent a good bit of time on planning and budgetary matters. Getting the budget together and getting it through was very important. I was trying to improve the division and increase its staff. I was trying to restructure the division to make it more responsive to the environmental problems of the seventies. I spent a lot of time thinking about how to deal with new issues, like the growing hazardous waste issue and things like that.

By and large, it is one of the nicest jobs in the government for an environmentalist. It doesn't attract the attention that some of the jobs at EPA or Interior do. It's a lower-profile job. But it's one of the few jobs where the programs of all the environmental and natural resource agencies touch. I was able to deal with Interior Department problems, EPA problems, Forest Service problems, Corps of Engineer problems and NOAA problems. There were pollution problems, resource problems, parkland acquisitions, NEPA cases, Indian resource questions, everything. Where else in the government would one get to deal with all those issues? OMB gets a look at all the agencies in its way, but those guys always take a negative view. I suppose CEQ, which is a White House office, has that same right to look at everything. However, the assistant attorney general for land and natural resources has a staff of 150 lawyers. CEQ is now down to about three professionals, which means it can't do much.

Hudson: I've heard it's something like that.

Moorman: I was constantly lending lawyers to CEQ to give them a hand, they were so short-handed. I wanted to give some of my people broader experience, so the program was a moral booster.

Hudson: Oftentimes when a new administration comes in, the first thing they do is reorganize. I understand you did a little bit of that in the Lands Division yourself. Maybe you could explain briefly just what organization you created there.

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Expanded Responsibilities for the Lands Division

Moorman: Generally I am opposed to reorganizations. They wasted a lot of time and effort and divert people from the real task at hand. I didn't reorganize the Lands Division. I spent a lot of time on strengthening it. Throughout the seventies Congress had established a tremendous environmental protection program. EPA had been created, the Clean Water Act, the Clean Air Act, RCRA [Resource Conservation and Recovery Act]. All of these laws had been passed. Not only that, but on the Interior Department side a lot had happened. The Surface Mining Act had been passed. New parks had been created. Many of these required parkland acquisition. The Endangered Species Act was on the books. New things were all around, like the Fisheries Management and Conservation Act.

These programs produced new litigation: new public interest litigation, new regulatory litigation and new enforcement litigation. I did a series of charts to show how the docket had risen in the Lands Division as a result of these programs. Take, for example, the Clean Water Act. After the act was passed, you saw a rising number of cases on the docket of a defensive nature, in which EPA is sued about the regulations under the act. That is followed by a set of enforcement cases which began to rise two years later. I charted the different types of cases. The bottom line was that they were all rising.

The Lands Division was managed very conservatively throughout the early seventies. It was run by Walter Kiechel, the deputy assistant attorney general. Assistant attorneys general came and went, but Walter remained. And Walter did not believe in asking for new positions and expanding. So the division had the largest docket of any of the department's divisions and the smallest staff. And the staff was just utterly overwhelmed.

No effort had been made to modernize the division. For example, the docket of all those thousands of cases were still kept on file cards. There was not a computer in the division. There was only one word processor in the division. The support services for the attorneys were very poor.

My predecessors had created a small Pollution Control Section to handle EPA's work. That was about the only effort they had made to deal with the new situation. That section had fourteen lawyers in it. It was completely overwhelmed with EPA work. It's inadequacy was one of the reasons for the litigation authority dispute. EPA lawyers had concluded that the Justice Department wasn't trying. And they were right. The individual

lawyers were trying, but institutionally, the effort was inadequate. So, we agreed in the memorandum of understanding that the Department of Justice would increase the staff of the Lands Division devoted to EPA. Bell signed off on that.

EPA also insisted that we make some managerial changes. As I think I mentioned last time, I recruited Angus MacBeth, an ex-NRDC lawyer then in the U.S. Attorney's Office for the Southern District of New York, to become the Chief of the Pollution Control Section.

He was an expert in the Clean Water Act. I then managed to increase the staff of the Pollution Control Section. Later we split the section in three. We created the Hazardous Waste Section, an Environmental Enforcement Section to bring water and air enforcement and an Environmental Defense Section to defend the regulatory program of EPA. We more than tripled the resources available. And Angus, after a year and a half, was promoted to a position of deputy assistant attorney general overseeing all the EPA litigation of the three sections.

I recruited Tony Roisman to handle the Hazardous Waste Section. My successor, Carol Dinkins, abolished the Hazardous Waste Section to get rid of Tony Roisman because he was disliked by the chemical industry. She merged the Hazardous Waste Section into the Environmental Enforcement Section. She then reassigned him to a special litigator's job. It was a demotion, and he left after a while to form Trial Lawyers for Public Justice. I guess they didn't need both an Environmental Enforcement Section and a Hazardous Waste Section with Rita Lavelle and Anne Gorsuch, et al. at EPA. EPA didn't refer any new enforcement cases to the Justice Department for a year after Gorsuch came in. Sullivan, the assistant administrator for enforcement, was strangely uninterested in enforcement.

Eventually Sullivan was dumped and then, of course, Lavelle was dumped, and now they have so many enforcement cases from EPA that the old Hazardous Waste Section has in effect been re-created within the Environmental Enforcement Section. The Environmental Enforcement Section is now bigger than the two sections together were when I was there and is doing the work of both. It's far too big for one section chief to handle.

I've already talked about the Wildlife Law Section. This was an area of law enforcement which was not working properly. The agencies were not cooperating. They were referring cases directly to the U.S. Attorneys' Offices. The assistant U.S. attorneys had no one available to provide expertise. I hired Ken Berlin to put that section together and head it up. We've talked about that and I won't go over it again.

In addition, we created a special section with an odd name-- Policy, Legislation and Special Litigation. The division had no capability to deal with Congress, no ability to do policy planning and no ability to cook up new strategies. And that small unit become central to our activities. It worked up the hazardous waste program. They worked up the initial wildlife program. It gave the division an ability to get an oar in on legislation. PL&SL Section made the Lands Division a small, but real, player in the environmental policy game.

Hudson: Was there ever any call to present testimony on Capitol Hill in this section?

Moorman: I was called on to testify on a number of things. Hazardous waste problems was one such.

Other things happened. The division had been hidebound on such things as the hiring of women and minorities. I appointed the Division's first female section chief, Lois Schiffer, and appointed the first black assistant section chiefs and generally hired minorities and women in far greater numbers than had been done in the past.

Lois Schiffer was the woman I hired to be section chief of the General Litigation Section. That section does NEPA cases and most of Interior's work. Jim Watt didn't like Lois. She had thwarted him on a couple of his cases, one involving wild and scenic rivers in Northern California. He insisted that she be removed as section chief when he came as secretary of the interior, so she was also shuffled off to a special litigator's position by my successor.

Hudson: I think I know that northern California case you talked about, where the Interior Department recommended for designation certain wild and scenic rivers without waiting the requisite amount of time by a couple of days. I think it was a technicality that Watt used to overthrow those decisions.

Moorman: Yes. On behalf of the Mountain States Legal Services he had filed a suit against what Andrus had done. Then when he came in as secretary of the interior, totally unmindful, I guess, of any conflict of interest, he continued to wage his lawsuit from the inside. And one of the things he wanted was to be rid of Lois Schiffer.



Working with Other Members of the Carter Administration

- Hudson: The high echelons of presidential administrations are full of strong personalities, and there were a number of them heading up various departments and bureaus within departments. I wonder if you could describe your relationship with folks like Cecil Andrus, and Gus Speth at the Council of Environmental Quality, Rupert Cutler at the Conservation Division of the Agriculture Department, Doug Costle at EPA, people like that.
- Moorman: I'll start with the easiest one--Rupe Cutler. Rupe and I were friends, had been friends for years. I knew him when he worked for the Wilderness Society. He oversaw the Forest Service in the Department of Agriculture [in his capacity as assistant secretary for natural resources and the environment during the Carter administration].

I had done a lot of work for the Sierra Club which the Forest Service didn't like. I'd sued the Forest Service a lot. The forest products industry opposed my appointment and were watching me. Chief [John] McGuire was a little nervous about my being assistant attorney general. But I got along all right with them. I didn't receive any complaints about the way the Lands Division handled suits for the Forest Service, with one exception, which I will mention in a minute.

I argued one case in the Supreme Court when I was assistant attorney general--that was U.S. v. New Mexico--which involved the instream reserved water rights for the National Forest Service. Chief [John] McGuire came to hear the argument. He was very interested and wanted very much to win that case. Unfortunately, we lost it 5-4, opinion by Justice Rehnquist, who said there were no reserved water rights for the national forest for recreation, fish and wildlife, or livestock purposes. Only for mining and forestry, which was a gross misreading of the Multiple Use Act. I have a nice dissent by Justice Powell that says it right. But, you know, a loss is a loss. The case was a lot of fun to prepare for and to argue, and McGuire and the Forest Service were very supportive, so that relation turned out all right.

I disqualified myself from all matters in which I had been involved as an environmentalist. And I also disqualified myself from all cases in which the Sierra Club was involved, even if those were cases which arose after I'd left the Sierra Club Legal Defense Fund. So if I had been involved with a matter, I wouldn't touch it. Or if it was a Sierra Club case that arose after I came in, it was delegated to one of my deputies and I never heard about it.



Hudson: How does that disqualification work in a practical way? If somebody mentions it to you do you say, "Uh, uh, uh, I can't talk about it" or...

Moorman: We circulated a list of cases around the Lands Division. The lawyers were told not to discuss matters involving the cases on the list with me. They were assigned to my deputy. My principal deputy was Sandy Sagalkin, who had come to us from the Alaska Attorney General's Office. He handled all those matters. He was the acting assistant attorney general for purposes of those cases, and I stayed completely out of the loop.

Anyway, a prominent environmentalist whose name I will not mention wrote me a blistering letter complaining about some position the Lands Division had taken with regard to a case involving the Forest Service that he didn't like. I wrote him back a letter and told him that I was sorry, but I couldn't do anything about it, because I was disqualified. And he didn't accept that and accused me of being a turncoat. This was a person who had purported to be my friend, with whom I had collaborated, and who, I might add, I had spent a lot of time assisting regarding an environmental problem he was interested in, one involving a waterfront park. I was quite taken aback. I guess he was so emotionally involved that he refused to listen to what I was telling him or refused to understand that I had obligations other than the obligation he assumed I had.

I had another example like that which was a distressing. An environmentalist tried to get me to arrange for the criminal prosecution of some Corps of Army Engineers' officers who had, he believed, lied about something. He had no evidence of criminal conduct of any kind. It infuriated me to think that he would lobby to have a criminal case brought the way he would lobby to get a bill through Congress or lobby to have another kind of decision made. It was so out of tune with my own sense of propriety regarding criminal prosecution that I blistered the guy.

There are people whose zeal causes them to lose their sense of proportion. By and large, the environmental movement has been respectful of legal process, of people's rights, of using the system properly. I considered these two characters, one of whom wouldn't understand the criminal prosecutorial system and one who wouldn't understand the conflict of interest rules, as anomalies.

**Secretary of Interior Cecil Andrus**

Moorman: Cecil Andrus was a very nice person, though I did notice he occasionally got hot under the collar about things. He got hot under the collar, you remember, about the an Interior Department employee that wrote a letter to the owner (D'Ermo ?) of Dominique's Restaurant? Dominique had wildlife items on its menu. And he blew his stack and fired Bill Eischbaum, who was the associate solicitor for surface mining, over nothing. I think those episodes resulted from the pressures he felt from a tough job. He was, by and large, a nice guy. I think he liked me. I dealt mostly through Leo Krulitz, the solicitor. But I met occasionally with Andrus.

Andrus got mad at me about one thing. He got upset that I would not agree to take a legal position that he wanted me to take with regard to a fight involving Alaska's relationship to wolf hunting on federal land. Alaska had been regulating the resident game on most of Interior's lands in Alaska for many years. They did some things that a lot of people disapproved of. Wolf control was one of those things.

Some group, maybe it was Defenders of Wildlife, brought a suit to try to force the Interior Department to prepare an environmental impact statement on Alaska's wolf control, or more accurately on the "decision" of the secretary of the interior to let Alaska go ahead and control wolves. We looked at the law and decided that the secretary of interior didn't have to prepare an environmental impact statement because he wasn't making a decision. It was a continuing practice. No decision was being made. Alaska was just operating under a decision that had been made years ago.

But, it was very clear that the Interior Department could make a new decision or, without a new decision, prepare an environmental impact statement if it wanted to. The law was very clear that it could. Andrus wanted me to take the position in our brief that the Interior Department couldn't make a decision in this area even if it wanted to. He wanted us to argue that Alaska's activities were completely outside his authority. He confessed during all of this that his childhood ambition had been to be a state fish and game manager. He believed strongly that resident game was completely under the authority of state fish and game managers, and it was none of the secretary of interior's business, and he didn't want to have authority over resident wildlife.

Since the secretary himself was making such a big point of this, I ran this by both the Solicitor General's Office and the Office of Legal Counsel. They both agreed that we were right and

Andrus was wrong. It was a question of legal interpretation, I told Interior. The Justice Department gets to make the legal calls; Interior gets to make the policy calls. Well, Leo Krulitz insisted that the secretary thought this was a policy call rather than a legal call. We disagreed; we did it our way; and we won the case our way. But Cecil, didn't like it. I don't think he ever quite forgave me on that one. However, he did nothing in consequence to make life hard for me.

Andrus was very frustrated over an injunction that prevented Interior from leasing any coal, the NRDC v. Hughes injunction. NRDC had gotten this injunction against the whole federal coal leasing program. Bruce Terris was handling the case for NRDC.

Hudson: Was this suit the beginning of the moratorium?

Moorman: No, the moratorium had been in effect. The moratorium had been in effect...

Hudson: Since 1970, wasn't it?

Moorman: Right. You see, but attempts to end the moratorium and everything had come a cropper on this case. He asked me personally if I would negotiate with Terris to see if I could get them to agree to some leasing by way of settlement rather than fighting to the death. It turned out that NRDC and the Northern Plains Resource Council and others on their side were nervous about their victory. They thought they had won too much and that they had to give some ground. I spent about six months negotiating with them. Eventually we negotiated a settlement which allowed Andrus to lease some coal. He was very pleased.

Oddly enough, some elements of industry were furious with me about the settlement. Utah Power and Light Company wrote a diatribe about me which they published in their annual report and which they got published in the Congressional Record. Why Utah Power and Light was so furious was always a mystery to me. Maybe they thought that I should have fought the case through the courts. Or maybe they thought I was some kind of an environmentalist devil and that through this settlement I was tricking the government into acquiescing in NRDC's victory.

They were just completely irrational about the whole thing. Their lawyer tried to participate in the settlement negotiations, but I wouldn't let him. He then accused me of all kinds of conflicts of interest. I thought that Utah Power and Light had come unhinged. I couldn't understand why they wanted to prevent the secretary of interior from settling the Hughes case as a way to allow him to lease some coal.



## CEQ and EPA

Moorman: Gus Speth [chairman of CEQ] was wonderful. His Global 2000 Report was one of the single, most important things that the Carter Administration did. I'm happy that I lent him Kris Hall to help prepare it. Nick Yost at CEQ and I also collaborated well. We got into a very curious problem involving NEPA's application abroad. CEQ under Carter was terrific, Gus was terrific, and so was Nick Yost.

Hudson: Doug Costle?

Moorman: I was going to say something more about the CEQ. There were a group of people in the government that did not like NEPA: that included the Ex-Im [Export-Import] Bank headed by John Moore; the Defense Department; the Energy Department people; some of the State Department people. These people did not like NEPA. They didn't like the idea that NEPA would apply to things which had foreign affairs implications: like export licenses for nuclear power plants, like loans the Ex-Im Bank might make to destroy forests abroad through the logging of hardwoods.

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Moorman: John Moore of the Ex-Im Bank attempted to submit a memorandum to the president saying I had a conflict of interest. Griffin Bell prevented the memorandum from being sent to Carter, but the matter of the application of NEPA abroad remained heated. One of the focal points seemed to be claims by the opponents of NEPA that I had some kind of conflict of interest because I had been at the Sierra Club. Mike Egan and I decided, as a strategy matter, that we would diffuse that issue by my stepping aside and letting Mike handle the issue.

One of the things the agencies didn't like was that we sent copies of all the briefs we filed on NEPA over to CEQ to get CEQ's views. They didn't want CEQ chiming in. They didn't like the idea that we might take a position in one of these NEPA abroad cases that they didn't like. They wanted us to take the hard legal position that NEPA didn't apply beyond the boundaries of the United States. I took the position that NEPA applied to all decisions of the U.S. government whether the decision's impact was in or out of the U.S. Eventually there was a compromise in the form of an executive order which somewhat diffused the issue. But it was very hot for a long time. And Nick Yost and Gus Speth were allies in that fight which raged for

months. It was one of the more interesting and nastier little fights that I was involved in.

Hudson: Remind me, I have one question about some other outside players but...

Moorman: OK. Doug Costle was a terribly accomplished administrator, and he was very knowledgeable about EPA. He was at OMB when EPA was set up. He had been the administrator of Connecticut's EPA and he is a terribly smooth fellow. I got along with him well. There weren't a large number of things that I had which rose to his level, but a few. And they always seemed to work out fine. Barbara Blum was the deputy administrator, and she and I also got along very well. Jody Bernstein was the general counsel over at EPA, and I got along with her very well, as I did with most of the assistant administrators.

However, there was a lot of friction between the Lands Division and the assistant administrator for enforcement [at EPA], Marvin Durning. This was unfortunate. Marvin had actually handled a case for the Sierra Club when I was at the Sierra Club Legal Defense Fund. He was from Seattle. His heart was clearly in the right place, but he and Angus MacBeth and others could not get along. The problem, I think, was that Marvin did not have an administrative temperament. You know, things didn't leave his in-box. They piled up in his in-box. He was not well organized. This caused endless little problems which irritated a lot of people. He had a hard time.

He was being criticized for being a bottle neck. He sent a report out which implied that it was the Justice Department's fault. I blew my stack and went on the warpath about that. I probably overreacted. In fact, I did overreact.

I think some of the people at EPA wanted Marvin to go so they could get a more efficient operation going. They started to think, "Aha, Durning can't get along with the Justice Department, so he has to go." I was used as one of the excuses for Costle and Blum to urge Marvin to go back to private practice. Marvin was not fired but...

Hudson: Was this after he ran for Congress in Seattle? I think it was 1976.

Moorman: Oh, yes. This was after he ran. He came in with the Carter people. I like Marvin a lot, but Marvin just didn't mesh well with the organization. His frustrations were there too, and he took the hints and went on back to private practice. I mention this because some people blame me for Marvin's going. I always thought that was unfair, because there were a number of people at

EPA that felt that way, and they used me as an excuse. I had just blown up about something Marvin had done, and that event in no way would have caused him to go. Marvin did a lot of good things while he was there, too.

Jeff Miller took over his job as acting administrative assistant, and Jeff ran a much more orderly ship than Marvin did. Who else?

### The Solicitor's Office at Interior

Hudson: You mentioned in passing Leo Krulitz at the Solicitor's Office at Interior. He was another key second echelon actor in the Carter administration for a while. But I never heard any good comment about Leo from civil service types at Interior when I was there in those years, and the Watt people that came in certainly had no use for him. I wonder if you can tell us a little bit about Leo Krulitz.

Moorman: Leo is a very nice man. He's also a very good lawyer, and he was very loyal to Cecil Andrus. He was a good-hearted fellow, and he did his job well. When Cecil Andrus held his press conference to announce his mini-leasing program after we settled on NRDC v. Hughes, he described what he was going to do. Leo was sitting up on the stage with Cecil. One of the reporters said, "Leo, what do you think of all this?" Cecil said, quick as a wink, "Leo thinks what I think." [Laughter] And everybody laughed. But that was accurate. Leo Krulitz was quintessentially Cecil Andrus's man.

I collaborated with Leo on a number of things: the attempts to settle the Pacific Northwest fishery matter was the main matter. There were a lot of the sticky little Indian cases with which I dealt with Leo. I found him to be very bright and easy to get along with. We had a couple little disputes about this and that, but they weren't very significant. I thought he was a pretty good solicitor. I don't know what he did that might have irritated his own people in the Solicitor's Office or . . .

Hudson: Not so much in the Solicitor's Office, but I think in the civil service part of Interior, the various bureaus. Under Krulitz there was a feeling that the Solicitor's Office was making too much policy and not enough law. Also, the first thing that Watt's solicitor did when they came in was to reverse the reserved water rights opinion that was Krulitz's big thing towards the end.



Moorman: Oh yes, the reserved water rights opinion that John Leshy worked on as associate solicitor for water and power. Yes, but that had become a political football in the West. The Carter administration had political problems with western water rights, starting with the hit list of water projects which created a political furor at the beginning through to this opinion of John Leshy's at the end.

The business about meddling with the bureaus or getting into policy goes back to what I said about Leo being Cecil's man. If you'll look at the Interior Department's organization, it's very clear that the second most powerful officer in the department is the solicitor. The solicitor is far more powerful than the under-secretary. I learned that when I was in the Lands Division in the sixties. Frank Berry was the solicitor, and John Carver was the under-secretary, and they had big fights. They constantly had fights, Berry and Carver did, about a variety of things. Carver lost all those fights, and he eventually got appointed to the Federal Power Commission. One of the reasons he lost all the fights was because the solicitor has this big staff professional lawyers, that mirror the bureaus in regional offices throughout the department that can staff up any issue. The under-secretary has a tiny little staff, right?

If you're the secretary of the interior, your job every day and every way is to beat the bureaus. That's what the secretary's job is. The secretary and the assistant secretaries have to keep the bureaus in line. That is their job, to make sure they carry out policy as they see it and not let bureaus set the policy themselves. That is the tension in the department. And the best instrument that the secretary has to control the bureaus is the Solicitor's Office. To be successful, a secretary has to have a simpatico solicitor who knows how to run the Solicitor's Office in such a way as to keep a close eye on what the bureaus are doing and to push the bureaus around as necessary.

So the fact that Leo was a little pushy and created some resentments out in the bureaus means to me that he was a successful solicitor from the view point of the secretary.

The tension between the bureaus and the secretariat is there, and the Solicitor's Office is used to police the bureaus. I liked Leo. He was easy to work with, but I can understand how people in the Bureau of Indian Affairs, the Park Service, etc. would feel that he meddled too much.

Hudson: You mentioned during the conflict discussion Utah Power and Light, and that brought to my mind a couple of folks who are insiders now in the Reagan Administration who were outsiders

then. I'm thinking particularly of William Coldiron, who just retired as solicitor at Interior, and John B. Crowell, who replaced Rupert Cutler at Agriculture. I wonder if you had any dealings with those folks while you were with the Lands Division, or people like that.

Moorman: No. Industry types didn't lobby me very often. I didn't get as many chances to meet those people as you might expect. Crowell and Coldiron are an interesting pair. I've never met them. But it is true that they have been among the more successful of the Reagan appointees in the Natural Resource area. Crowell has managed to avoid the kind of controversy that...

Hudson: Pretty much.

Moorman: Yes, a mark of success. [William] Gianelli over at the Corps of Engineers is another one. Coldiron was part and parcel of the Watt operation.

Hudson: Well, Gianelli is leaving also.

Moorman: Oh, is he?

Hudson: Retiring, they call it.

Moorman: By choice?

Hudson: I don't know.

Moorman: I hadn't heard that. He's managed to avoid the kind of controversy that Watt, Gorsuch, and many others have gotten into.

#### Attorneys General Griffin Bell and Ben Civileti

Hudson: You had two bosses when you were at Justice, your second incarnation at Justice, starting off with Judge Griffin Bell and then Ben Civileti. I wonder if you could compare and contrast those. You've talked a lot about Judge Bell and, it seemed to me, in a favorable light as attorney general.

Moorman: I liked Judge Bell very much and thought he was an outstanding attorney general. In my lifetime, he ranks with Bobby Kennedy as one of the two best attorney generals we've had. He was very supportive of me personally. Judge Bell was not much interested in environmental and natural resource issues. That just wasn't where he came from in life, you might say. But he let me do my thing. He didn't interfere. And he was very supportive of me.

Did we talk about the times Jim Schlesinger tried to get me fired?

Hudson: You mentioned it, but you said you were going to come back to it.

Moorman: Maybe I should tell those stories now. The phone rang one day; it was the attorney general's direct line. The A.G.'s line has its own bell which rings extremely loud in the assistant attorney general's office. It practically knocks you off your seat. Judge Bell didn't call me directly on that line very often, and it always scared me when it rang. Recovering from the shock, I picked up the phone and it was the judge. He said, "Jim?" I said, "Yes." He said, "Are you single-handedly trying to thwart the energy policy of President Carter?" I thought, "Uh oh, what now?" and said, "I didn't think so." And he said, "Well, Jim Schlesinger says you are. Come on up. We'll talk about it."

So I went on up to Bell's office, and he explained that Jim Schlesinger was in a snit because I had sent a comment to OMB opposing Jim Schlesinger's pet "one-stop licensing" bill for nuclear power. Do you remember one-stop licensing? It would have been an arrangement for nuclear (and maybe non-nuclear) power plants to get all their licenses, all their permits, all their zoning permits, everything, through one decision. This was one of Schlesinger's pet projects. He wanted to speed up the licensing of nuclear power plants through the mechanism of "one-stop licensing." One decision which would grant all water permits, everything, one big multifaceted decision would be made.

OMB had circulated a request for comments on the "one-stop licensing" proposal to all the departments. At the Justice Department, comments on this type of proposal were made by the Lands Division. I commented rather negatively on his proposal. Before this, I hadn't realized that the comments of the assistant attorney general of the Lands Division to OMB on proposed legislation were particularly important. I assumed an OMB examiner read them and put them in the file. Well, apparently Jim Schlesinger also read the comments of the Lands Division, and he was furious about them.

When Judge Bell understood the situation, he said, "OMB asked for your opinion, didn't they, Jim?" And I said, "Yes." "And you gave them your opinion, didn't you?" And I said, "Yes." And he said, "I might not agree with your opinion, Jim, but you're the one they asked. You were the person on the organization table who is supposed to give that comment, and you gave it. I don't see that you did anything wrong." He said, "I don't understand what he's complaining about. You just go back and do your business, and I'll take care of Jim Schlesinger."



About a couple of months later the attorney general's line in my office rang again. Judge Bell said, "Jim?" I said, "Yes, Judge?" He said, "Jim Schlesinger says you're at it again!" [Laughter] This time Schlesinger was all in a huff about a lawsuit that he thought I had brought to enjoin Northern Indiana Public Service Company [NIPSCO] from building a nuclear power plant next to the Indiana Dunes National Seashore. I hadn't heard about it and it turned out that we hadn't filed the lawsuit. The Park Service had sent over a request that we file such a lawsuit, but no action or decision had been made on it. One of my lawyers was reviewing the Park Services' litigation request. I reported to the judge that we had a request to file a suit, but we hadn't made a decision. Bell said, "Boy, that Schlesinger sure is a nut, isn't he? You look it over and do whatever you think is right."

I should tell the end of this story. I had a meeting to which representatives of the Nuclear Regulatory Commission and the Energy Department came, and I have never seen such a crazy bunch. The Nuclear Regulatory Commission people seemed particularly unstrung. They wanted to see the litigation request that the National Park Service had sent to us. They were demanding to see it. I wouldn't let them see it.

These guys were literally screaming in my conference room and demanding to know why I wouldn't show them the report. They said they were part of the government, and therefore had a right to see it. I told them the reason that I would not show it to them was because it was a law enforcement matter and they were displaying a very hostile and uncooperative demeanor. If the Park Service wanted to show it to them, that was OK with me; but the Justice Department wasn't going to show them another agency's law enforcement reports. I also said, "Don't forget, I handle cases for you." I handled the NEPA cases for the Nuclear Regulatory Commission and some other things. I said, "You wouldn't want me showing your litigation reports to people who are hostile to your litigation positions, would you?" Well, that hardly mollified them.

It turned out that the Park Service's report raised some unanswered questions. The Park Service was upset because NIPSCO, in the digging of the foundation for the power plant, was lowering the water table. But the litigation report also revealed that they were also upset about a coal-fired power plant NIPSCO had in the area which had a cooling pond which was raising the water table. So this litigation report was complaining simultaneously about Northern Indiana Public Service Company lowering and raising the water table. I worried that we would look foolish bringing such a suit.

They had an explanation. They said they wanted the natural water regime. I said, "OK, but you've got to figure out what the effects of the two actions are and whether they changed the natural regime significantly. Go back and rework it." The Park Service never brought the matter back to me.

Anyway, Judge Bell was personally supportive. As I noted earlier, he prevented John Moore of the Ex-Im Bank from sending a memorandum to President Carter saying I had a conflict of interest. I also got in a big fight with the general counsel of the Defense Department, Deanne Seimer, over a NEPA case involving Berlin. It was one of those overseas application of NEPA cases. She claimed that I was behaving unethically. Deanne Seimer didn't want the Lands Division to handle this case, which involved the application of NEPA to the construction of a barracks by the army in a wheat field in West Berlin called "the dupple." She made some unpleasant charges, and got the Secretary of Defense to write a strong letter about me to Judge Bell. Judge Bell answered the charges with strong support.

So he was personally very supportive of me throughout my tenure and protected me from attacks from others in the government who were hostile to environmental protection. I couldn't have survived if he had not been protective.

Ben Civileti was also supportive, but his support was directed toward our programs. Ben was very interested in environmental protection. In fact, when asked by Bell if he wanted to join the Justice Department, Ben had originally asked to be head of the Land and Natural Resources Division. Judge Bell had wisely made him assistant attorney general for the Criminal Division, which he was extremely well suited for. I think Judge Bell thought all along that he was going to advance Ben to be deputy attorney general at the first opportunity and that it was best to do that from the Criminal Division. Bell didn't have confidence in his first deputy, Peter Flaherty. Flaherty had been the Mayor of Pittsburgh. Bell decided right away that Flaherty would not last and that he was going to make Ben Civileti the deputy. And that's eventually what happened.

Ben was interested in promoting the growth of the Lands Division. He was personally interested in the hazardous waste program. He was personally interested in the wildlife program. He encouraged me in these endeavors. Things were very tight budgetarily. Getting OMB or the Hill to give additional money was very tough, but he assisted me in getting additional funds for the Lands Division. Ben was also personally supportive as Judge Bell had been, but my need for personal protection had waned by the time Ben became attorney general. His contribution was not so much as my protector, but more as a promoter of our

programs. I was very fortunate to serve under both of those gentlemen. (And they are both gentlemen.) I have the greatest admiration for both of them.

By the way, I should say that while Judge Bell wasn't particularly interested in environmental affairs, he gave an award to NRDC that I suggested he give. So he was not unsympathetic.

Hudson: I don't know. It's just from reading the newspaper. I always was of the opinion, I guess, that he was just a Georgia crony of the Carter political machine, didn't have that great a stature himself, but you cast him in an entirely different light. He wasn't just a "Georgia mafioso", as they call them.

Moorman: Well, Judge Bell was a Fifth Circuit Court of Appeals judge for seventeen years and had only been in private practice for a year when Jimmy Carter asked him to be attorney general. Bell had a towering reputation in Georgia, and I think that...

Hudson: Federal Court of Appeals?

Moorman: Oh, yes. He was on the Fifth Circuit Court of Appeals. I think Carter had huge respect for him. When Bell came to town he had some problems. He belonged to two all-male clubs in Atlanta, and he got a beating for that, and a couple of other little things. He had a problem early on in his tenure with a smart-aleck U.S. attorney in Philadelphia named Marston. Marston was a Republican appointee who, when told to leave, claimed that Bell was trying to prevent him from investigating a corrupt Philadelphia congressman. It was a completely scurrilous charge. But it got a lot of press attention and hurt Judge Bell.

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Moorman: If you noticed the editorials and the tributes Bell got when he left office, it was pretty clear that he had overcome all those problems and that he was highly regarded. The press had decided along the way that Judge Bell was a genuine fellow. Bell did a number of things to gain their confidence. He regularly invited reporters to breakfast. He never would say anything to them off the record. The board of editors at Time magazine once asked him to come meet with them off the record. Bell refused on the grounds that nothing he said was off the record. The press finally decided that with Bell, what you saw was what you got. They decided that he was genuine, and he began to get good press. He is one of the few people in recent years to have the job of attorney general that didn't leave with a smudge on his reputation.



Ben Civileti, who is as honest as the day is long, was not as lucky as Bell. He could never quite convince people that he hadn't done something slightly wrong in the Billygate affair. Remember? That took a little shine off his attorney generalship. I thought it was sad because Ben Civileti would never have done the slightest thing improper. He never could quite convince everyone of that.

Hudson: Was this John M. Mitchell's fault?

Moorman: This all stemmed from John Mitchell. John Mitchell severely damaged the reputation of the Justice Department and the office of the attorney general. And Richard Kleindienst contributed. That's why it is so disturbing that Reagan would appoint this fellow [Edwin] Meese to be attorney general. It reinforces the image in people's mind that the attorney general is some kind of sleazy mouthpiece. Griffin Bell overcame that.

#### The Army Corps of Engineers

Hudson: Who was in charge of the Corps of Engineers when you were there? Did you deal with an assistant secretary of the army? Or was it a chief of engineers? Who was the chief actor you dealt with?

Moorman: I hate to tell you this, but I can't remember. The guy that I had the most dealings with was the chief counsel for the Corps. He may still be there. He used to be House staffer, a very popular and well-known fellow with a lot of prestige, and I cannot think of his name for the life of me. Do you know about the lawsuits in Louisiana about the application of Section 404 to bottomland hardwoods?

The Aveola Sportsmen case and similar cases created a lot of controversy. There's an anomaly in Section 404 which provides for the divided jurisdiction of the Corps and EPA: the Army Corps of Engineers grants the permits for the discharge of dredge and fill material under Section 404, but it is EPA which brings suit against people who discharge without a permit.

In the Louisiana cases, EPA had threatened to sue some people who EPA said were dredging and filling wetlands, and so the private parties went to the Corps for permits. The Corps told them they didn't need permits, because they weren't disturbing wetlands, etc. Thus the Corps refused to give permits and EPA threatened enforcement actions if the farmers acted without permits. So these people were caught between EPA and the Corps over what was a wetland.

Then the question became, who gets to decide what is a wetland? Who gets to call that? Does EPA get to call it or does the Corps get to call it? The Lands Division was in the middle of the fight because we had the lawsuits, and we had to decide whose interpretation we were going to adopt: the Corps' interpretation or EPA's interpretation? We decided that EPA's view was to be adopted.

Well, the Corps of Engineers did not like that. We had endless meetings, and finally the idea was broached to refer it to the attorney general for an attorney general's opinion. To my surprise, the Corps thought that was a dandy idea. The legal opinions of the attorney general were prepared by the Office of Legal Counsel, which was headed by an Assistant Attorney General John Harmon. Bell treated his "opinions" as a judge would. He didn't treat the matter as a political matter at all. OLC examined the question (and we had nothing to do with it), and came out the same way the Lands Division had, that is to say EPA's way. Bell reviewed their work personally and signed the opinion. That was the most difficult problem I had with the Corps of Engineers when I was there.

Hudson: Early in his Administration, Carter designated a number of Corps of Engineers and Bureau of Reclamation water projects not to be funded. This, I believe, happened before you were confirmed as assistant attorney general. Nevertheless, did you have any policy input into any of that controversy?

Moorman: You're right; that happened very fast. I believe it was worked up by Kathy Fletcher at the White House. To tell you the truth, I don't even think Cecil Andrus or any cabinet officer got a good look at it. The impulse behind the hit list was a good one. All of those water projects, of course, injure the environment and waste money. But it was a political blunder of the first order. It was a blunder of the kind that Watt made when he became secretary, but in reverse. It armed all the proponents of these water projects in a political way, and the whole thing was just a disaster.

#### The Press, and Ethics in Government

Hudson: There are lots of other facets of Washington life that a public official has to deal with. One of those would be the press. Did you have to give press conferences or otherwise deal with those folks?

Moorman: I didn't have a lot of press traffic. I would occasionally get calls from reporters. I seemed to get a pretty good press when I was there. I didn't have any real problems with the press. How you deal with the press when you're in a government job is important. In a highly visibility position--secretary or administrator--the press makes you or breaks you.

I learned a lot from Terry Adamson, who was Judge Bell's press assistant. He was pretty aggressive with the press, in the sense of reaching out to them to get them in, and to get them to understand a story. If you're passive about an important story, the chances that things will be told wrong are higher.

Hudson: Were you ever an unnamed source or victimized by one?

Moorman: Not really. I didn't play that game, and I wasn't the subject of any significant surreptitious press attacks. There were people around who didn't like me, and they made a number of attacks on me of the types I have mentioned: Schlesinger, John Moore, Utah Power and Light. But they were never effective. Of course, the thing which brings you down in Washington is usually some odd, little impropriety. For example, taking a watch from Japanese businessmen as a present.

Moorman: If you just do your job in Washington, don't give contracts to your buddies, don't take trips on corporate jets, don't do funny little things like jump in the reflecting pool with a stripper, you will do OK. You must treat the job like a job. Get up in the morning, and go to the job. If people try to give you favors, you ignore them. You just don't get involved in that. You don't do any of the stuff Meese has been doing. What people want is for their government officials not to take advantage of their positions. There's hypersensitivity in the country about government officials taking advantage of their office for any personal gain. That is the main thing to avoid.

The other thing you've got to avoid is saying dumb things. That was Jim Watt's mistake. Watt shot his mouth off all the time making provocative statements. It's not too hard for an environmentalist to avoid these things. Environmentalists don't come to town with a great yen for money. The problem with the Republicans of this day and age is that so many of the Republicans have grown up in the business world where getting money is the mark of success. It's very hard for them to change gears when they come into government. Environmentalists are out of that loop, so they don't have to worry about it; money's not on their minds.

Hudson: To a public interest lawyer, your job is a fortune and a half to them.



Moorman: Yes. It was a considerable raise for me at the time. Also, most of the environmentalists in Carter's government were politically astute. Watt and Gorsuch were politically naive, if you think about it. Watt was naive to think that he could go around making all those provocative statements.

Hudson: Speaking of the environmentalists, you came from that side of the game and all of a sudden found yourself dealing with them perhaps quite often in an adversarial posture. How did you react with, not the Sierra Club obviously, but the other parts of the environmental movement?

Moorman: Well, as I pointed out, I disqualified myself from any Sierra Club cases, so that wasn't a problem. Secondly, except for the couple little incidents, I didn't have any trouble from environmentalists.

One area that was a constant problem was the attorney fee area. Judge Bell was not sympathetic about attorney's fees from the government for lawyers--public interest lawyers or anybody. He did not like the idea that you could get attorney's fees from the government, and, of course, the environmental litigation groups were very interested in developing the attorney fee area. Several of them wanted the Justice Department to loosen up. There was a case involving civil rights where the attorney's fee issue had come up. A lot of public interest lawyers, environmental and otherwise, were filing amicus briefs, and they wanted the Justice Department to take a more pro-attorney-fee position. I told them that my hands were tied. Judge Bell was adamant on the subject. He had given us all our marching orders on attorney's fee, and that's just all there was to it.

Hudson: What is your personal philosophy on that issue? I'm thinking of the Sierra Club's/SCLDF's reluctance to get involved in certain cases for fear of losing and being stuck with attorney's fees themselves.

Moorman: Well, I don't know. I don't know of any case where . . .

Hudson: It's a two-edged sword.

Moorman: Is it? It has not been a two-edged sword up till now. I think a potential danger is there. I think if we develop a system where one side can get attorney's fees, it's inevitable that the courts' sense of fairness will provide sauce for the gander. I think there is a long-range danger in the attorney fee area, that the whole system will turn, will flip. What environmentalists would like is a system where public interest lawyers get attorney's fees, but not the other side. I think that won't work over time.

Conservative Public Interest Law Firms

Hudson: Jogging slightly, do you consider the Mountain States Legal Foundation and the Pacific Legal Foundation to be public interest law firms?

Moorman: Yes, I think they are. They're conservative public interest law firms. I think the Mountain States Legal Foundation was an innovation worth noting. It was different in kind, really, from our public interest law firms. Jim Watt was not interested so much in winning his lawsuits as he was in making a public statements. He would file suits or intervene or file amicus briefs to make public statements on a whole range of political issues for the purpose of building the constituency.

It was a brilliant performance. It got him the secretaryship of the Interior Department. His problem was that once he got into the Interior Department, he didn't realize he had to step down off his soap box and be everybody's Secretary of the Interior. Ronald Reagan recognized that once he became president, he became the president of all the people of the whole United States. Though I don't approve of him, I feel he's my president.

Jim Watt couldn't make that transition. He didn't realize that his political speechifying at Mountain States Legal Service was something he had to chop off. And he continued his us-versus-them speeches in the secretary's office, and everybody resented it and he got pitched out. But, nobody on our side has used a public interest law firm the way Watt did to build a constituency. It was an innovation which has not been fully appreciated or duplicated.

Environmentalists' Support and Their Missed Opportunity

Moorman: Now, going back to the environmentalists. The environmentalists saved my bacon at one point. The Judiciary Committee has oversight over the Justice Department and the Lands Division. Senator Kennedy became chairman of the Judiciary Committee after Eastland retired. One of the subcommittees was run by Senator [Max] Baucus of Montana. Baucus had a staffer, Frank Silby. Well, Frank Silby got it in his head that I was a bad guy. In his mind, we weren't bringing enough hazardous waste cases and a variety of things and maybe we were fixing some of these cases. Silby is a loose cannon. He used to work for Frank Moss. Kind of a rough-and-tumble investigator type.

Silby demanded all of our enforcement files. I was warned by people who knew how he functioned that everything I told him was going to end up in Jack Anderson's column. He would leak to the press, and he was completely uncontrollable. You couldn't work out a program with him. I was concerned because these were the files of law enforcement matters. I was not going to turn over our law enforcement investigative files to this guy just because he asked. So I got into a big fight with Silby. At the same time, Silby was in a similar fight with the Anti-Trust Division.

I complained about this to Tommy Sussman on Senator Kennedy's staff, and Sussman said, "This is oversight. You have to do what Congress wants." So I called my environmentalist friends: NRDC, EDF, everybody. And they went to see Senator Kennedy, asked why Judiciary was letting this guy Silby attack Moorman.

So, negotiations began and a compromise was worked out in which I would show the subcommittee the files, and Silby promised in blood nothing would be leaked. Sussman told me that Kennedy told Silby directly that if anything leaked, Silby would be fired. With that assurance, I agreed to show the files. Silby never looked at anything. He sent a couple of bright, young interns down to the office, and they spent two or three weeks going through the files. They were pretty good guys, and, in fact, I gave one of them a job six months later. They reported to Silby that we were doing a great job.

Then Silby, interestingly enough, had a change of heart. Silby became a great champion of the Lands Division. Senator Baucus became friendly, and Silby even began helping us with our budgetary problems and one thing or another. So that all worked out well. I'm sure that the reason it worked out well was because John Adams at NRDC and some other environmentalists took it upon themselves to make a little show of force on my behalf. That was the only time that I needed them to do that, and they came through.

I didn't do political things. Despite the stupidity of a number of Republican attorneys general of recent times, the Justice Department is not a very political office, and we tried to stay out of politics. Judge Bell had strong rules about not talking to members of Congress. It wasn't always practical but was helpful in keeping some stuff off our backs. I was disappointed by one thing. The environmentalists missed a big judgeship opportunity in the Carter administration. Carter made a huge number of judgeship appointments. He was going out of his way, and the Justice Department was going of its way, to find blacks, women, minorities, etc., to fill these positions.



All the environmentalists had to do was ask President Carter to give some of those judgeships to environmental lawyers, and they would have had them. That's all they had to do. We've got so many deserving environmental lawyers. I quietly passed this word to a number of environmental leaders, but they never did anything about it. An opportunity went by.

Hudson: Attributable to naivete?

Moorman: I wouldn't agree with you on that. It was so obvious that Carter was going out of his way to pay off his supporters and constituents with judgeship appointments, how could they miss it? But when I mentioned it, they didn't get excited.

#### Cases Involving Private Industry##

Hudson: We talked a little bit about the Mountain States Legal Foundation and about people like Coldiron and Crowell when they were in private industry. What other sorts of dealings did you have with private industry, and how did you get along with those folks?

Moorman: The funny thing is that I didn't have very many dealings at all with private industry. I once got a questionnaire from Ralph Nader which demanded to know all of the times I had contacts with industry lobbyists. So I made a list, and I found that industry hardly ever came to see me. Maybe it was because of my background, but more environmentalists and Indian lawyers came to lean on me. They came a lot more than industry types did. [Laughter] When I realized this, I was a little disappointed. I felt that it was a failure on my part if industry was reluctant to come talk to me. I believed it was my obligation to be everybody's assistant attorney general. I wanted to be fair and open with everyone. I didn't think that because I was a Sierra Clubber and a strong environmentalist, that I would be unfair to U.S. Steel.

I mention U.S. Steel because U.S. Steel did come to me once. It involved a pollution control case. We had brought a suit on behalf of EPA with two claims against them. They were very upset about it. They thought it was very unfair, and they sent their general counsel, Gus Heathwold, to see me. We sat and talked about it. He brought with him his lawyer that was defending the case, and so I brought into the room the lawyer who was bringing the case.

We talked a little bit and then they started talking, and you know what happened? It was very interesting. It was very eye-opening. The lawyer that worked for him and the lawyer that worked for me could not talk to each other without fighting. They were at each other's throats instantly. It was a revelation to Heathwold and to me to see how antagonistic these two people were.

We sent them out of the room, and we talked about the case some more. It turned out that we agreed that on one claim EPA had a good case, but on the other claim, EPA's case was much weaker. So I told him I'd think about it, and get back to him. He was worried that he wouldn't hear from me for a month, but I called him the next day and told him I would settle on the basis that U.S. Steel give us the fine we were asking for our better claim. If he gave us that, we would drop the other claim. He agreed, and we settled the case in two or three days.

If you'll look at the Lands Division enforcement litigation, you'll see almost all cases are settled. Companies almost always fold in the face of a show of force by EPA and the Justice Department. They rarely go to the mat. They may resist the passage of new laws, but once passed, most of them just want to know what to do. There are exceptions, but they usually don't fight very hard. They, of course, want to comply in the most economical way possible.

Hudson: So they're more receptive to offers of cooperation than, say, the National Association of Manufacturers.

Moorman: Oh, yes. Individual companies will usually be a lot easier to deal with than their trade associations. The trade associations' raison d'etre is to fight holy wars. They become specialists to fight those wars. The companies don't have those specialists on their own staffs, and they don't understand it as well. Their mind is focused on their businesses.

#### Putting Out Legal Fires for President Carter

Hudson: Another area you mentioned in this little list we have is your ultimate boss, the White House. In one of our other sessions we talked about the White House and whether you ever met the president and got invited to White House dinners and that sort of thing. But was there any routine contact with the White House? Did you get as high as Hamilton Jordan, for example? Or was there some other office that you dealt with regularly?

Moorman: I dealt with the White House counsel, who at first was Robert Lipshutz, on a number of issues. Lipshutz was very interested in certain Indian claims, especially the Maine Indian claims. One of the first things that happened to me when I got to the Justice Department was a big meeting involving the position the United States would take in the U.S. Court of Appeals for the Second Circuit with regard to the Concorde [airplane]. Stuart Eizenstat [assistant to the president for domestic affairs] conducted the meeting. Ann Wexler was there from the Commerce Department. She was involved in the Pacific Northwest Fishery matter, and I got to know her through that problem. Did I mention the Pacific Northwest Fishery at all?

Hudson: I think in passing that it was one of the suits that you were involved with.

Moorman: Oh, goodness, it was...

Hudson: Indian problems.

Moorman: It's something we should mention before we go because it was the single most difficult resource problem that I have ever seen.

Jack Watson became involved a bit in hazardous waste matters toward the end. Judge Bell did not want the Justice Department being involved with the White House or the Congress. He discouraged it. But a lot of the things on our docket involved policy issues, and you had to get involved.

One of the cases that I handled personally was a case called Alaska v. Carter. That was a case involving Carter's decision to create national monuments in Alaska under the Antiquities Act while waiting for ANILCA [Alaska National Interest Lands Conservation Act] to be passed. The State of Alaska and others tried to enjoin Carter's action. They filed a suit which they focused on Admiralty Island, the Gates of the Arctic, and the Yukon Flats. The suit was against Carter and involved his personal decisions so the president was the "client," and I spent a lot of time on the case. Stuart Eizenstat and Secretary Andrus also involved themselves personally because of the president's personal interest.

One of the highlights was going to Anchorage to argue a motion for an injunction of the State of Alaska.

Happily, Judge Fitzgerald ruled from the bench in our favor. It was quite exciting. The fact that we had won was in the newspaper headlines on the street within an hour. I made a call right away to the attorney general so he could call Carter and tell him. Carter was personally quite interested in the case,



though I never talked to him about it. The case was all tangled up in the Alaska public interest lands legislation, and winning the lawsuit was viewed as crucial at that time.

Hudson: Were you involved in the Section 204(e) withdrawals, emergency withdrawals that came before that?

Moorman: We were. The Lands Division was involved in that. Yes. I sent two lawyers up to Alaska to deal with that case: Steve Herman to argue in the district court, and Kay Oberley, my special assistant, who had emergency appeal papers in her brief case. She was to dash down to the Ninth Circuit Court in case we lost. Well, Steve Herman worked so hard in getting ready to oppose this motion for a restraining order that he had stayed up all night and let his potassium level get too low or something like that. When he started to make the argument in the district court in Anchorage he collapsed. He just keeled right over. They had to take him to the hospital and revive him.

So Kay, who was an outstanding lawyer and was a great help to me the entire time I was at the Lands Division, stepped over his body and made the argument and won. The U.S. Attorney called me and said it was the best argument he had ever heard in his courtroom. She's now working for the solicitor general.

I had another case in which Carter was personally interested, brought by North Dakota, involving a report on water projects. North Dakota got an injunction against the secretary of interior preventing him from giving the report to the president. Carter called Bell and complained about the injunction. Bell asked me to see what I could do. I said I would go personally to the eighth Circuit Court in Omaha and argue the case. Bell loved that kind of response. He liked personal action from his assistant attorneys general when the president was interested or the matter was attracting attention. So I argued the case in the Eighth Circuit. There is a clause in the Constitution which says the president may request the opinions of his cabinet officers in writing. There had never been a judicial opinion construing that clause. We said that under that clause, written reports are the president's prerogative and the courts can't interfere. North Dakota argued that a NEPA statement had to be prepared.

The Eighth Circuit ruled for us on that one from the bench. It was the only time I'd seen a court of appeals decide an appeal right on the spot, following argument. The judges stopped the arguments, buzzed among themselves on the bench for a minute or two, and ruled. I had never seen this in the court of appeals before. They ordered the lower court injunction dissolved so Andrus could give his report to Carter.

When the court ruled from the bench I immediately called Judge Bell and told him what had happened. Bell said, "I'll call the president immediately." He was quite pleased to be able to solve this little problem for the president.

Bob Fisk, U.S. Attorney for the Southern District of New York, got a call once from Judge Bell about Micky Barnes, a drug dealer, whose picture had appeared on the front page of the New York Times Sunday magazine. The headline had been, "Why Can't This Man Be Put In Jail?" President Carter had read the article and called Judge Bell and asked, "Why can't Micky Barnes be put in jail?"

Bell called Fisk and asked the same question. Bob Fisk said, "I'll put him in jail." Fisk tried the case personally, and Barnes was convicted. Afterwards, Judge Bell took Fisk to lunch with President Carter. I didn't get taken to lunch laughter but of course what I did was not nearly as significant as what Bob Fisk did.

One of the nice things about being assistant attorney general for the Lands Division was that you got to go on some of these fireman's missions. They were fun to do.

#### Difficult Cases on Indian Rights to Natural Resources

Moorman: We are talking now about cases. I should mention that the most difficult part of the job was dealing with the Indian natural resources matters.

Hudson: The northwest fisheries case?

Moorman: Yes, and the Maine land claims. The Maine land claims were eventually subject to settlement, but that was a very difficult problem. The Pacific Northwest Fisheries are hopelessly tangled by the Bolt decision, after Judge Bolt. Bolt ruled that Indian fishermen were entitled to fifty percent of the salmon catch in Puget Sound, even though they were a much smaller percentage of the fishermen and of the local population. The Bolt decision caused endless turmoil, anger, and confusion. The local politics were very heavily against the Indians. One of the reasons it was so much against the Indians is because five of the tribes commercially fish steelhead trout, and all the sports fishermen in the Pacific Northwest thought that was scandalous. The Indians, on the other hand, think it's their holy right. It's a difficult situation.

I spent a lot of time with Leo Krulitz and Ann Wexler, from the Commerce Department, and with people from the State of Washington and with the Indians' representatives. We held endless meetings and made endless attempts to try to work out a settlement. Along the way, we won a Supreme Court decision affirming the Bolt decision.

One of the more exciting moments occurred in my conference room. We were holding a meeting of various government types involved in my conference room. Leo Krulitz was addressing the attendees. All of a sudden the door burst open and in came twenty-five women, screaming at the top of their lungs, "Murderers! Murderers!" They were the wives of white fishermen from the Puget Sound area who had flown back to Washington to lobby on behalf of their husbands. They had heard about our meeting, and they had sweet-talked their way past the guards at the Justice Department gate and had come up to our room, caught us totally unawares and completely disrupted our meeting. It was a wild moment. But wild is comparative. Gunfire on Puget Sound had triggered their trip. A fisherman had been wounded, and it was not a happy situation. Emotions were high.

The Maine land claims and some other similar Indian land claims were based on the fact that certain properties taken from Indians were not covered by treaties with the federal government or approvals by Congress. The law on this has been clear from the beginning of the republic that land transfers from Indians to non-Indians are not valid unless ratified by the government. The law dates from 1792. Well, the government had never agreed to the transfer of large parts of Maine from Indian ownership. The Indians were insisting they still owned the land.

Congress could kill the Indians' claims by ratifying the transactions in which they ostensibly lost their lands. But Congress passed a different kind of law. A number of years before they had set up statute of limitations. The Justice Department could bring suits on behalf of the Indians to challenge the whites' titles prior to the limitation date. Congress said, "OK. Bring suits to quiet the title of this property where you think the Indian claims are valid."

That statute of limitations was to expire about a year after I took office. It was my duty as assistant attorney general to file thousands of lawsuits in Maine, as well as in the states of New York, South Carolina, Massachusetts, and Louisiana, where there were similar claims, against people who thought they owned these properties, but which, technically, may still have been Indian property. I couldn't let the statute of limitations run. We were engaged in settlement negotiations all over the place on these claims, and the settlement negotiations were intractable



and they were political. The people that thought they owned these lands were totally upset. They didn't understand how something that happened in 1805 could affect their land titles, and they refused to cooperate. They refused to settle or do anything.

I wanted to get the statute of limitations extended for another five years to give everyone time to iron this out. So we got a bill up to do that. But we couldn't get anybody on Congress to help us--nobody. Pat Wald, who is now Judge Wald on the court of appeals for the D.C. circuit, and who was then the assistant attorney general for the Office of Legislative Affairs, helped me. The subject was just too controversial. No one in Congress wanted to touch it. They didn't want to wipe out the Indian title, yet they didn't want to extend the statute. They didn't want to do anything. We were in a fork. If we failed, I had to file all the quiet title suits. That was bound to create a major political uproar.

I can remember standing at the door of the House chamber, waiting with Pat to see Mo Udall, who was our last hope. He came out, and we tagged him. Mo understood what this was all about. We explained to him that we couldn't get anybody to help us, that the statute of limitations was going to force us to file these suits, and we didn't know what to do. He shook his head and said, "Boy, I sure am glad I'm not in your shoes, Jim," and he walked out the door. [Laughter] Pat and I looked at each other and sat down on a bench in the hallway. We were forlorn and were just letting our defeat sink in.

And you know what? Udall came back. He had walked outside, turned around, and come back. He said, "You two come over to my office." And he took us over to his office, sat us down in his foyer, and said, "Just sit here for a few minutes. I've got something to do, and then I'll talk to you." He made a couple of phone calls, and then he said, "I think I can take care of your problem for you. I know how to do it. I've figured out how to do it." And he did. He got the statute extended about a week later.

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Moorman: Mo Udall was one of the great people in the House of Representatives. He just wouldn't walk away from a problem when he felt it was his responsibility to do something about it and he could do something about it.

Land Acquisition for National Parks

Moorman: I should say something about land acquisition. We had very interesting land acquisition problems involving the National Park Service. One of the great fears I had was the bill that was coming due for the Redwood National Park expansion. It could be something like a billion dollars and could blow us away. The redwood park bill had an unusual legislative taking provision in it. Congressman Phil Burton, who had arranged for it, was nervous about it, too. I spent some time organizing a team to make sure we put up a good defense on the case. Other interesting problems came up on land acquisition all the time.

At the other extreme from the redwoods was the Big Cypress Preserve in Florida where the land ownership had been subdivided by land speculators. The Big Cypress is where the unscrupulous land companies had victimized people in the North. They had sold thousands of lots out in the Big Cypress swamp. Most of the buyers had never seen the property they'd bought. When they came to look for their land, they had no way of finding it. It was just out there in the Big Cypress somewhere.

Hudson: Unsurveyed lots?

Moorman: Well, maybe they had been surveyed in some fashion, but unless you were a surveyor, you couldn't find it. The Park Service had an office in Naples, Florida, acquiring these thousands of landholdings. I think there might have been as many as one hundred thousand lots at one time. They had acquired a large number of them. But there were ten thousand or so that we had to sue to get. A lot of these people defaulted. They just never showed up in court. We couldn't find the owners of many lots. There were several thousand, though, who were fighting, and it was an administrative mess. The U.S. Attorney's office in Miami was in a mess over the management of these acquisition cases. I spent much time trying to solve what was a major administrative problem. None of the lots were very valuable, but the sheer number of them was the problem.

Another interesting acquisition involved the Congaree in South Carolina. I got involved in negotiating with the Bidellers, who owned the Congaree Swamp, to transfer title to the United States and to prevent it from being logged. The Bidellers, of course, wanted their money and wanted as much as they could get. They were irritated with the slowness of the procedures. They were always threatening to cut, to get the government to move a little faster. And I got a tour of the swamp with the Bidellers and their forester. They had a tremendous expert on bottomland hardwood swamp forests. He took me through and showed me all the

different species and how big they were and how valuable they were. It was a great tour because he was a true expert, and he was also trying to impress me. They were letting me know, and the U.S. Attorney know, that they were ready to go to court if we didn't want to settle. They had their ducks in a row.

It was educational because the man did understand the ecosystem and all its species. They were very forthright and forthcoming. I was impressed by the Bidellers. Ted Snyder was very anxious at that time that we get the Congaree sale arranged.

One reason I mention these land acquisitions is because Senator [Ted] Stevens' staff and Senator Laxalt's staff approached me about what they thought was corruption in the land acquisition program. They, of course, viewed the inholders' associations as their constituents. The Big Cypress Swamp had created a little nest of opponents to the Park Service as did the inholders in Jackson Hole and Yosemite.

Hudson: Inholdings within a National Park?

Moorman: Yes, there was one staffer that came to see me who believed that the Nature Conservancy was involved in a criminal conspiracy to deprive people of their property rights. He believed the way they did it was to set up a phony sale in an area with a friendly landowner at a low price to set a low "comparable sale" price for evidence in condemnation cases. Say you owned a piece of property in the Golden Gate National Recreation Area in San Francisco, and you were an ardent environmentalist. So you sold your piece of property, according to these guys, to the Nature Conservancy at a way-below-market-value price to get a low sales price on record, and then they would condemn everybody else's property, and use the fixed sale as the comparable sale to cheat the land owners. That's what they believed. The guy that came to talk to me was on Senator Stevens's staff, and he was put in charge of land acquisition by Watt after Watt came in. What is his name?

Hudson: I'm thinking of Cushman.

Moorman: No, Cushman was the head of the inholders association. This was a guy that was on Stevens' staff. He's still in the Interior Department, but they sent him back to Alaska. What the heck is his name?

Hudson: Horn?

Moorman: No, not Horn. Well, anyway, I've lost it. What a strange paranoia! But it is a straw in the wind about opposition to parkland acquisition. It stems from the fact that Congress has



created projects that have to be purchased--you know, from Fire Island to the redwoods. Wherever you have to acquire private land, you create sympathy for the land owners. They all found each other at the end of the seventies through Cushman. Cushman owned property in Yosemite, and he found the people in Grand Teton and the Voyagers and the Big Cypress and on and on and on. And they all banded together. And when you put all those people together, they can make enough noise to be felt politically. Though they're a very tiny minority in the country, they have managed to thwart parkland acquisition through the Reagan administration.

Hudson: The one fellow you were talking about without a name. It sounds like Ron Arnold who has accused Trust for Public Lands and the Nature Conservancy of shady dealings in his book about Watt.

Moorman: They also tried to claim that Phil Burton was involved in some way and John Burton.

#### Love Canal Litigation

Moorman: I think we've covered everything with the possible exception of Love Canal. Love Canal was a great cause celeb. Love Canal had gotten into the press and was big news, and there were congressional hearings. It was during the course of those hearings that EPA Assistant Administrator Tom Jorling made the statement that there were 30,000 hazardous waste dump sites in the country. We discussed this earlier.

And we discussed our theory for lawsuits under Section 7003 of RCRA and creating a Hazardous Waste Section led by Tony Roisman. But having a theory and working up a case are two different things. Love Canal was a very complicated site. Getting scientists together and lawyers together to develop the facts to bring the Love Canal suit took time. Through all this period I was getting a lot of pressure to file a suit. I got a call from Carl Rowan, the columnist, who wanted to know why we hadn't brought a suit. Senator Moynihan called us up and asked us to come up and talk to him about this, why we hadn't filed suit. Mike Egan, the associate attorney general, would call and ask me about once a week why we hadn't filed a suit. My answer to this was we would file suit as soon as we were ready.

So there was this enormous pressure to bring a lawsuit on Love Canal. Even after we worked on it for several months, there were lots of problems. We finally filed the suit, and everybody said, "Hooray, wonderful, that's terrific." Then, of course, we

had to litigate the suit. Litigating the suit brought many surprises along the way.

One of the unpleasant surprises that occurred involved the evidence of genetic damage. We retained a scientist named Piccione. Dr. Piccione did a study which indicated there was chromosomal damage to the people who lived in the Love Canal area. His report created the damndest storm I have ever seen. In particular, it created an enormous backlash from scientists at HEW.

Apparently there was a tremendous academic dispute going on concerning the issue of chromosomal damage. A number of scientists immediately attacked Piccione, and an article attacking Piccione was published in Science magazine, which I respect very much. It was highly critical of Piccione for not having a control group, and a number of other things that he had done. EPA came under attack from OMB and HEW for doing this kind of research, which they claimed should only be done by HEW and by the Center for Disease Control and the National Institutes of Health. We had endless meetings about this in which the Lands Division and EPA were very much on the defensive because of the mistakes Piccione had made.

We had disturbed the entire world of epidemiology, etc. They were furious that EPA would enter their domain. There were scientific holy wars going on in the field of genetics, and we had just walked into it unaware.

We had been very naive. We'd just gone out and retained a geneticist and had him do a study. He produced this bad study. It didn't have the same consequences it would have had if we'd been private lawyers. It created a tremendous storm, and the consequence of it was that EPA was forced to concede certain research programs to HEW. It was very unsettling.

The attack on Piccione had been extremely well orchestrated. I've always believed, but I have no proof, that lawyers for Hooker Chemical had a role in whipping up the protest.

#### Delegation to Study Soviet Environmental Protection

Hudson: I think I've got maybe three or four more questions.

Moorman: Go ahead, ask them.

- Hudson: A couple of them are on your list. One, you have a cryptic note in your little biography there about a trip to Russia.
- Moorman: Oh, yes.
- Hudson: Were you engaging in some international law for the Lands Division or what was that about?
- Moorman: One of the detente treaties involved cooperation in the field of the environment. A series of exchanges were set up between the United States and the Soviet Union under that treaty. One of the categories of exchanges dealt with law and administration of environmental protection. CEQ ran the exchange with the Institute of State and Law of the Soviet Union. Under the exchange, every two years a delegation would go there or come here. In other words, in a four-year cycle, we'd take one trip there and they'd take one trip here. I was included on one of the trips to the Soviet Union which included Leo Krulitz, Nick Yost, Kris Hall, Ollie Houck and Nick Robinson. Kris Hall worked for me during part of my tenure, but at the time of the trip worked for the Sierra Club Legal Defense Fund. Of great importance to us, she spoke Russian and had had a year's experience in the U.S.S.R. She was a great asset to us.
- Hudson: You could have taken me. I spoke Russian at that time.
- Moorman: Oh, did you? Phil Pride also went. He is a geographer from San Diego State who had written a number of papers on parks and wildlife refuges in the Soviet Union. So we were seven. It lasted about two and one-half weeks, and we learned some interesting things. One of the interesting things that we learned was that the protection of nature is very popular in the Soviet Union. It's a subject the Russians are very interested in. They're very big on preventing water pollution. They're not as interested in air pollution, but they're getting some inversion problems in cities like Alma Ata.

The man in charge on the Russian side was Mikhail Kolbasov. He is an academic lawyer who heads the team at the Institute of State and Law concerned with pollution control laws. In the Soviet Union, such laws start at the Institute of State and Law. They then go to the Ministry of Justice, and from there to the various committees of their parliament. They have a specialized committee there on environment. Then it goes to the Central Committee of the Communist Party. We were walked through the process.

Kolbasov had guided the water pollution bills into law and was at this time working on proposed air pollution laws. He subscribed to the Environmental Law Reporter, which impressed me,



and he followed developments in American environmental law. He also was active in the All-Russian Society for the Protection of Nature, which was a quasi-private group with two hundred employees of its own. We visited a number of its chapters. In very Russian fashion, they informed on polluters and poachers and things like that and in some instances had the power of arrest. They had chapters in factories, and we visited with three of their chapters. They were very interesting groups of people.

Kolbasov had drafted the environmental protection provisions of the new Soviet constitution, about five or six years ago. He was particularly proud of the wildlife protection provisions which he had gotten in the constitution. The constitution was processed the way we process regulations. It was put out for comments. They received thousands of comments from people. They said the comments had influence on what went in. He said that the wildlife provision had gotten more comments than any other provision of the Russian constitution. Isn't that interesting?

Kris Hall pointed out to us a billboard with a picture of Lenin quoting Lenin to the effect that "The protection of nature was the duty of all Soviet citizens."

##

Moorman: I have the impression that Kolbasov was a important guy in the Soviet Union for environmental protection, both from the standpoint of organizing citizen activity and in getting legislation written and passed. I think that he may be a person worthy of the John Muir Award. He may be the single most important environmentalist in the Soviet Union. I can't be sure of that, of course. It's very hard to know who is important in the Soviet Union. He's very interested in the Sierra Club, I know, and told me that he was considering writing a book on the subject of the Sierra Club. I think the Sierra Club should also be interested in Kolbasov.

#### Private Practice in Washington, D.C.

Hudson: If we can come back from the exotic East, can you spend about thirty seconds and tell us what you are doing now?

Moorman: Yes. I'm a partner in a law firm of Cadwalader, Wickersham & Taft, and I'm practicing law. I'm doing some environmental law and litigation and some general litigation. I'm doing a lot of very mundane things like taking depositions and whatnot.

Hudson: Do you miss the glory and honor and whatever, and the work of the Justice Department?

Moorman: I have had a very interesting legal career in the field of environmental law, starting with the Lands Division the first time, the Center for Law and Social Policy, the Sierra Club Legal Defense Fund, and then the Lands Division again. It has been interesting and stimulating and I have been blessed by that. In private practice, I'm paid more money, but the things I do seems less important. From time to time I do miss it.

I have had a couple of matters in private practice which were very interesting. I represented a group of Micronesians, people from the Marshall Islands, who live on Kwajalein, in a big fight with the Defense Department over their property rights. I sued Secretary Weinberger and forced him, among other things, to flush a toilet on Kwajalein Island! Five hundred people occupied the military base, and the Department of Defense cut off the water to their toilets to induce them to leave. I got the court to order them to turn that water back on and repair the toilets. It was our clients' property. The Defense Department just leases it, and the leases had expired.

One of the more depressing human habitats on the planet is the island of Ebai, in Kwajalein Atoll, where eight thousand Marshallese live on sixty-three acres. People sleep ten to a room and the only open space is a burning dump. The water is polluted and has to be barged over from the military base. There are only school rooms for a third of the children. The hospital is so bad that you wonder if you dare touch anything when you're in it. Ebai is a very, very depressing place.

The United States Army pushed these people off of the other islands. The lagoon is the bull's eye for ICBM's fired from Vandenberg Air Base. The Army also launches anti-ballistic missiles from the atoll at the incoming warheads. They've sprinkled huge phased-array radars and other equipment all over the atoll, and they don't want the people who own the islands to get near their equipment. So they've removed them from all the islands, of which there are dozens, and concentrated them all on this one little island of Ebai.

The United States for its own personnel, though, has taken much bigger islands and has built a campus-like base with palm trees and two golf courses, tennis courts, clubs and what have you. The situation is stupid. We represent the members of the Kwajalein Atoll Corporation. If you are a landowner on Kwajalein you are a member of this corporation. Since the majority of persons originating from Kwajalein are landowners in some degree under Marshallese custom, that meant about 6,000 of those 8,500

people living on Ebai were our clients. And several hundred of them were engaged in this demonstration at the Army base.

I've got another client I like. It makes a methanol fuel blend. EPA is trying to prevent them from selling their product. EPA is basically unsympathetic to methanol alternative fuels, which is a shame. This could be worthwhile.

I recently brought a suit for the North Slope Borough against the Corps of Engineers on Section 404 regulations. That was interesting.

Hudson: When the electoral axe fell in November of 1980, what was your feeling and how did you go about ending up where you are now?

Moorman: I was very depressed about Carter's reelection chances before the election. It was crystal clear that he wasn't going to win.

After the election was over, I felt great relief that it was finally over. The decision made, I immediately began looking for a job. I didn't know what I wanted to do, but then again I didn't have very many options. About the only thing I could do was practice law.

I didn't have the option to go back and be head of the Sierra Club Legal Defense Fund. The job wasn't open. Also, I felt I'd spent a lot of years doing that, and I was now curious to know whether I could succeed as a practicing professional lawyer. I have some friends who raise money for public interest law, who offered to work out a special position for me that I could tailor somewhere. I thought it very kind of them to offer that, but I decided that I just wasn't in the mood for it, so I wouldn't impose on them.

So I shined my shoes, got a haircut, pressed my suit, and started going to lunch with people. I finally ended up at Cadwalader, Wickersham and Taft.

Hudson: So it wasn't a case of them recruiting a high-powered lawyer from the Carter administration. You were actually out pounding the pavement seeking employment.

Moorman: Yes, well it's...

Hudson: The revolving door and that sort of thing.

Moorman: I'm certainly not an example of the revolving door. If I had gone back to the Sierra Club, that would have been "revolving door." Carol Dinkins, coming from Vincent, Elkins, and then went back. This is "revolving door." That's what people mean when



they say "revolving door." I've struck off on an entirely different angle.

Hudson: That leads into another question that I wanted to ask. A couple of years ago, fairly early on in the Watt administration, a story came out in the Legal Times, I believe, about David Russell and Perry Pendley, who were a couple of deputy assistant secretaries under Watt at Interior, advising oil companies and other folks that deal with Interior not to engage attorneys that had been associated with the Carter administration. Can you say anything about that? Were you one of the attorneys affected?

Moorman: I think I must have been in some way. I believe that somebody in the Watt crowd at Interior bad-mouthed me to one of my clients. I don't think the client paid any attention to it. But, I think this was an example of the overzealousness that was part of the Watt scene. This didn't happen at EPA. This was a Watt phenomenon. This was not a general Reagan phenomenon. But it was definitely part of the Interior drill. I know that they did this to a number of people. I know one lawyer who may have been damaged severely in his law firm because of it. He eventually left the law firm, and it may have been for that reason.

I think we've gotten the last laugh on Watt. The best way to get even is to do well, to succeed, to survive. I'm still around, doing better now than I was then, and he's gone. They did it; it was excessive partisanship, and it didn't accomplish anything.

Hudson: Well, the penultimate question is, given all of what we've talked about, would you go back if the right folks won the election in November [1984]? Would you accept employment with the administration, the new administration, and if so, what would be your preference?

Moorman: I have no ambition for another government job, and I have given it no thought. It's not in the cards for me to get another appointment. The appointment I had was more than enough to last a person a lifetime. It was a wonderful job. I'll never have a job that good again, and I don't know what I could do that I would enjoy as much. I don't think it'll come again; I don't think I'll seek it again.

Hudson: One final question, totally shifting gears: this week the environmental movement and American art lost one of its greatest figures in Ansel Adams. I wonder if you have any words you might like to say about Ansel?

Moorman: Well, I think Ansel Adams was a great man. I knew him only slightly. I didn't know him well enough to understand how he developed his vision and how he created his fantastic art .

The art is extraordinary. It changed the way we see; it has caused a perceptual revolution and has been extremely important to the environmental movement. He is probably the greatest black and white still photographer of all time. He is labeled as a nature photographer, but that is an insufficient label. He was one of the great artists of our time, and his art has had a profound impact. He was interested in conservation and environmental protection and worked on those things off and on throughout his life, and that work was important to the Sierra Club and others. But nothing that he could ever do as an activist could ever compare with his art, which is just astonishing. I have seen photos by others of some of his scenes, photos of scenes I have viewed with my own eyes. The remarkable thing about Adams' photos is how they capture and convey the power of those scenes when you are there. In contrast, others' photographs of those same scenes fail to convey that power. They show the scene, but not the spirit of the scene.

##

Hudson: Thank you very much. I've enjoyed it.

Moorman: Well, I've enjoyed it too. It's flattering to have someone ask you so many questions about yourself. I think I've talked myself out. I don't think I'll want to talk about myself again for ten years.





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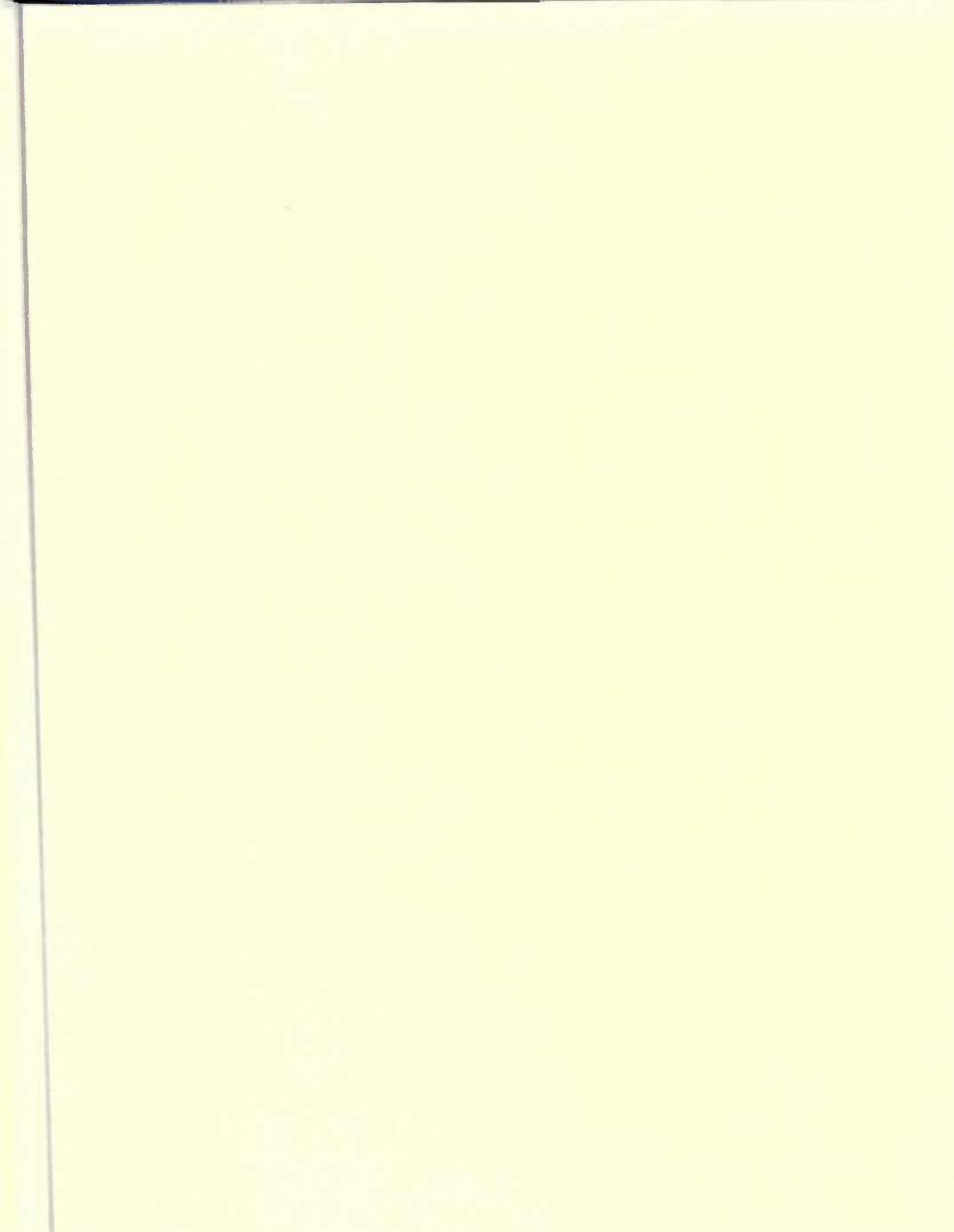












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