

An Interview with
Douglas R. Kennedy

at his law office in
Poplar Bluff, Missouri

04 August 1998

interviewed by Will Sarvis



Oral History Program
The State Historical Society of Missouri
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Collection C3966

Missouri Environment a.c. 51

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PREFACE

Douglas R. Kennedy was a central figure in the late 1980s-early 1990s controversy surrounding a group of horses that roamed freely in Shannon county, Missouri, in and around the Ozark National Scenic Riverways. The following transcript focuses specifically on this topic. Mr. Kennedy's major initial involvement entailed the donation of his legal skills and advice to a group of people interested in preserving the horses in this eastern Missouri Ozark habitat. These people later organized themselves into the Missouri Wild Horse League, based in Eminence, Missouri. Mr. Kennedy was among the group of horse advocates that testified before Congress. Their efforts finally resulted in a federal statute protecting the horses.

I first heard of Mr. Kennedy through Jim Smith, another central figure in the "wild horse controversy." I later wrote to Mr. Kennedy, but was not able to reach him by telephone just before departing on an interview trip through southeast Missouri. After arriving in Poplar Bluff some days later, however, we spoke by telephone and Mr. Kennedy accommodated me on very short notice. We conducted the interview in his law office. On one wall he had framed two outstanding pictures of the horses we were discussing, and mention is made of these pictures during the session.

The interview was recorded on Sony type I (normal bias) audio cassettes, using a Marantz PMD-222 manual recorder (set on automatic recording level) and a Shure VP64 omnidirectional microphone attached to a floor stand. No interference compromises the recording, and the audio quality is good throughout.

The following transcript represents a faithful rendering of the entire oral history interview. Minor stylistic alterations -- none of factual consequence -- have been made as part of a general transcription policy. Any use of brackets [] indicates editorial insertions not found on the original audio recordings. Parentheses () are used to indicate laughter or a spoken aside evident from the speaker's intonation. Quotation marks [" "] indicate speech depicting dialogue, or words highlighted for the usual special purposes (such as indicating irony). Double dashes [--] and ellipses [. . .] are also used as a stylistic method in an attempt to capture nuances of dialogue or speech patterns. Words are *italicized* when emphasized in speech. Although substantial care has been taken to render this transcript as accurately as possible, any remaining errors are the responsibility of the editor, Will Sarvis.

WS: I'm here in the law office of Attorney Douglas R. Kennedy in Poplar Bluff, and we're going to talk about this wild horse issue. They tell me the way you heard about this was, you were in a café and overheard somebody talking about the issue, and that's how you got involved with it. Is that true?

DK: Yes. And then I followed up. I saw an article on it when Ronald Smotherman and Richard Wilkins were starting the first petition drive, presenting a petition of (I think) over 1,000 signatures to Representative Emerson. That made a little article in the paper. I saw that and read a little bit about what was going on. I'm not a big horse lover or anything, but I just hated the thought of big government going in and making a decision like this that was obviously against the grain of so many people there. I'm not a supporter of big government, obviously.

So, after talking with some people that knew Ron Smotherman and Richard Wilkins, and just bits and pieces about things, I finally thought, "I'm just going to call and see what I can do; see if they want some help." I think Ron Smotherman was the first one that was *directly* involved that I talked to. He said, "As a matter of fact, we're having a meeting with the National Park Service this week." I said, "I'll just go up there with you guys." (laughs) So we met there (it was the first time I ever met them) at the Park Service headquarters.

We went in and discussed the issue, but the Park Service was just very adamant that they were going to remove the horses, and really didn't give us much time about

anything. They did give an extension of time, initially, of about six months, and said, "If you'll find some alternative to do something with the horses, we'll listen to that." But they were not interested in any alternative that involved leaving the horses on the Park grounds.

WS: What inspired you to volunteer all your legal expertise?

DK: (laughs) I don't know about "all your legal expertise."

WS: I'm told you didn't charge anything to represent those people.

DK: No, I didn't initially. Now, later on, after the Missouri Wild Horse League formed and we were getting ready to go to the Supreme Court, and they started getting lots of money together, then they started paying my legal fees, then. And it was taking up so much time, not only just the legal end of it, but persons like yourself; reporters calling here and people wanting information and wanting to give support; that sort of thing. It was just taking up a whole lot of time out of the office, and they were nice enough to go ahead and start paying my fee at that time. But the initial portion of it was *pro bono*, up through the Court of Appeals; that segment of it.

But what inspired me was just that, "Well, these guys are giving their time. Here's something that, if somebody doesn't do something there won't be any backing up and recovering. It'll be gone. The horses will be gone. That portion of their history, that portion of their background is going to be forever lost." I felt like that was something I wanted to be involved in. I don't know of any other way to explain it.

WS: I was talking to Art Sullivan, the [former] superintendent, about this issue. He described it, in one sense, as kind of a three-stage issue in terms of the people supporting the existence of those horses. First, to try to establish their existence through an administrative move within the Park Service, which failed. Then, through the judiciary, and then finally, of course, the legislative process.

DK: Yes.

WS: Now at what point did you get involved with that?

DK: Initially, with the administrative decision. Like I said, they were meeting. They didn't have any formal process with the Park Service for administrating decision-making. They did an informal process, and finally the last decision was a letter from Art Sullivan, "We are going to remove them."

[tape meter, 50]

At that point, that became a final administrative opinion that was reviewable. Our next step was before the judiciary with Judge [Steven] Limbaugh in District Court, southeastern division at Cape Girardeau. We filed for a permanent injunction in claiming that they were removing the horses, that that was part of their history, and that was part of what the Park Service was supposed to *preserve* by their enabling act.

We also said that the Park Service had engaged in *post hoc* rationalization. That means they had made the decision, then put together a rationale. Their initial reason for

removing the horses was that, "They're in bad shape. They're subject to disease." You know, just making kind of a pitiful story for the horses. Well, all the locals knew that the horses were in horse heaven up there. All those old fields they had full run of. They had plenty of food, even all winter long, because there was that old fescue over there. It would fall over and preserve itself all winter long. And then the locals, if it got to be a bad snow or anything, would put out some hay for them and keep salt out for them; that sort of thing, to help them.

In the Park Service's own report -- they'd done a study in (I think) '85. (It was Victoria Mendosa? I think her [the author's] name was? It's been a long time since I've reviewed all the specific facts). Anyway, that report said that the horses were fat and slick and looked good. And all the locals knew that. So, when we called them on that, the Park Service then shifted their rationale for moving them and said, "Well, now there's a state law that says all strays are to be rounded up and removed." Well, that doesn't mean that the Park Service has been ordered to do that. That just gave landowners a right to remove strays if they wanted to. Plus, we argued that they were native or indigenous to the area as well, and that they were -- I'd forgotten about this term -- "extirpated" species. In other words, there were horses here back in prehistoric times, then they were gone, but then they were reintroduced. So we made that argument as well, that they should remain for that purpose. We made the argument that historically they should remain because they were part of the history; that they were a thing of beauty, unique

scenery -- all these were things within the enabling statute that the Park Service was supposed to preserve.

But anyway, they came up with this state law and said, "We've got to remove them for that reason." Well, we sent off for an attorney general's opinion. He said, "No, that doesn't require the Park Service to do any removal at all. We wouldn't want them to try and enforce that."

Then finally they got on the environmental bandwagon and said, "Well, they're causing a problem to the environment there." And the locals were just really laughing up their sleeve there, because fifty horses (well, there weren't even that many; it was about thirty, I think, initially) in 65,000 acres, roaming in there. They weren't hurting anything or anybody. But they hung their hat on that. When we went to court, that was the evidence they presented. Most of it was more evidence about what *could* happen if the numbers got out of kilter; that it could really become a problem -- which we admitted. I mean, naturally you don't want 500 horses up there running in the area, but the numbers that were traditionally there were not a problem, never caused a problem. We couldn't understand why the Park Service was spending money to fix something that didn't need fixing.

Anyway, Judge Limbaugh decided in our favor, after we had taken the case up with the federal court system. The last day of their appeal time, they appealed it.

[tape meter, 100]

And then we went before a three judge panel up in St. Louis, the Eighth Circuit Court of Appeals there. Judge Loken wrote a very strong dissenting opinion in our favor. Judge McMillan and Judge (I can't remember the other judge) decided against us. The standard of review was very strongly in favor of the Park Service, because their standard is that you only have to show *some* evidence or some rationale for removal or taking some action.

They did have *some* evidence. It wasn't right; I mean, it wasn't compelling or anything that we felt was very strong. But they did have *some* evidence for removal and that's why they decided. We argued that there was *post hoc* rationalization. There should be heightened scrutiny of the decision, and that was the basis for the appeal to the U.S. Supreme Court. We asked for a *writ of certiorari*, which is more or less we go up there, "Will you hear our case?" This is basically what it's about. But they denied the writ.

Once we got that decision back we had a meeting. All the people in the Wild Horse League were saying, "What are we going to do? What are we going to do?" I said, "Well, if we did this right, we could maybe get some attention and maybe do something different, if we use our First Amendment rights; do some demonstrations -- peaceful demonstrations -- and try to get the word out a little bit more to the grassroots people until they just finally *have* to listen to us."

So we started letter writing campaigns, and we organized a demonstration at the Park Service [Riverways office] at Van Buren. They put together a convoy. People were

coming from all over. I mean all over the nation. One guy rode his horse all the way up from around Kansas City to join in. They all gathered up in Eminence, where the [wild] horses were; close by there. They had like an eight mile long convoy that was being escorted by the sheriff's department from Shannon County. Also, highway patrol helped out. We had that convoy come in. There were a bunch of people that were there already. They had about 3,000 people in that little old town of Van Buren. There are only about 900 people in the whole town. There were horses and people everywhere. They all formed underneath the bridge. We came out from underneath that bridge and went down the main drag there, Highway 60, to the Park Service office, and all gathered around.

The Park Service had (laughing) panicked when all this organization was going on, because they were hearing from I don't know what sources that there were going to be a lot of people there. They had, the week before, brought in a riot control specialist from Washington, D.C., and he had them change the building around. I got a phone call from Don Crandall, whose bank owns the building that they were housed in at the time. He said, "What in the world is going on?" (laughing) I said, "What do you mean?" He said, "What are you stirring up up there?" I said, "Well what's going on, Don? What have you heard?" He said, "They've got some riot control expert in here and they want us to take these ladders off the building, and they're going to have rangers in there with guns and everything." I told him, "Wait. Now if you *want* a riot, you do something like that and

you'll *get* a riot. Calm them down. Nobody's going to cause any problems. It's all well thought out and well planned and everything."

[tape meter, 150]

He said, "I'll talk to them. I just wanted to hear it from you, what exactly was going to happen.

We were having announcements on the radio about this. They'd given notice to the radio stations that the whole demonstration was called off, that it had been resolved. As a matter of fact, like the day before, he [Art Sullivan] had written a letter and given a stay, "We're not going to remove them. We're going to try and work with you and try and resolve something here." But we said, "We're having the demonstration. We're going on until we hear a promise from you that the horses are going to stay. No conditions. Nothing else except that they're going to stay."

Anyway, we had the demonstration. We didn't even have a horse attempt to kick anything. Everything went so smoothly, it was just wonderful. We gave our speeches. I presented them with a petition on behalf of the Missouri Wild Horse League and the people of the state of Missouri. I cited the reasons for leaving the horses there, and requested once again that the Park Service reevaluate and make a decision to leave the horses there. We had Representative Koller, Representative Mark Richardson, Representative Bill Foster, Senator Danny Staples. We had a person from Bill Emerson's office (Emerson couldn't make it), and there was a person from Bond and Ashcroft's

office there, I believe. But they all wanted to make speeches, which they did. Basically the speeches were, "If ain't broke, don't fix it. Why is the government doing this? People don't want it." Koller even called for Art Sullivan's retirement. He said, "We've got enough people here for a party. Let's just make it a retirement party for (laughing) Art Sullivan." Something to that effect.

So anyway, it was very successful. They had lots of coverage from the different TV and radio stations there. They had a helicopter that had taken film of all the convoy and everything. So it started getting national attention. We did meet with the Park Service some more, but they just kept not wanting to make the commitment, and kept saying, "If you're going to do anything it needs to be with legislation, because we feel that we're mandated by our enabling statute." That was their interpretation. I think it was wrong; still think it's wrong. But that was where they were coming from.

Emerson finally -- I talked to one of his aides there, Greg Brannum. And Brannum said that the phone calls coming into Emerson's office were five to one. The horses would get five calls. All other issues were the one. (laughing) That was the ratio of phone calls for requests for assistance from Emerson's office. So Emerson finally just said, "If legislation is what it's going to take, that's what we're going to do." And he introduced a bill. It went through a few minor changes. I haven't read that bill in a long time.

[tape meter, 200]

Basically the horses are allowed to remain, but their numbers are kept at fifty. The Park was to coordinate efforts with the Missouri Wild Horse League. The Wild Horse League was going to do removals and adoptions of the horses as needed, and more or less be the proctoring entity for the horses.

Once that was passed, then the Park Service pretty well settled down, and we've been working pretty well with them. There really hasn't been a whole lot to do. The whole issue all along was that, "You don't have to *do* anything for these horses. Just leave them alone. Leave them like they've been for years and years."

We had evidence that the horses had been there for over a hundred years. We had people that were born in the 1800s that remembered the wild horses there back in the late 1800s. We also had different documentation about John Jacks, who was a Cherokee Indian that the Jacks Fork River is named after. He was a breeder of race horses. He started straight track racing. He bred his breed stallions to the wild horses in that area. We also had documentation from a doctoral thesis that Sterling Price, a Confederate general during the Civil War, had brought 6,000 troops up from Arkansas and mounted them all with conscriptions as well as wild horses in the area. So there have been wild horses around for a long, long time in that area. I'm glad they're going to be there for a while. A lot of people come along and want to see them. They really get a good kick out of them. That's them on the wall, as a matter of fact [indicating two enlarged, matted and framed color photographs.]

WS: I understand the Humane Society was one of the first organizations to get involved with them.

DK: Yes. The Park Service asked the Humane Society to intervene *with* them to remove them. The Humane Society sent a representative. The locals said, "Hey, go look at them. They're not hurting. They don't need your help." That was where they ended up; they just backed off when they saw that there were no horses being mistreated. Now occasionally someone would shoot a horse, just like any poacher out there. You'd get some fellow that's had a snoot full and has a mean streak in him, and he's just looking for something to shoot. They had one or two shootings in the last ten, fifteen years, on the horses. A lot of the locals thought it was the Park Service that was doing the shooting. In their own reports they had said that the quickest way to get rid of the horses was to go and shoot them all, but they thought there would be a lot of local objection to that. And they decided against that. Then they [the Park Service] went with this removal plan. Of course, they [the locals] were against that as well. But the Humane Society said it was fine with them. Leave them where they were.

[tape meter, 250]

WS: Mr. Smith told me that at one point there were some that were trapped out.

DK: Yes. The information we got was that a Randy (I can't think of Randy's last name) and a guy named Dennis (what was Dennis's last name?) Crass -- had gone in. The first time we met, the first time that the Park Service said that, "We're going to give you some time

to come up with an alternative." They said February whatever; some date, 21st or something like that. I can't remember the exact date. Maybe March 1, I don't know. But anyway, they gave us a specific time, and before that time was up -- all this time they were telling us, "We're going to work with you. Let's talk about alternatives," and everything. All this time they were plotting a plan of removal. And they let these two fellows go in there ahead of the deadline that they had given for trying to resolve the problem. The locals found out about it somehow. I can't remember specifically. But they had gone in and caused more environmental damage with their removal efforts than the horses ever thought about causing.

We've got video tapes of this -- they set up a big pen with two big wings coming off of it, down through the woods. They had taken staples and nailed to the trees (laughing) these big wings going out. There was about a hundred yards on either side of this catch pen. It was double calf wire. So it went up about eight feet in the air. They had kind of a box pen built and then two big wings going off like this. They were going to drive the horses, just funnel them into that catch pen. The locals saw a bunch of tramlings around there and everything. But the fellows that had done the round up denied that they caught any wild horses. They said, "No, that trampling in there was our horses." "Well what'd you have them in the catch pen for?" You know, nothing made a whole lot of sense. And they were scared to death. They thought the locals were going

to just put it on them. I can see why they might deny based on just fear for their own lives (laughing) I guess. I don't know.

But anyway, they said that they didn't catch any, but the word we got from a number of people [was they had been removed, but they] said, "You can't use my name. If you subpoena me I'll deny it."

[tape meter, 300]

Eighteen of them they supposedly got and removed. And they went up to Willard Harris' farm, and then supposedly went on to slaughter. They said that there was one foal that had been killed, that was born during the transportation, and that had been killed during the transportation of the wild horses. It was dead there at Willard's place. He was up around Patterson, Missouri, which is where Dennis Crass is from. The word was pretty solid around that there had been a removal, but no one would say, "I'll come forward and say that." They said, "I'm friends with these guys," or they were friends with somebody else or whatever. "I'll deny it if you ask me to testify about it." But we pretty well knew that they had been removed.

It was at that point in time that we got the injunction, when they had jumped the gun to come in there and do the removal. We knew we had to move real fast, then. We went up and got a temporary injunction from Judge Limbaugh. We drove up to St. Louis and caught him in his office up there. He signed the temporary injunction. Then we had the hearing about a year later, I think; on the permanent injunction.

WS: I don't mean to abuse your sense of modesty, but would you say that you were the one responsible for that march in Van Buren, with the 3,000 people?

DK: Well, "responsible;" that was just a lot of people putting their heads together figuring out what needed to be done and how to do it. Now as far as getting the crowd turned out, there's no doubt in my mind that Jim Smith was the one that did that. He worked pretty hard. The whole Missouri Wild Horse League just worked hard. I told them, "You get a little fizzle -- if you turn out a hundred people -- that isn't going to mean anything. If you want this to mean something, you better get out there and let the people know what's going on and see if that motivates them to come forward." And it did. People get tired of intrusions from the government, just one after another. There was just no reason why the government would remove those horses; it was just an idea in somebody's head, "This ought to be our philosophy, that we get these horses out of here."

[tape meter, 350]

Just one man's opinion. But when you ask all the locals here, absolutely they wanted them there. They are a thing of beauty. They are something nice to look at, something to enjoy; something that means a great deal to a lot of people. So it was a joint effort. There wasn't any one person that you can say did this, that, or the other to make it a success. It took a lot of people working a lot of hours to make it go.

[end of side 1; tape meter, 362]

WS: But I guess you would agree that it would be accurate to say that after the judicial process, in terms of legal advice, you did kind of recommend that First Amendment rights and protest would be an avenue worth pursuing.

DK: Thank goodness we've got the First Amendment here. Yes. And it's worked a lot of times in a lot of different ways. When there's no other choice, at least you can go out there and you can say how you feel about things, as long as you do it peacefully. And we did that, and made sure the city of Van Buren let us come there. With open arms, they said, "Come on." Everybody was in favor of it. So it all went well.

WS: Commissioner Grassham told me that he had helped coordinate that.

DK: Yes, he had. Him, and -- did you talk with Chris Black?

WS: No.

DK: He helped some. And McSpadden helped. There were just a number of people. The Park Service, I'll tell you; those yahoos. I guess they felt that they were doing their job. They had even gotten a local highway patrolman to say, "No, you're not going to march down the highway." We had already cleared it through Troop (I think that's G Headquarter over there). *I thought* we had. We called Senator Staples up when they said, "You're not going to come down the highway." I thought we already had that taken care of. We called Staples up and said, "Hey, they're saying we're not supposed to come down through here. We've already gotten that cleared, or *thought* we had it cleared." He

said, "Let me make some phone calls." He calls back and says, "You're going to have to take a side street." I said, "No. We don't want to do that. We want to come right down the highway. We've see parades like that before and we want to do it that way. There's no reason [why not]. We've got the OK. Who gave us the OK before?"

But finally, when that convoy came, the troopers that were assigned to the thing came with them, and the local man was out of line; the Park Service buddy was out of line in saying that we weren't going to come down there. The troopers that had been charged with that particular duty said, "Oh, yeah, we've got clearance. Sure. Come down the highway." They blocked traffic and let us all troop (laughing) down the highway there.

WS: You mentioned that occasionally there had been a horse shot in the years previous. Another story I heard that you may have heard something about was, one reason the Humane Society had come in was they had been told that those horses were being abused; not necessarily killed, but maybe -- I don't know -- chased? I don't know what the nature of that would have been.

DK: Yes, they had been told. And they had been told that they were malnourished, like it was just a horrible, horrible existence for the horses there. In that initial press release that the Park Service put out, that's what it says in that. But I think the Humane Society found out pretty quickly that that wasn't the case. I can't remember that investigator's name.

WS: With the Humane Society?

DK: With the Humane Society, who said, "We're not going to take any action on it. We don't feel compelled to, after research and investigation."

WS: This was the chapter out of St. Louis?

DK: I don't remember.

WS: Somebody told me they were the one that have actual pens that could accommodate an animal as large as a horse. They've got chapters all over the state, but as far as I can tell they're not really coordinated around a headquarters or anything. They're all kind of independent. Well, I'll look into that.

DK: I don't know. All I remember is verifying with this investigator -- and I can't remember his name. The Park Service was saying, "The Humane Society wants these horses moved, too." The locals were saying, "No, that's not the case." I called the Humane Society investigator and I said, "Do you feel compelled to step in and do anything?" He said, "No, we've looked them over. They're fine. We're out of this."

WS: When you got involved with this issue, was the Wild Horse League already established, or did you help get that established?

DK: No, we set up a not for profit corporation.

WS: So this is more of your legal work.

DK: Yes.

WS: Oh, you did help them.

DK: Yes. Sometime during the course of events we set up a not for profit corporation. They organized loosely before, and then I said, "You ought to set up a corporation and get some officers and bylaws and everything so you have a little better organization." Because there was lots of membership becoming involved, and money coming in.

[tape meter, 50]

WS: And, would you say Congressman Emerson's real involvement came after the roadside demonstration, or prior to that?

DK: He was involved all along and kept trying to put the heat on the Park Service with letter after letter. He just couldn't understand why they were doing everything. When I was involved, though, it was like, "Well, let's let the courts work on this." For about a three year period, I guess, it was in the court system. At that point in time he was like, "I'll give you all the support I can, but we'll see what the courts do." When we ran out of steam in the court system and then started with our demonstrations and that sort of thing -- and it looked like the Park Service was still putting it off but not going to make the final commitment to allow the horses to remain -- he said, "If they want legislation they're going to get legislation. I'll do whatever I can to get it through."

So, if there was one man that did it, I would say Emerson would be the one that saved the horses. Because he was the one that got the legislation together, which ultimately allowed them to stay.

WS: It seems like this Wild Horse and Burro Act would have been a pretty strong precedent on which to argue this case.

DK: We did argue it, long and hard. But that was BLM, Bureau of Land Management land; not the same as Park Service land. And that particular act didn't apply to Park Service land, and it specifically said that. We did argue it was a precedent, and certainly if you look at their enabling statute on that particular Wild Burro Act, it made Congressional findings that wild horses were indicative of pioneer spirit and part of the history of the U.S. They made a Congressional finding to that effect. Then, later on, the law said, "Because of that we're going to enact this law and allow the wild horses and burros to stay." But it didn't apply to National Park Service ground.

But, like you said, it does seem a little precedent-ial; that, "If they're going to make this finding, they ought to apply that finding to their interpretation of their own Park Service statute with regard to the Ozark National Scenic Riverways. So we did make that argument. The courts bought it to a certain extent, but not as we went on up the ladder.

WS: Mr. Smith tells me, I guess you all went on at least one trip to Washington. He had some pretty colorful (laughing) stories to tell about; the plane ride and everything. That was for the subcommittee hearings you were telling me about.

DK: Yes. When we were getting geared up, it was like a last minute thing. "Well, they're going to have a subcommittee hearing, but you have to be up here day after tomorrow," or something like that. It was like, "Grab a plane and get up there as quick as you can, however you can." I don't think he'd ever ridden on a plane at all. On one of the trips up there I took my boy, who had never ridden on a plane. And I'm not any great world traveler, either. So we took off with a band of people that were going to testify up there. It was kind of like a "Mr. Smith Goes to Washington" kind of a thing; a bunch of country bumpkins (laughing) going up there to testify. But we finally did get up there. We almost missed a flight one time, because we had some ticket problems and some miscommunication on where we were supposed to be.

[tape meter, 100]

I just remember they were fast trips, and that we were constantly in a state of confusion and being lost (laughing) most of the time. What story did he tell you about it?

WS: Oh, it was something about the friends you made with the pilots, and then when you were trying to come back there was some problem where they weren't going to let you on the plane, and the pilots waited out on the tarmac.

DK: Oh, yes. They gave Nate one of those little pendants, you know, that they give kids that have never flown before. But I can't remember why it was -- there was some confusion, and they sent us upstairs to one flight, then back down, then back upstairs again. They couldn't get it straight, where we were supposed to be, either. They tried to stop us from getting there. I kind of said, "We're going." (laughing) We charged right on through. "We're getting on that plane." (laughing) They finally realized that we were going by God get on the plane. They said, "Well, okay. Get on," and let us. But it's kind of a funny story, in retrospect; at the time we were tired and didn't want to spend another night up there.

WS: In that testimony, did you have Park Service people arguing the other side?

DK: Yes.

WS: Was there anybody else besides the Park Service arguing against that?

DK: No. No one else, other than the Park Service. They had [my son] Nate stand up. He had one of the Wild Horse T-shirts on. I introduced him to the committee chair, there. He got on the Congressional Record that way, which was kind of nice. We just argued the common sense of the thing. "This is not a really big issue that anyone should take a whole lot of time with, but it would be very easy for you all to pass this little old bill we've got and have the Park Service kind of do the right thing here." And they did so.

WS: How would you describe your reception there among the legislators?

DK: Oh! Great!

WS: Do you think they were on your side?

DK: Yes, they got a big kick out of the thing. I think after they deal with all the issues that they have to deal with on a day to day basis, they enjoyed this type of an issue. You know, nobody was going to live or die because of it; except the horses, I guess. But it was an important issue to all of the people here. People could have gotten along without the horses, I'm sure, and maybe even would have forgotten about them by now. But then again, for them to be preserved didn't take a whole lot of effort. It doesn't take any effort now. Like you say, "If it's not broke, don't fix it." So let's enjoy those things. So that's happened.

WS: Would it be possible for you at all to estimate the [financial] cost involved for winning this fight?

DK: Oh, God. You mean *all* the man hours? Not only legally, but all the man hours?

WS: Well, I guess one thing I could ask you is the time and the money on your part. And, of course, we'd have to consider the volunteer time [of legal work, prior to Wild Horse League funding], because I imagine it would be impossible for one person to know what everybody did.

DK: Oh, man. I don't know.

WS: Would it be in the hundreds of thousands, do you think?

DK: Oh, yes.

WS: Easily. Wow.

DK: Yes, it would have to be. Because it just went, like I said, for seven years. Seven years from the first trip up to Van Buren till the bill was finally passed.

[tape meter, 150]

And then, even after it was passed, there were several meetings to coordinate our efforts and see what we were going to do with the Wild Horse League, vis-à-vis the Park Service and how often they were going to meet, what they were going to do to proctor the horses, and that sort of thing. But it really doesn't take a whole lot of effort on anybody's part right now.

I imagine it's going to still take some effort, though. There's going to have to be some removals from time to time, I'm sure; of the horses, and some adoption programs. But not near like it was trying to fight the Park Service. Because that just went on and on and on. And they kept changing, like the mercurial governmental entity. Every time you'd think you'd get them nailed down on some supposed reason they had for removing the horses, then they'd change their mind on it. "Well now, we're really removing them for this reason." You know.

WS: It seems like it would be difficult dealing with an entity like that, because you've got the headquarters in Van Buren, then you have a *regional* headquarters in Omaha, then you

have the director in Washington, and then you have the Secretary of the Interior. So who was the one saying, "The buck stops here," or making that policy?

DK: Nobody really wanted to, I don't think. Art Sullivan, I think, was one that was finally given the direction to write the letter and say that you can't keep them here. But we'd gone on up. We'd written letters on up to [Bruce] Babbitt, who was Department of Interior [secretary] at that time. Still is, isn't he?

WS: Yes.

DK: And, of course, all the senators. Tons of letters went out, I know; a bunch of phone calls. They were even calling the president. "Let's just by God call the White House."
(laughing) You know, so they'd try to get on the phone and call the White House and get an audience. That Horse League, I'll tell you. They were a tenacious bunch. Yes. But we finally got it done. Yes, if you consider all those man hours and the whole Horse League thing; God, that just goes on and on and on.

WS: So all your involvement and all your work were for reasons of principle and philosophy, mostly.

DK: I would say that. Like I said, I'm not big horse fan. I'm not a big horse lover. I ride some; I used to ride a lot when I was a kid. I read a lot of horse books when I was a kid. And I see the beauty in horses. But it was more the big government looking for something to do; looking to set up a file so they'd have more reason to ask for more

budget dollars, is what it appeared to me to be. And, "Why don't they just leave that alone. There are a lot more important things to deal with and bother over, than to try to remove those horses."

WS: I kind of wonder if people in Shannon County, now, have a different perspective on attorneys, in general. (laughs)

DK: (laughs) Probably worse. I don't know; I hope so. I think that they know that a lot of people went to bat for them. I think they have a realization that if they work at it they can turn the system around and make it work for them. But man, it takes a lot of work. It just takes an awful lot.

[tape meter, 200]

And they certainly have to be more aware of the court system and how it works, and governmental entities and how they're all tied together. And if they need help, how to go to their representative or senator and request that help and band together, and how to get something started at a grassroots level.

And I think they may have felt a little abandoned after all that eminent domain stuff we were talking about earlier. They just felt like they were pretty powerless against the Park Service and others. And now I think they understand they've got a voice if they'll use it.

WS: What have we left out? Have we covered it pretty much, you think? The major issues?

DK: There are just so many things; I don't know. Like I said, we could drag out all those -- I've got about three or four boxes downstairs, and everything from maps to [legal] briefs. But I think we've pretty well covered the major [issues].

WS: Okay. Maybe I could come back some time when you've got more time.

DK: Sure. We'll get out those boxes and go through them. There's lots of articles, letters to the editor, correspondence between the government and this office, and all the legal briefs and everything -- well, to me, they're interesting reading. And Judge Loken's dissenting opinion, I thought, was well reasoned. He was pretty much voicing what all the people felt, that, "Here's the Park Service. They've made a decision, and now they just think that their pants are too big to turn around and say, 'Well, maybe it was the wrong decision.' So they coopered up." He used the word "coopered," which I'd never read before. Do you know what a cooper is?

WS: Making barrels?

DK: Yes. He said, "They coopered up a reason to remove the horses." That's pretty well the whole case. That's how it came across before Judge Limbaugh, who heard the facts. Judge Loken just read the transcripts and what we sent up there to him. But that's basically what they did, is they coopered up a reason to remove the horses and give themselves something to do, I guess; I don't know.

WS: I haven't met too many attorneys that are able to save records from a law case. Of course, this was a big case.

DK: "Save" records?

WS: Well, usually they don't have the room. They'll throw them out. So I don't know if this is exception, or maybe I've just run --

DK: I think we have a retention policy here of about five years, or something. But that one -- I had people coming in here a lot, people that are writing. One fellow came in and said he was writing a dissertation that had something to do with the wild horses. I don't know. He dug around in those boxes down there forever. That was about a year or so ago. Back when it was going on lots of kids were making speeches. One kid got on Nick News. They came down and interviewed. They had a little news program on the wild horse issue. Andrew Mann is his name.

[tape meter, 250]

They were making speeches about them, having debates in school over it. But I heard they were having lots of trouble getting anybody to take the other side, the Park Service side. (laughter) And the radio programs. Bill Steiger had us on three or four times, on the radio, about updates on the wild horses and what was going on there. Have you seen them yet?

WS: No, I haven't.

DK: Did Jim drive you around?

WS: That day I got there at eight and we finally got to the interview about noon. (laughing)
He was so busy.

DK: Was there a ride going on?

WS: He had a festival that was coming in; a bluegrass festival. He told me the next time I came to see him he would make sure to take me out to see the horses.

DK: If you go down V Highway you can see them lots. But get him to take you on a ride back there, because it's a lot better to see them by horseback. And go at a time when there hasn't been a trail ride so they're not too stirred up. Wintertime is the best time. You can see through the woods and everything. You can see them a lot easier. They're pretty horses.

WS: Who took those photographs [indicating the enlarged, framed pictures on the wall]?

DK: Lynn.

WS: Lynn Morrow?

DK: No, Bob Lynn.

WS: I like how you've got them where they're standing, and here one where they're running.
That's nice.

DK: Yes. I've got maps of their range. After the demonstration, I guess they were given an order to really get serious about negotiation. They had whoever was in charge with the Park Service of that, draw up a map of their range. A real detailed map. I've got a copy of that. It's pretty nifty. When we first met, we met there at the Carter County Courthouse, after the demonstration, to try and work something out -- which was unsuccessful. But they had maps. They had contacted all the local landowners, the MDC [Missouri Department of Conservation]. We had quite a bunch of people that met there that day trying to work something out. It never came to anything. But the Park Service got ready to negotiate, boy, they had all their maps (laughing) laid out there.

[incidental conversation omitted; tape meter, 292-326]

One thing that was funny that happened, when they were giving testimony -- I was just thinking about old Roland Smotherman. He's like the ultimate cowboy. He's like somebody you'd see out of a movie. Always got that cowboy hat on. He shoes horses for a living. I told him, though, "Roland, you need to express how you feel about these horses. You've got to tell them. Now, if you think they're part of your culture and part of your history and everything, you've got to express that to them. Tell them all that." He was just nervous about testifying, big time. He got up there. He testified about the horses and what they meant to him. He said, "The horses that are not bothering anything. They're doing fine out there. They're just doing really good." On cross

examination the government's attorney asked him, "Those horses out there, you say that they're doing fine and getting along real good?" He said, "Yeah."

[tape meter, 350]

And the government's attorney said, "You really don't know how they feel." He said, "No. I haven't asked them." (laughs) Which is pretty funny, coming from Roland, especially. But there were lots of things happen in that deal that were pretty different, from around here.

WS: I imagine that's a unique law experience for you.

DK: Yes, it is. Like I said, it's the highlight of my career. I've had lots of things that have paid me better and paid me worse, and things that have just been lots of trouble. But that's the most satisfying thing, to see the system working in a way that it finally responded to the grassroots people.

[end of interview; tape meter, 376]