Oral History of John C. Cruden, Esq.

This interview was conducted on behalf of the Oral History Project of The Historical Society of the District of Columbia Circuit . The interviewer is Tracy H. Scarrow, and the interviewee is John C. Cruden. The interview took place on April 8, 2021, on Zoom. This is the third interview.

MS. SCARROW: In our first two interviews we covered your childhood, education, and military service and so now we're going to turn to your career at the Department of Justice. After leaving the military you served as Chief of the Environmental Enforcement Section at the Department of Justice and that was from 1991 until 1995. Can you tell me how that shift came about from the Department of the Army and then back to DOJ?

MR. CRUDEN: While I was serving in the Pentagon as Chief Legislative Counsel of the Army, I was approached by senior DOJ officials who encouraged me to fill the then vacant position of Chief of the Environmental Enforcement Section . The position was open because the predecessor, a great lawyer and friend named David Buente, had gone into private practice. I was known to these DOJ officials because of my previous position as Special Counsel to the Assistant Attorney General of the Civil Division, and my litigation of environmental cases while I was in the Army Litigation Division, including the well-known *Berlin* case.

Three of the senior people in the Environment Division interviewed me: Myles Flint, the Deputy Assistant Attorney General; Pete Steenland the Chief of the Appellate Section; and Barry Hartman the Principal Deputy Assistant Attorney General. They recommended me to

the Assistant Attorney General, Richard Stewart, who was the deciding official. Dick selected me and then the Office Personnel Management approved my Senior Executive Service status.

MS. SCARROW: I understand that part of your interest in the position was that it combined not only your passion for the environment but also the federal litigation responsibility as well. Is that correct?

MR. CRUDEN: Yes. The position of Chief, Environmental Enforcement for the United States was a dream job for me, combining my passion for environmental improvement with my background in litigation, both teaching and practicing. The Environmental Enforcement Section was still a young section but was then the largest litigating section in the Department of Justice, full of inspired, active, and committed individuals. I knew it would be challenging, but I was honored to be selected and excited about advancing environmental protection.

MS. SCARROW: I understand that when you started in the Environmental Enforcement Section that Dick Stewart, who was then the Assistant AG for the Environment and Natural Resources Division, convened the entire section in the Great Hall to welcome you. What was that like?

MR. CRUDEN: The welcoming ceremony was surprising and delightful. I left my job in the Pentagon on Friday and then on Monday found myself at the Department of Justice in an entirely different position with a Section of new people. Dick Stewart intended this welcoming ceremony to be a significant announcement which would be in support of me, but also make

it clear he was energizing the section with new leadership from outside the Department. This was the first time the Division had such a ceremony, similar to what the military does when they bring in a new commander, and I was honored by the outpouring of support, particularly since my wife and teenage daughters were present.

Later I found out that there were some people at the Environmental Enforcement Section concerned about having a former military officer as their leader. They thought I was going to dictate what people wore or check haircuts. Of course I wasn't interested in any of that. What I wanted was to hit the ground running, learn from experts, and mold the Section into the best litigators of the Department.

MS. SCARROW: How did you get educated at DOJ in your new role?

MR. CRUDEN I was fortunate in having superb lawyers – who were also great teachers – in my organization. Even before I started, while I was still in the Pentagon, Jennifer Haverkamp, now a Professor at University of Michigan and Director of their Sustainability Institute, spent the day with me teaching me the changes in the Clean Air Act which had just passed. When I arrived at DOJ, Bob Van Heuvelen was my Deputy, and he made sure that I was adequately briefed on each new case. Then, when I needed specific knowledge on the technical aspects of CERCLA/Superfund cost recovery, Steve Novick stepped in and gave me weekly classes complete with an outline and examples. Later, when I was preparing to testify before Congress, Nancy Stoner, now the Executive Director of Potomac

Riverkeeper Network, updated me on Clean Water Act law. Finally, in the relatively new world of natural resource damage, Bill Brighton spent hours going over with me the intricacies of the statutory structure that became so important in future mega cases like *Exxon* and *Deepwater Horizon*. And even before I met her, I watched hours of video tape of Nancy Firestone, later a judge on the Court of Federal Claims, lecturing about all the changes to CERCLA/Superfund that had recently been enacted. All this was my introduction to the practice of law in the Environment Enforcement Section.

MS. SCARROW: Can you tell me a little bit about the Department of Justice's Environmental and Natural Resources Division and the Environmental Enforcement Section?

MR. CRUDEN: The Environment and Natural Resources Division was established in 1909, by Attorney General George Wickersham who created what was then called "The Public Lands Division." As the Nation grew and developed, so did the responsibilities of the Division, and its name changed to the "Environment and Natural Resources Division" or ENRD to better reflect those responsibilities. Today, the Division, which is organized into ten practice areas, has offices in Washington, D.C., Anchorage, Boston, Denver, Sacramento, San Francisco, and Seattle, and a staff of over 600 people. During much of my time in the Division it handled thousands of cases each year and represented virtually every federal agency in courts in all states. About half of what the Division does

is offensive, bringing cases on behalf of the federal government, and the other half is defensive, responding to lawsuits filed against some element of the government.

The Environmental Enforcement Section or EES that I led is the largest litigating section in the Division. The Section is responsible for bringing civil actions under the federal environmental laws enacted to protect public health and the environment from the adverse effects of pollution, such as the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Oil Pollution Act, Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act (commonly referred to as CERCLA or Superfund).

To accomplish this large charter of responsibilities, the Environmental Enforcement Section, during my tenure, had about 250 people, including 150 lawyers, divided into five litigating groups. During those years, the Section achieved through litigation the highest record of environmental improvement valued in billions of dollars and judgments totaling hundreds of millions of dollars. We also gained new favorable court decisions in particularly critical areas, all assisting in our goal of improving and advancing the environment through the rule of law.

MS. SCARROW: What changes did you make to the organization of the office when you started as Chief?

MR. CRUDEN: For the same reason that when teaching management to military commanders, my counsel to them when they assumed a new command

position, was to listen first before making major changes, I followed my own advice. At the beginning of my tenure, it was incredibly important for me to gain the advice and recommendations of those highly qualified people, both attorneys and support staff, who I was supervising. And I needed to demonstrate my own work ethic, my own commitment to the goals of the section, and my own ability to litigate.

During those early moments I had the good fortune of receiving advice from individuals who would become lifelong friends. One of them, Nancy Firestone, who was then the Chief of Staff in the Environmental Protection Agency, had been the Deputy of the Environmental Enforcement Section. Nancy reached out to me right away. We spent time together, her talking to me through not only the people involved but the statutes and the relationship with EPA as well as the new CERCLA amendments. Another was Scott Fulton, who was the Deputy in the EPA's Office of Enforcement and Compliance Assurance and a past-Assistant Chief in the Environmental Enforcement Section. Scott was generous with his time, briefing me on many of the current issues as well as the EPA bureaucracy. He also spoke about the relationship between the Department of Justice and EPA. There were a number of people inside of the Enforcement Section who became close confidants. One of them, Clicky Stone, was the head of the administrative part of the Section, and I quickly learned that she was the backbone of the administrative staff. We developed a great relationship, and I always solicited her advice when

making personnel decisions. Other leaders in the Environment Division included Walker Smith, Joel Gross, Bill Brighton, Jack Lipshutz, Susan Akers, Lori Jonas, Bruce Gelber, Catherine McCabe, Ben Fisherow, Tom Mariani, Sarah Himmelhoch, Tom Carroll, Henry Friedman, Jeff Sands, Nat Douglas, Karen Dworkin, Ellen Mahan, Alan Tenenbaum, Cynthia Ferguson, Patrice McKenna, Bill Weinischke, Tom Clark, Bruce Buckheit, Phil Brooks, Jim Kilbourne, Bill Cohen, Andy Mergen, Jennifer Newmann, Deborah Harris, Joe Poux, Cherie Rogers, Ann Shields, Justin Smith, Lisa Russell, Seth Barsky and Pete Steenland and many others who became lifelong friends and esteemed colleagues. They all provided me with advice and channeled my impatience into reasonable action.

I would add one other environmental giant, who became a mentor of mine, David Sive. David was one of the fathers of environmental law, and even before I started work at DOJ, he reached out to me and offered his assistance in introducing me to the environmental community and inviting me to speak at the annual ABA-ALI Conference on Environmental Law. He continued to advise and assist me throughout my career.

Before I made any significant structural changes in my new position, I needed time to listen to people, time to find out how best to gain the trust and confidence of the Section and mobilize its efforts in a very fast-moving environment in what ultimately became the best section in the Department of Justice, with the highest morale, the most significant

results, and the highest retention of qualified individuals. Eventually, relying on my background in teaching management, I made changes to how the Section was organized, how people were selected for key positions, the role of senior lawyers, our relationship with other agencies, and the process by which we received, researched, and prosecuted cases. The Section leadership met at my house on several occasions to gain consensus on our direction and goals. When we made decisions, we then immediately communicated everything to the Section. At that time, I was also pushing hard to find and attract qualified women for our leadership positions. We did so by recognizing those with leadership skills and promoting them. One, Catherine McCabe, ultimately became the Acting Administrator of EPA. Finally, we had to improve our relations with our primary agency clients, as we were dependent upon them for investigatory resources and important litigation advice and support.

MS. SCARROW: I heard that in your first year of your tenure as Chief you had a confrontation with the Governor of California. Is that true? [LAUGHTER]

MR. CRUDEN: Yes, we did. I had not been Section Chief long, maybe a month, when I was called into the office of the Assistant Attorney General Dick Stewart. Dick read me a scathing letter from the Governor of California to the Attorney General concerning our handling of the infamous superfund case known as the *Stringfellow Acid Pits* a toxic waste dump located in Jurupa Valley California. The site became the center of national news coverage in the early 1980s, in part because it was considered one of the most polluted

sites in California, and because it became linked with mismanagement and scandal involving EPA. Ultimately Assistant Administrator Rita Lavelle was convicted of perjury and Administrator Anne Gorsuch Burford resigned.

I conferred with the trial counsel, Phil Brooks, who had obviously irritated the State Attorney General. While Phil made some decisions that I might not have made, he did so in the best interests of the United States and exercised sound judgment. I advised Dick Stewart that I stood behind all of the decisions made by my trial attorney and concurred in his judgment. He accepted my position and briefed the Attorney General. I can remember him coming back—remember, this is a Republican era, during the presidency of George Bush—Dick took me aside and asked me that if in the future, if I was going to irritate governors, would I mind choosing Democratic ones. [LAUGHTER]

MS. SCARROW: Your tenure as Chief was during a great active period of environmental enforcement, seminal cases like *Exxon Valdez* and *Love Canal*. Can you talk a little about these now famous cases?

MR. CRUDEN: *Exxon Valdez* was one of the first cases I worked on when I arrived at DOJ, the result of an environmental disaster of major proportions when the ship owned by Exxon ran aground on Bligh Reef in Prince William Sound in 1989. Approximately 11 million gallons of crude oil spilled from the Valdez, fouling the waters and shorelines of a pristine area which included national wildlife refuges and national parks. Thousands of

migratory birds, including 100 bald eagles were killed. There was a massive cleanup effort led by both state and federal officials, as well as both criminal and civil investigation.

The case was settled, at least by the federal and state governments, in 1991 when Exxon Corporation and Exxon Shipping Company agreed to pay $900 million in damages and a criminal fine of $100 million. The aggregate of one billion dollars in civil damages and criminal restitution was by far the largest single amount ever paid because of environmental violations at that time. While I was involved, the real key people were the lead counsel on the criminal case, Charles DeMonaco, and on the civil side, William Brighton.

I approved the final civil consent decree settlement. The money we saved went into a trust fund administered by both state and federal agencies, all designed to achieve the cleanup of the area. Ultimately, the Exxon disaster led to the creation of the Oil Pollution Act, which I used successfully when prosecuting BP and others for the Deepwater Horizon oil spill many years later.

The other case you asked me about, the famous Love Canal litigation, largely occurred before I came to the Division, but I supervised the final settlements of that important case, which ultimately led to the passage of the Comprehensive Environmental Response, Compensation, and Liability Act, better known as the Superfund Act or CERCLA.

The history of Love Canal has often been told, but essentially between 1942 and 1954, the old canal was used by Hooker Chemicals & Plastics Corporation as a landfill for toxic chemical waste from its Niagara Falls plant. The company then transferred the site to the City of Niagara Falls School Board, and an elementary school was built in the central section. The site became a national story when the contamination seeped out of the canal into other buildings, and President Carter declared an emergency at the site and many homeowners had to move. EPA and the state of New York sued Hooker Corporation to recover the costs of cleaning up and assure the safety of the Love Canal area. After the Superfund Law passed, Love Canal became the first entry on the cleanup list. The case ultimately settled, but in some ways lives on as the catalyst of today's superfund litigation.

MS. SCARROW: You mentioned some cases in California. Was the case involving the Palos Verdes Shelf one of those?

MR. CRUDEN: Yes. California, as a large and prosperous state, generated a significant amount of environmental litigation. While Chief of the Environmental Enforcement Section we created an office in San Francisco, adding to the Division's office in Sacramento, to handle the large number of significant cases. There were many, including the *Palos Verdes Shelf* case, S*tringfellow*, *Operating Industries*, and many others. As a California lawyer, I had a good relationship with many of the California attorneys both in the Attorney General's office and in California's EPA which

helped us in many instances. In addition, EPA had an excellent office in San Francisco, with Nancy Marvel as the Regional Counsel, and we had a superb relationship.

The case you mentioned, involving the Palos Verdes Shelf, was contentious and well publicized in California. At that time, other than the Exxon Valdez oil spill case, that lawsuit was the largest in U.S. history alleging damages to natural resources from chemical dumping.

From the late 1940s to early 1970s, the Montrose plant in California discharged over a thousand tons of DDT into Los Angeles County sewers that empty into the Pacific Ocean. Montrose also dumped DDT contaminated waste into the ocean near Santa Catalina Island. That discharge created one of the largest known areas of DDT contamination in the world, a 17-square mile of contaminated sediment on the Palos Verdes Shelf, off the coast of Los Angeles. DDT had been banned in the US because of its significant ecological problems. We filed a lawsuit with the state of California and then had contentious litigation with the volatile District Court Judge Hauk, who made several key rulings that we appealed to the 9th Circuit. The 9th Circuit ultimately overturned his decisions dismissing the case on statute of limitation's grounds and capping the amount of liability. The favorable appellate rulings paved the way for a trial jointly prosecuted by federal and state agencies, seeking to recover millions of dollars in damages to help restore the area.

We ultimately settled for the money needed to restore the natural resources and clean up offshore contamination. As I recall, the total of all the settlements in the case exceeded $130 million, at that time the largest such settlement of its kind. I was personally interested in the case since DDT concentrates on the tissue of fish and birds, including some of my favorites: bald eagles, brown pelicans, and peregrine falcons. Although this was a superfund site, led by EPA, we also represented the natural resource trustees, the National Oceanic and Atmospheric Administration, and the U.S. Fish and Wildlife Service, as well as California agencies who were developing projects like artificial reefs to provide new habitats for displaced fish and birds.

Lead counsel on the case, who I worked with all the time, was a well-known DOJ lawyer, Gerry George, who was also the head of our San Francisco office, and Steven O'Rourke, who would later become lead counsel for the Deepwater Horizon oil spill.

MS. SCARROW: The other major case that I think might have been during your tenure there involved the Bunker Hill Superfund Site and its various owners and operators.

MR. CRUDEN: Yes. The Bunker Hill Mine and Smelting Complex in Idaho was at one time the largest smelting facility in the world. The surrounding area was a center of extensive silver and other metal mining and processing. The mining activity resulted in extensive contamination of water, land and air, endangering residents including the Coeur d'Alene Tribe, which had

traditionally depended on fish from the waterways as part of its subsistence. DOJ, joined by the state of Idaho, sued multiple site owners for cleanup costs and damages. The lawsuits bounced up and down with the Ninth Circuit, and then following a 3-month trial, ultimately resulted in a series of settlements, first with some of the mine owners, then larger settlements with ASARCO, and later with Hecla mining company. This particular case has many different parts we should probably explore in future questions.

MS. SCARROW: You also personally argued some cases before the District Court. Can you tell us a little bit about those?

MR. CRUDEN: I did. Serving as Chief of Environmental Enforcement in an incredibly active era filled up my days with client consultations, meetings, and settlement conferences. Yet, I had a longing desire to return to the courtroom. To use my time wisely, I looked for cases in which we were likely to make new law. The first case I chose was *Environmental Protection Agency v. Fleet Factors*,[7] tried in Georgia. I chose that case as it would be one of the first interpretations of EPA's Lender Liability Rule.

We sued Fleet to recover the cost of cleaning up their Swainsboro Print Works, a textile printing plant. Fleet had entered into a standard factoring agreement, in which Fleet provided funds and took a security interest in the company's property and inventory. After the Swainsboro Company filed bankruptcy, Fleet foreclosed and hired liquidators to

[7] *United States v Fleet Factors Corp.*, 819 F. Supp. 1078 (S.D. Ga. 1983).

auction off the equipment and clean up the site. When EPA inspected the site, they found several hundred drums and numerous vats of CERCLA hazardous chemicals plus asbestos. At DOJ we assembled a great litigation team, led by Jon Mueller, now the Director of Environmental Clinic at University of Maryland Law School, and Brad Campbell, now the President of Conservation Law Foundation. I remember at trial personally examining the CEO of the company and showing him pictures of the aborted clean up. He somewhat surprisingly agreed in response to my questions that his company had really destroyed the site. It did not go well for the company and at the end of the trial—I remember this well—the judge read his decision from the bench upholding the liability of Fleet Factors and then saying something equivalent to "your clean-up had all the finesse of a Viking raiding party." That was a long trial but well-known during that time period and made important law for the future. The Fleet decision by the Court of Appeals later resulted in an amendment to CERCLA. As part of the Omnibus appropriations in 1996, Congress enacted the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act which includes lender and fiduciary liability amendments to CERCLA.

MS. SCARROW: I know that you were primarily responsible for district court actions, but I believe you also argued precedential cases in both the 6th and the 1st Circuits. Is that correct?

MR. CRUDEN: Yes. The case I argued in the 6th Circuit was titled *Production Plated Plastics*[8] and dealt with chrome plating for the automobile industry. The manufacturing processes involved creating and storing chromium, which is a hazardous waste. We sued under the Resource and Conservation Act, or RCRA, seeking injunctive relief to bring the company into compliance with the law and gain civil penalties against the company and its President, Michael Ladney. We did this in tandem with the state of Michigan, then led by a person who became a friend of mine, Steve Chester. This was the first case seeking liability against an individual as opposed to only a corporation. The district court granted us summary judgment and there was the appeal that I argued. The Court of Appeals upheld the personal liability of the president, a weighty decision for EPA who gave me one of their annual medals for my argument.

The case I argued before the 1st Circuit is also well known, *United States v. Charles George Trucking, Inc*.[9] We had been in litigation at this superfund site in Tyngsboro, Massachusetts for years alleging multiple CERCLA violations. That litigation, and its voluminous records, led to us establishing a field office in Boston which still exists. We entered two settlements to partially resolve the cleanup of a hazardous waste site with Massachusetts District Court Chief Judge Tauro as the settlement master. The owners of the site did not settle, and they challenged the settlement

[8] *United States v. Production Plated Plastics, Inc*.**,** 61 F.3d 904 (6th Cir. 1995).

[9] *United States v. Charles George Trucking, Inc.,* 34 F.3d 1081 (1st Cir. 1994).

arguing that it resolved some matters that were not in the complaint. Writing for the majority, 1st Circuit Judge Selya held that: a CERCLA consent decree may (and, in many cases, should) sweep more broadly than would the court's judgment in the event that the litigation culminated in a full trial. That was an extremely helpful decision, and that case is often cited by the government as it gives the standards by which federal courts review the legality of a consent decree.

MS. SCARROW: If you ever look at your tenure as Chief of the Section, what would you say your greatest accomplishments were?

MR. CRUDEN: Although I know that people tend to grade such positions by the big cases argued or negotiated, personally I was most proud of the evolution of the Section into an exceptionally high-quality litigating entity during my tenure. We recruited, trained, rehearsed, and then litigated in a highly professional and incredibly successful fashion. I cannot take credit for all of this, as it was the product of the extraordinary number of really gifted men and women—not just all lawyers – in the section but all the paralegals, secretaries, and other staff. We also invented new social activities that brought us together, like our own summer Olympics including an event where we substituted for the normal shotput event a competitive throw of outdated volumes of the Code of Federal Regulations. Our retreats in Annapolis and the Eastern Shore of Maryland were legendary for both their professionalism and their fun, with many untold adventures and mishaps. Our holidays parties were the envy of all

of the Department (except when we were barred from ever returning to one unnamed federal agency where we were a bit too loud and rambunctious). Morale was high. But I also think we moved the Environmental Enforcement Section from a loose group of lawyers to a really well-managed and highly motivated group which respected due process while implementing and enforcing all the new statutes and advancing the environmental goals of the Nation.

MS. SCARROW: I understand you were also involved in working with Congress and the administration on the Superfund Reauthorization and chaired an important Committee?

MR. CRUDEN: Yes. The extensive Superfund reauthorization effort occurred during the Clinton administration. EPA Administrator Carol Browner created a Superfund Task Force led by the Deputy Administrator of EPA, Robert Sussman, to completely review the Superfund implementation and make necessary improvements while opposing a bevy of legislative proposals to substantially weaken the statute. I chaired one specialized committee of the overall task force, a task force examining natural resource damage. I was given a broad charter to create my own committee and brought as an advisor Bill Brighton who had led the *Exxon Valdez* case, as well as senior representatives from all of the relevant federal agencies. We met frequently and produced a consensus set of legislative proposals which the administration approved and transmitted to Congress. That effort gave me an important role inside EPA, introduced me to the all-important laws of

natural resource damages, and gave me a wide cadre of federal contacts, all of which were very valuable to me when I was later working on cases like Deepwater Horizon where natural resource damages was the centerpiece of the litigation and resolution.

MS. SCARROW: Beyond the committee that you chaired, did you also work with Congressional committees on Superfund reauthorization in general?

MR. CRUDEN: Yes, Superfund reauthorization was clearly front and center during the Clinton administration and I frequently worked with key Congressional staff in the House and Senate, spoke with Senators on the Environment and Public Works Committee, briefed the EPA Administrator, and evaluated Congressional proposals. During that time period we were on the Hill each week and were highly involved with Senators and members of the House of Representatives. There were several major legislative proposals weakening CERCLA which did not pass, Instead, the amendments that did pass concerning lender liability standards, brownfields, restoration, and small business protections were supported by the administration and improved Superfund. In the Senate I worked primarily with Senators Chaffee and Baucus, and in the House, Congressman John Dingell who was the elected official from my home District in Michigan.

MS. SCARROW: You mentioned that this was during the Clinton administration. In 1995 you were selected as the Career Deputy Assistant Attorney General in the

Environment and Natural Resources Division, and you served in that position until 2011. How did you get that position?

MR. CRUDEN: As we have discussed, the Environment and Natural Resources Division was organized into ten sections. The overall leader of the Division is a presidentially appointed, Senate-confirmed Assistant Attorney General supported by two or three politically appointed Deputy Assistant Attorneys General. In addition, the Division has, like all of the other DOJ litigating Divisions, a career Deputy Assistant Attorney General. The career Deputy provided expertise and continuity as the senior non-political official in the Division.

When I started my tenure at DOJ the career Deputy Assistant Attorney General was Myles Flint, a superb lawyer with decades of experience. When he retired, I was selected by Assistant Attorney General Lois Schiffer through a competitive process to be the Deputy Assistant Attorney General. It was a highly regarded position within the Division and a promotion. I ultimately held that position for 16 years, making me the longest serving career DAAG in ENRD history. One aside, when I was selected, I also promoted my longtime administrative assistant, Shanedda Bogan, who served with me for 22 years. She has now retired but was a close friend, a wonderful administrator, and always a great friend.

MS. SCARROW: As the Deputy Assistant AG, what were your initial management responsibilities?

MR. CRUDEN: In the beginning I supervised the Environmental Enforcement Section, the Land Acquisition Section, which did all of the eminent domain litigation for the United States, and the Executive Office which controlled the budget, litigation support, experts, IT, human resources, and education.

MS. SCARROW: Did you retain those responsibilities throughout your tenure, or did it change at all?

MR. CRUDEN: Eventually my responsibilities increased as I came to supervise the Environmental Defense Section as well. When that happened, combined with my work supervising the Environmental Enforcement Section, I then had responsibility for about half of the attorneys of the Division, and all of the federal environmental litigation in the United States. Supervising the Environmental Defense Section included responsibility to defend EPA regulations, often in courts of appeal, where petitions for review were filed, frequently before the U.S. Court of Appeals for the D.C. Circuit. The D.C. Circuit is highly unique in the area of environmental law because the Clean Air Act gives the D.C. Circuit exclusive jurisdiction over challenges to Clean Air Act regulations that are national in scope.

MS. SCARROW: While you supervised all the litigation of your division, were there types of cases that you were personally involved in, and can you tell me about those?

MR. CRUDEN: As you can imagine, we had hundreds of cases under my direction, involving most of the federal agencies. My tenure bridged several different Presidents, and several different Assistant Attorneys General. I

met weekly with section leadership, and daily on individual cases. I often handled negotiations of the largest cases, always with the brilliant assistance and advice of the line trial attorney. The most well-known types of cases during that period that I was personally involved in were the various "initiatives" we did in tandem with EPA to direct resources at a particular area of environmental concern. In the Bush administration we did a well-publicized Lead Initiative which Deputy Administrator Hank Habicht announced, and during the Clinton administration we did Attorney General Reno's Mississippi River Initiative. Probably the most famous were the ones we did under the Clean Air Act addressing coal fired power plants and oil refineries, and under the Clean Water Act reaching municipalities with significant sewer problems.

MS. SCARROW: Please describe the Coal Fired Power Plant Initiative and any meaningful results.

MR. CRUDEN: At the end of the Clinton administration, I joined Attorney General Janet Reno and EPA Administrator Carol Browner to announce the filing of civil complaints against seven electric utility companies operating coal-fired power plants in the Midwest and Southeast, charging that their plants illegally released massive amounts of air pollutants over a period of several years without adequate pollution controls that contributed some of the most severe environmental problems facing the United States. The filing covered 32 plants located in 10 states. Those important cases jump

started the initiative, which produced extraordinary results. Then the administration changed.

The Bush administration started with an energy task force chaired by Vice President Cheney. One of the directives of that task force was to reexamine the power plant cases that we had filed as the cases were very controversial. Ultimately the DOJ Assistant Attorney General for the Office of Legal Policy, Viet Dinh, was given the responsibility to conduct that legal review, and he concluded that EPA had the legal authority to take the actions that it had. However, during that administration various elements remained hostile to the litigation, and we had to argue inside the administration to maintain and advance the cases. At one crucial moment, a White House official called Attorney General Ashcroft to have me taken off the cases. He demurred and supported me completely, which has always made me fond of AG Ashcroft.

Probably my most significant success in the coal fired plant initiative was the settlement with the Virginia Electric and Power Company or VEPCO to resolve CAA violations at several of the company's coal-fired power plants. The settlement included working with the State Attorney Generals of Virginia, West Virginia, and the northeastern states of New Jersey, New York, and Connecticut as parties to the settlement. The National Park Service also participated in the settlement. Under the settlement, VEPCO agreed to spend over a billion dollars to install state-of-the-art pollution controls to meet legal pollution

limits. As a result, hundreds of thousands of tons of sulfur dioxide and nitrogen oxides emissions each year were eliminated from eight coal-fired electricity generating plants in Virginia and West Virginia. VEPCO also paid a significant civil penalty and funded millions of dollars for environmentally beneficial projects.

MS. SCARROW: What about the Petroleum Refining Initiative? Do you know whether the results were significant?

MR. CRUDEN: Yes. I also led the DOJ/EPA National Petroleum Refinery Initiative which addressed illegal air emissions from many petroleum refineries. Since its inception, DOJ has now entered into over 30 settlements with U.S. companies that refine over 95 percent of the Nation's petroleum refining capacity. These settlements require over a hundred refineries in 32 states to install advanced pollution control equipment worth billions of dollars and pay significant penalties. The settlements will result in annual emissions reductions in hundreds and hundreds of tons of nitrogen oxides and sulfur dioxide. This is a good example of an initiative in which we were able to settle virtually all of our cases at the outset, accomplish significant environmental improvement, but avoid costly and lengthy litigation.

MS. SCARROW: And I know that you led a number of cases against municipalities with sewer problems. Please discuss those and specifically cover the two cases you personally negotiated with the city of New Orleans and the District of Columbia.

MR. CRUDEN: Older municipalities often have sewer infrastructure problems, particularly those with combined systems that handle both sewer water and rainwater. During heavy rainfall and other wet weather events, these combined sewer systems can overflow, and discharge untreated wastewater mixed with raw sewage directly into a nearby water body, impairing water quality. There are hundreds of municipal water systems which have such sewer problems, often lacking the capacity to adequately treat the water to legal standards. There is no questions that there has been massive improvement in this area, really the result of a series of important enforcement actions, starting in many ways with the lawsuit that I led against the city of New Orleans.

We filed our litigation against New Orleans, alleging significant Clean Water Act violations, and I frequently met Mayor Marc Morial and his General Counsel, Avis Russell. The litigation was challenging and long, but we ultimately joined with the city to resolve the case. We were assisted by a local citizen group which joined in the litigation and the ultimate settlement. Under the agreement reached with the city and the Environmental Protection Agency, New Orleans agreed to spend several hundred-million dollars to upgrade its antiquated sewage collection system to prevent more discharges into the Mississippi River and other nearby waters. I also negotiated the first environmental justice Supplemental Environmental Project with New Orleans outside counsel, Ben Wilson, who later became the Chairman of Beveridge and Diamond.

The city agreed to spend $2 million to restore water quality in Lincoln Beach, a once-segregated beach for blacks that was abandoned since the 1960s. As part of the settlement, the city also paid $1.5 million in civil penalties, then the highest penalty for such actions.

The other specific case of this type that I negotiated was with the District of Columbia Water and Sewer Authority (DC Water), located in the District of Columbia, which owns and operates a combined sewer system, including one wastewater treatment plant. DC Water's problems included frequent discharges of raw sewage, industrial waste, nutrients, and storm water discharges (*i.e.*, combined sewer overflows) to District of Columbia waterways, including the Anacostia River, the Potomac River, and Rock Creek.

Leading the DC negotiations was Deputy Mayor Robert Bob, advised by former Secretary of the Interior Bruce Babbitt. Working with the trial attorney Nancy Flickinger, we created a plan that required construction of three storage tunnels in the Anacostia River, Potomac River, and Rock Creek Watersheds. Later, when AAG, I agreed to amend this consent decree to allow "Green Infrastructure" to be incorporated into the mitigation measures being undertaken in the Potomac and Rock Creek watersheds, potentially reducing or eliminating the need for a storage tunnel in the Rock Creek Watershed and reducing the size of the storage tunnel in the Potomac River Watershed.

MS. SCARROW: Can you also talk about cases you led involving car and truck emissions?

MR. CRUDEN: Probably the most well-known case I negotiated, at least before the VW case, was with Honda Motor Co. We alleged that Honda disabled the misfire monitoring device on over a million 1996 and 1997 model year Accords, Civics, Preludes, Odysseys, and Acuras, as well as 1995 Honda Civics. Our complaint also alleged that Honda failed to report this fact when applying for Certificates of Conformity, which allow for vehicles to be legally sold if they meet federal emission standards.

Finally, the series of vehicle cases I led that probably received the most attention was the set of cases that we brought against six diesel engine manufacturers, including Cummins, Caterpillar, and Detroit Diesel, and others for violations of the Clean Air Act Mobile Source provisions. Mobile Source deals with emissions requirements for cars and trucks. Because we were proceeding against all six at the same time—and that was the first time that was done—I was very much involved in those cases along with Steve Herman, who was then head of EPA Enforcement. We had multiple negotiations and ultimately settled with each of the companies. The settlements, all approved by the courts, required a significant amount of change by all of the diesel companies and an important decrease in harmful emissions. We did the settlement under the Clinton administration but then implemented it in the Bush administration. During the Bush administration, Assistant Administrator Jeff Homestead and I had to go to Congress and meet with the Speaker of the House to defend the settlement.

MS. SCARROW: Can you tell us about the *American Smelting* case? It might be referred to as the ASARCO settlement. Is it true that you told the Mexican owners of the parent company that they had to pay $100 million to resolve their liability?

MR. CRUDEN: Yes, but there is a story behind my demand. Negotiating with the Mexican owners of the mining company was challenging. I do recall being called by the Mexican Embassy to complain about my settlement demands. ASARCO was one of the owners of the Bunker Hill superfund site I previously mentioned, and it declared bankruptcy in 2005. The U.S. Bankruptcy Court for the Southern District of Texas held a two-week hearing on competing plans of reorganization for ASARCO and the court confirmed a plan worth well over a billion dollars to fund the cleanup and restoration of contaminated sites and facilities throughout the country. The money from the settlements was used to finance past and future costs incurred by federal and state agencies at more than 80 sites contaminated by mining operations in 19 states. Of course, that depended on a viable ASARCO, which led to our next lawsuit.

To ensure that ASARCO had sufficient assets to pay for all their cleanup requirements, we later filed a unique complaint against the company seeking an order prohibiting it from selling its most valuable financial interest in Southern Peru Copper Corporation to its parent company, American Mining Corporation, at what we thought was way too cheap a price. Our complaint alleged that the proposed transfer of the Peru

stock would render the company unable to meet all of its environmental obligations because of its precarious financial condition. After we sought a preliminary injunction, ASARCO agreed not to transfer the assets until a settlement was reached. The final agreement with the Mexican attorneys required their American Mining Company to pay more than $100 million over their original deal for ASARCO's stock-ownership interest in SPCC. The settlement also created an independent environmental trust to pay for cleanup of environmental contamination at sites for which ASARCO was responsible. Significantly, the environmental trust was guaranteed by the parent corporation of ASARCO, Grupo Mexico S.A. de C.V. of Mexico City to ensure the cleanup would occur.

MS. SCARROW: And you had previously mentioned wanting to help establish the law, and your involvement in cases that went to the Supreme Court. Which ones did you personally work on?

MR. CRUDEN: Because of my position, any environmental case involving the United States that went to the Supreme Court was under my authority. Those included such important cases as, *Massachusetts v. EPA* (2007), 549 U.S. 497 (2007), *Whitman v. American Trucking Associations, Inc.,* 531 U.S. 457 (2001), *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), *Rapanos v. United States*, 547 U.S. 715 (2006), *Burlington Northern and Santa Fe Railway v. United States*, 556 U.S. 599 (2009), *American Electric Power v. Connecticut*, 564 U.S. 410 (2011), *Sackett v. EPA*, 566 U.S. 120 (2012), *EPA v. EME*

Homer City Generation, 572 U.S. 489 (2014), *Michigan v. EPA*, 576 U.S. 743(2015), *Utility Air Regulatory Group v EPA*, 573 U.S. 302 (2014), *Environmental Defense v . Duke Energy Corp.*, 549 U.S. 561 (2007), *United States v. Bestfoods*, 524 U.S. 51 *(1998)*, *Cooper Industries v. Aviall Services, Inc.*, 543 U.S. 157 (2004), *and Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). [10]

MS. SCARROW: Could you please talk about the *Bestfoods* argument and how that intersected with your congressional work?

MR. CRUDEN: *Bestfoods* involved a Michigan site littered with thousands of leaking and even exploding drums of waste, plus soil and water saturated with noxious chemicals. A chemical plant was responsible. EPA cleaned the site and sought reimbursement from the parent corporations. The question before the court was whether a parent corporation that exercised control over the operations of a subsidiary could be held liable under CERCLA. Justice Souter wrote the unanimous decision in favor of the United States. The Court concluded that although Congress did not intend for CERCLA to displace all of the established principles of corporate law, including the principle that a parent corporation is not usually liable for the acts of its subsidiary, a corporate parent that actively participated in and exercised control over the operations of a facility may be held directly liable in its own right as an "operator" of the facility. Lois Schiffer did an excellent

[10] *See* John C. Cruden & Seth Gertz-Billingsley, *Ranking the Court's Top Cases*, ENVIRONMENTAL FORUM, November/December 2024, at 46. *See* Appendix 3.

job arguing the case for the United States, and as the Deputy responsible for CERCLA enforcement I was completely involved.

When *Bestfoods* was argued I was also leading one of the Superfund reauthorization groups preparing reports to Congress that I previously mentioned, frequently meeting with Senator John Chaffee, the chair of the Senate Environmental Committee, and Senator Max Baucus, the minority leader. As soon as the *Bestfoods* argument was over, I literally ran to the Senate building as Senator Chaffee had asked me to join him during "mark-up" of some of the bills. When I walked into the Hart building conference room Senator Chaffee waved to me and brought me to his table. What I recall is that he was going quite quickly though a number of proposed amendments, calling out the number of amendments and seeking a committee vote. Soon after I arrived Senator Baucus raised his hand and told Chaffee to slow down and said, something like, "You need to slow down John. I am not going to vote unless you tell me what I am voting on." Having just come from the Supreme Court argument of the CERCLA *Bestfood's* case, and the court's detailed review of statutory language in that case, it was fascinating to then be part of the legislative process.

MS. SCARROW: The other case I would like you to talk about is *Rapanos*, because I believe you testified to Congress several times about the interpretation of that well-known decision.

MR. CRUDEN: The now infamous *Rapanos* case considered what constitutes wetlands that are subject to the Clean Water Act as a "water of the United States." The opinion was highly confusing because there was no controlling majority and provided two radically different tests. A narrow test by a 4-justice plurality led by Justice Scalia which significantly limited the coverage of the Clean Water Act, and a broader test, authored by Justice Kennedy, which included wetlands that have a "significant nexus" with a water of the United States. As I had supervised the litigation, then Assistant Attorney General Sue Ellen Wooldridge asked me to take the lead in developing a federal position on how to implement this confusing opinion. After meeting with Solicitor General attorneys, EPA, and Corps of Engineer officials, in testimony before the Senate Environment and Public Works Committee, I announced that the position of the Department of Justice was that a wetland was covered if it met either of the two tests in the *Rapanos* case, the broadest and most environmentally beneficial decision that could have been made. Later, a friend watching my testimony on CSPAN told me that my presentation before Congress was entertaining. I suppose that was a compliment but also indicates all of the questions I received from the Senators.

Later, when a new rule was promulgated during the Obama administration, I led the effort to defend that rule. That rule and the

Rapanos decision were ultimately the subject of a subsequent Supreme Court decision in *Sackett v. EPA*.[11]

MS. SCARROW: A couple of times you mentioned the D.C. Circuit and its larger role in environmental issues and the Clean Air Act. Do you have a specific example?

MR. CRUDEN: Yes, probably the most well-known would-be *Massachusetts v. EPA*,[12] and then the defense of the Obama Clean Power Plan. *Massachusetts v. EPA* arose during the Bush administration when EPA denied petitions to regulate greenhouse gases and many sued, including the State of Massachusetts. Because I supervised the Environmental Defense Section, I was also the supervisor of the case. In my entire history at the Department, it was the only time that I asked that my name be taken off the brief because I did not agree with the arguments by the government, which opposed regulating greenhouse gases for reasons I did not agree with. This seminal case paved the way for the EPA regulations we now have regulating greenhouse gases.

MS. SCARROW: In 2006 you were awarded the American Bar Association's Mary C. Lawton Award for Outstanding Government Service for your role as the Deputy Assistant Attorney General. What was that award for?

MR. CRUDEN: Mary Lawton was a quite well-known government lawyer whose name is on this prestigious ABA Award. My selection was largely because of the

[11] *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).

[12] *Massachusetts v. Environmental Protection Agency*, 415 F.3d 50 (D.C. Cir. 2005).

successful array of environmental enforcement cases that we had finished, including the settlements in the coal fired power plant initiative that I discussed, including the well-publicized agreement with Alabama Power Company, and my work on the Duke Energy case, which the Supreme Court resolved in favor of the United States. We had also resolved that year's litigation with Maryland's Washington Suburban Sanitary Commission where, with the State of Maryland, the Commission agreed to a significant upgrade to their facility, a penalty, and a large environmental project. Although I was quite honored by the award, our record-breaking success was the product of many people, all of whom deserved the award.

MS. SCARROW: While serving as a career Deputy you also twice served as the Acting Assistant Attorney General. First during President Bush's first year in office in 2001 and under Attorney General Ashcroft, and second during President Obama's first year in office which was in 2009 under Attorney General Holder. Can you tell us how that came about during those two periods?

MR. CRUDEN: Yes, transitions between administrations are always a fascinating time. Since I was the senior career Deputy Assistant Attorney General, I became the Acting Assistant Attorney General when there was not a Senate confirmed AAG. Accordingly, I became the Acting Assistant Attorney General for almost the entire first year of the Bush administration and for most of the first year of the Obama administration. In both instances the two Attorneys General decided to keep me in that position, even after

political appointees arrived. And, to have the full authority of the Assistant Attorney General, I received Presidential appointments in both instances. After my second time, the Division gave me at the end of my tenure a large replica of an academy award, with a plaque designating me as the "Best Actor."

MS. SCARROW: Turning to your first year in the Bush administration, how was your relationship with the new Attorney General?

MR. CRUDEN: Becoming the acting head of the Division was immediately eventful. The Attorney General was John Ashcroft, a former Senator, and Governor of Missouri, who I came to have a good working relationship with. Although he was quite conservative, he was a resolute man of law with high ethical principles and became a firm supporter of the division. And, he had some significant Superfund experience at the well-known Times Beach Superfund site which was cleaned up when he was Governor of Missouri.

I believe the incoming administration was skeptical about having a career lawyer in such a significant position, so they assigned a brand-new political appointee, Lucy Clark, to attend all my meetings with me. Lucy and I became friends, and I ultimately supported her as she advanced, later to become the first General Counsel of the Department of Homeland Security. Another person of great assistance to me was our press advisor, Dana Perino, who later became press secretary to President Bush.

MS. SCARROW: What stands out to you about this time?

MR. CRUDEN: One aspect of the Bunker Hill negotiations we have talked about before arose immediately under the new administration. One of the companies that did not participate in the settlements was Hecla Mining company. Hecla and its predecessors disposed of contaminated mine waste, often directly into the South Fork of the Coeur d'Alene River – well over 60 million tons of tailings, some with lead and zinc contamination.

The Governor of Idaho, Dirk Kempthorne who later became Secretary of the Interior, came to D.C. and met with Attorney General Ashcroft about his desire to resolve this case. Ashcroft contacted me, and I was soon in the midst of contentious negotiations. At my side was Michael Bogert, the counsel to the Governor, who later became the Regional Administrator for EPA Region X. We negotiated a settlement with the president of the company who, as I understand it, was fired by the Board when he returned to Idaho. Ultimately. we settled for $263 million on behalf of the U.S., the state of Idaho, and the Coeur d'Alene Tribe. That money went to pay for response actions throughout the site, and for natural resource damage.

In addition, I continued to supervise and advance the environmental initiatives we had ongoing against refineries and power plants for Clean Air Act violations. I do not recall a single time when the Attorney General prevented me from doing something I thought was necessary and legally justified. There were a few times when he did call me into his office because he received complaints from the White House

about us being too aggressive. Each time that happened he listened, he agreed, and he defended us to the White House. During this time, I also ran for D.C. Bar President, which AG Ashcroft agreed to and then monitored.

MS. SCARROW: I understand that you travelled to New York to meet with the Mayor of New York after the World Trade Center attack. Can you describe what happened?

MR. CRUDEN: Yes, those days are still indelibly etched in my memory. Where the terrorist-controlled plane hit the Pentagon was the location of my office when I worked in the Pentagon, and I lost friends that day. Shortly after the attack on the World Trade Center, AG Ashcroft called me in along with the head of the Civil Division, Robert McCallum, Jr. and told us we were the DOJ representatives to an emergency White House Meeting about the World Trade Center. At the White House we were directed to immediately to go to New York City and meet with Mayor Rudy Giuliani and his leadership group. We were told to offer any assistance they needed and to report back on how they were doing with this tragic set of circumstances. We traveled immediately to New York City to meet with Mayor Giuliani and his leadership team. They carefully went over with us all that they had done so far and their plans for the future. After our offer of assistance, Mayor Guiliani told us he appreciated our presence, but he was already cleaning up the site using four different contractors, all under city direction, and they were on track. We then asked, and were granted, a

chance to walk the entire site, with a Fire Marshall at our side, since the remnants of the World Trade Center were still on fire.

At that stage there was so much dust and particulate matter that we wore masks. Not the kind of masks we wear now because of COVID, but more expansive military-like gas masks as protective gear. While we were there a phalanx of fire engines spread water on the burning remnants while cranes gently pulled down the remaining structure. In one of the telling moments of my life, a rainbow spread across the sky. Later, when I said that story to the United States Attorney Conference, I told them that the rainbow symbolized hope, even in tragedy.

MS. SCARROW: Pretty amazing time for you. Now turn to your time as Acting Assistant Attorney General during the first year of the Obama administration.

MR. CRUDEN: The second time I became Acting was when we transitioned from the Bush administration to the Obama administration. I was again appointed as Acting Assistant Attorney General by a Presidential Order. Eric Holder was the new Attorney General, and I knew him from his prior DOJ time as Deputy AG and U.S. Attorney. We had an extraordinarily strong relationship, and I admired AG Holder greatly. During that time there were clearly matters that we did that were incredibly significant. For instance, the Washington governor, Christine Gregoire, met with General Holder about the *Hanford* case, in which the state had sued the Department of Energy. Hanford was a huge Department of Energy facility in the eastern part of Washington with massive radiological

contamination. For more than 40 years, the Hanford Nuclear Reservation played a critical role in the Nation's military weapons program, producing plutonium for nuclear weapons. This process generated massive quantities of waste, much of which was buried on-site or, in the case of liquids, discharged directly to the ground, risking contamination of the groundwater that flows into the Columbia River. Hanford holds more high-level radioactive waste than all other U.S. sites combined. Waste is stored in over a hundred underground tanks.

Hanford cleanup is governed by a Tri-Party Agreement, an agreed enforcement order signed by the Washington State Department of Ecology, the U.S. Environmental Protection Agency, and the U.S. Department of Energy, that contains detailed schedules for the Department to clean up the site and bring it into compliance with applicable environmental laws.

The state of Washington sued the federal government for missing—or being on track to miss— major milestones for construction and tank waste treatment. Working with DOE and the states, we were able to settle the suit in a judicially enforceable consent decree, defining new milestones and commitments of time and energy. I announced this settlement at Hanford with Governor Gregoire, Attorney General Bob McKenna, and other elected officials. While we were successful then, Hanford has continued to be challenging for the Energy Department.

MS. SCARROW: When you were Acting were you given full responsibility for the work of the Division?

MR. CRUDEN: Yes. In both instances the Attorneys General secured for me a presidential appointment for me to be the Acting Assistant Attorney General. That gave me full authority to bring complaints, settle cases, and take positions on behalf of the United States. I was assisted significantly in that regard by the career Deputy Assistant Attorney General Eileen Sobeck. When new political appointees arrived, they worked under my direction until a new Assistant Attorney General was Senate-confirmed. It probably helped that during that period the Partnership on Public Service rated the Environment and Natural Resources Division as the "Best Place to Work in the Federal Government."

MS. SCARROW: You just talked about the differences between your two tenures, but you've also mentioned that it was obviously a transition period for those two administrations. Was that sort of transition process different in those two periods for you?

MR. CRUDEN: Yes. The first year of any new administration is filled with energy, action, and some chaos. I felt all of that the first year of the Bush administration and the first year of the Obama administration. Political appointees are coming on board, but the mission of the agencies continues without regard to whether the new person has been confirmed, understands his or her job or has any idea how to work with the bureaucracy they have joined. I was personally fortunate in my two tenures as Acting AAG to work for

Attorneys General who I admired and who valued the career work force. As we have discussed, the first year of the Bush administration included the tragedy of the World Trade Center, and the first year of the Obama administration was also quite eventful for me.

MS. SCARROW: What stands out that you were involved in during the first year of the Obama administration?

MR. CRUDEN: Beyond the cases that I have discussed, the two big matters were the historic joining of EPA and the National Highway Safety Administration or NHTSA on setting car standards and the huge General Motors bankruptcy. In response to a Presidential directive, EPA and NHTSA, on behalf of the Department of Transportation, jointly proposed to reduce greenhouse gas emissions and improve fuel economy for light-duty vehicles for model years 2017–2025. This was the first time this had happened, and it was a major undertaking to have these two diverse agencies work together and synchronize their rulemaking. Ultimately, NHTSA proposed corporate average fuel economy standards and EPA proposed greenhouse gas emissions standards under the Clean Air Act. These standards apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles, and represent a continued harmonized and consistent national program. I moderated many of the meetings which led to the ultimate successful resolution. A great leader in that regard was Jody Freeman, then a Counselor in the White House, but now a professor at Havard Law School.

The second major action I was involved in was the massive General Motors bankruptcy. Growing up in the Detroit area, I always followed the auto industry. At the beginning of the Obama administration, with car sales declining due to the worst economic downturn since the Great Depression, General Motors was losing billions and running out of cash. As General Motors teetered toward bankruptcy in 2009, an Obama-appointed team used the bankruptcy code to save the company by segregating and spinning out its valuable assets, while providing billions in taxpayer funds to make sure the company was viable. I supervised organizing the portion of the bankruptcy which funded money for environmental issues. Two Environment Division attorneys, Alan S. Tenenbaum and Patrick Casey, led the government effort to negotiate with 14 states and the Saint Regis Mohawk Tribe to provide funding for superfund sites. We filed a bankruptcy proof of claim against Old General Motors to recover environmental cleanup costs for sites owned or operated by Old General Motors. Old General Motors ultimately paid nearly a half billion dollars for cleanup, money put in trust for particular sites. Leading that cleanup effort was a good friend of mine, Elliott Laws, who was the prior EPA Assistant Administrator for the Superfund during the Clinton administration.

MS. SCARROW: While you were Assistant Attorney General, did you interact with EPA and Department of Interior leadership?

MR. CRUDEN. Yes, my primary client was EPA, and I had a superb relationship with first Administrator Lisa Jackson and then Gina McCarthy, who became friends. At DOI I knew Secretary Ken Salazar well from his time as Colorado Attorney General. His Deputy was David Hayes, a lifelong friend of mine. Both had superb political appointees. Later, I developed a superb relationship with the new DOI political appointees, Secretary Sally Jewell, and her Deputy Mike Connor. Also important to me were the EPA General Counsels Scott Fulton and Avi Garbow and Cynthia Giles, the leader of EPA enforcement efforts. Finally, my friend, and the first Native American to become the Solicitor of the Interior, Hilary Tompkins.

MS. SCARROW: I understand you had several interesting interactions with the Secretary of Energy?

MR. CRUDEN: Yes. I can easily remember my first meeting with the Nobel Prize winning Secretary of the Energy, Steven Chu. His General Counsel had advised me that Secretary Chu, who had just left being director of Lawrence Berkeley National Laboratory, had just been subpoenaed to give testimony in a deposition arising out of his prior role. I told the Secretary I could oppose such a request, and he just smiled, then said something like, "Don't worry John, I've already agreed to be deposed." I smiled back, and told him if that's what he wanted, then I needed four hours of his time to prepare him for a deposition. He seemed surprised but then acquiesced and we developed a good relationship. I did, however, realize that he had a lot of confidence in his own ability to navigate successfully in the Washington

D.C. environment. We also spent a lot of time working through the Hanford facility nuclear cleanup issues. And he appreciated hearing about the successful press conference I did with Governor Gregoire when we settled. Later, as President of Environmental Law Institute, I awarded him our most prestigious environmental award in a crowded banquet with over 700 attorneys present. He gave one of the best speeches of any award recipient. I value him highly.

MS. SCARROW: One last question about your time as a career attorney at DOJ. You received the Presidential Rank Award from three different presidents of both parties, which I assume is probably unheard of in that it crossed parties and three presidents. Can you talk a little bit about that award and how that came about?

MR. CRUDEN: The government does have their own awards structure and there are different awards that you can receive through the government. But, by far, the most prestigious is the Presidential Rank Award. For me to receive these awards is extremely humbling because there are so many gifted people in the government. I have always been proud of the fact that I received the award from three different Presidents of different parties. Yet, I received the award really for what was done by the entire Division, and each time I received an award I told all of the people that I supervised that the award was really for them.

MS. SCARROW: In 2004, while you were still a career Deputy, you were the first government attorney to ever be elected as the President of the D.C. Bar. Can you tell us how that happened?

MR. CRUDEN: During the Clinton administration, when I was the Deputy Assistant Attorney General, I decided that it was time for me to become active in my local bar. By some fortune, the Counselor to the Assistant Attorney General, Ignacia Moreno, was on the nominating committee for the D.C. Bar. She asked if I was interested, and I agreed with little knowledge of what I was getting myself into. In any case, I was nominated for a position on the Board of Governors, and was elected by the membership of the Bar, which was then had something like 80,000 members.

After serving on the Board for several years, the Board President, George Jones, and the Executive Director, Katherine Mazzaferri, encouraged me to run for President. To do so I needed the approval of the Attorney General. John Ashcroft agreed and then followed my election. I believe he was amused that he had a career attorney running for office. I then had to set up a campaign committee and because I was a government official (and could not lobby people who worked under me), I also had an ethical advisor, Polly Milius. Great lawyers like Steve Solow, Steve Herman, Tim Webster, Doug Letter, and many others stepped in to support and lobby for me.

On election day, right after I found out that I had won, I was called by Attorney General Ashcroft who wanted to know how I had fared. I

replied that I had won, but it was “hardly a landslide.” He then laughed and asked me, “what were your numbers?” I told him I had won by 55% to 45%. He paused for a minute—now remember, this is a man who lost his last Senate election to a man who had already died in a plane accident. After his pause, he said “trust me John, that’s a landslide.” [LAUGHTER]. I then served as the President-elect for one year, and then in 2005 became President. At that time Alberto Gonzales was the Attorney General. He had intended to come to my investiture ceremony as I was the first government lawyer to serve as D.C. Bar President, but at the last minute he could not. Instead, he sent the Principal Deputy Associate Attorney General to introduce me to the Bar – soon to be Supreme Court Justice Neil Gorsuch. Gorsuch sat with my family during that evening and charmed my wife and children. Gorsuch gave a wonderful introduction for me to be Bar President, calling me one of the most well-known lawyers in environmental law.