

Mr. McCLOSKEY. Now, in this case, the surveys and investigations conducted by the U.S. Fish and Wildlife Service resulted in a strong case being made to Mr. Cain—a case which caused him to reverse himself—that there was intrusion on conservation resources, was there not?

Mr. BLACK. I would not characterize it as a strong case. If it were a strong case, I would have recommended that the Department of the Interior resist issuance of the permit.

Mr. McCLOSKEY. Under the law, your report had to be based on surveys and investigations, did it not?

Mr. BLACK. Yes, sir.

Mr. McCLOSKEY. And you have testified here today that your report and recommendations overruled those studies and investigations made by the U.S. Fish and Wildlife Service, have you not?

Mr. BLACK. I testified that I overruled the conclusions that the authors of these studies arrived at, because I did not agree that they warranted the conclusions that were reached.

My recommendation was based on them, in the sense that they received my most careful consideration, but I did not read the Fish and Wildlife Coordination Act as requiring that we accept the conclusions—that the Secretary accept the conclusions—of the Fish and Wildlife Service if he does not feel that those conclusions are within their expertise, or flow from the studies that they have made.

In other words, I feel that the Secretary must be in a position here to exercise a broader policy—to act in a broader policy role, to exercise some discretion as the principal executive officer of the Department.

Mr. McCLOSKEY. Well, no part of your recommendation is based on those studies and surveys, is it?

Mr. BLACK. I do not know what you mean by “based on.” In the sense that my decision adopts the conclusions that flowed from these studies, the answer would be no, it does not adopt the conclusions.

Mr. McCLOSKEY. I do not think we are just arguing semantics here. A study and an investigation result in a conclusion, and in this case you overruled that conclusion and substituted your own judgment for the conclusion of those who had made the investigations and surveys; did you not?

Mr. BLACK. That is correct.

Mr. McCLOSKEY. And you did it in a sense of urgency while the Department was pursuing a contrary policy for the preservation of the Potomac.

Mr. BLACK. I did not, as I have testified before, do it with a sense that there was any deadline involved or sense of urgency in the ordinarily accepted sense of the term. The bureaucracy is too often criticized for never arriving at a decision, and I wanted to do my part to help move at least one decision along.

But again, with respect to my substituting my judgment for theirs, I feel that the Fish and Wildlife Coordination Act does repose a measure of discretion in the Department's officials, and that I am not bound by the conclusions that the Fish and Wildlife Service may reach or there would be no—I would have no function, or the Secretary would have no function, under that act.

Mr. McCLOSKEY. Then, it is your interpretation, I take it, Mr. Black, that under the present law, while it says that your recommendation will be based on these reports and investigations, you are left the