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Interviewer: Tom Martin (TM)

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TM: Today is Wednesday, September 18th, 2019. This is part eight of a Grand Canyon oral history interview with Dickson "Dick" Hingston. This oral history interview is conducted at the dinner table of Tom and Hazel at our house. My name is Tom Martin. Good morning, Dick. How are you?

DH: Oh, I'm doing good. Thank you. Glad to be here.

TM: Thank you so much for carrying on with the interviews here.

DH: All right.

TM: We finished up part seven talking about the national park service report to Congress, which included a lot of data on sound impacts at remote locations throughout the different... some of the different national parks. And that report then was submitted to Congress in 1990...

DH: 4. It was the original version of it. Yes, that's right. The basic first edition, you might say the main edition though.

TM: Okay. Do you want to pick that story up?

DH: I'll pick up that and say how this impact... this report was sent to me by Wes Henry in person. I mean, it came to me in a personal envelope. And we might say about Wes... another thing because just to clarify the record on him. I had of course, done the sound measuring work at Zion under his supervision. His...the way he intersected with me was that he did start with BLM in the spring of '79 as an outdoor recreation planner for the bureau of land management. And then he took a position as a budget analyst for the park service in Washington. Then he became in 1990 just as I started the Grand Canyon work, he became a natural resource specialist in the ranger activities division. And he remained in that position for the next 13 years working hard on wilderness management issues almost to the last, and his Memorial program, he died, you see, in the end of 2003, says that during that time, he also dealt with difficult and frequently contentious park overflight issues. And, in fact, a Grand Canyon memory of mine that definitely tied to his life was in fact, read out loud by a daughter of Wes Henry at the NPS memorial service in Washington D.C., which was held in...I think in December of 03 after he died. And so

that's just for the record. But one of the reasons this report had such an impact on me was a very, I thought, valuable move that Wes made in putting this volume together because right after the acknowledgements, various people that had to do with this report, we hit an essay. It's an essay. I had never seen it before, but it was by Pico Iyer and it had appeared in Time Magazine originally in about 1993. It's copyright 1993. It's called the Eloquent Sounds of Silence. It's a two...fully two page marvelous essay that would be too long to read for this history, but is worth reading by anybody interested in this subject. And I remember I opened this at the end of the day that I had received it in the Sierra Club LA office in the late afternoon. And I came across these two pages and I was stunned by the fact that it started with something like this in a government report. It was very beautifully elaborated emotive meanings of silence. The place of natural quiet and the silence in this Pico Iyer essay. And I remember my reaction to it was...I was so moved and also elevated by it that I...you see, I had come under attack from some people who didn't think this was as important an issue. Natural quiet. They didn't see that.

TM: You mean within the club?

DH: Within the club.

TM: Oh, I see.

DH: Oh, yes. There were...this issue was still emerging. And there were people in the Sierra Club as we see even in other related organizations who do not value this the same way. They don't understand it. But Iyer did. And he laid it out in the first two pages. And I just remember, you know, putting my head down on the desk and just thinking about this. Oh, so this is important. This subject matter is transcendent because that's the way Iyer saw it. And there's no way Wes Henry would've put this as the opening statement if he didn't believe that.

TM: And who was Pico Iyer?

DH: Pico Iyer has basically done a lot of travel books but with a deeply philosophical bent. He's one of these people, you know, immersed in that world. And he wrote many books, and this came from one of the books. He does seminars on meditation and silence, and he knew that the Buddhist world and the Tibet, the, you know, the Tibet world of the world of literature. The world of...he quotes people like Thomas Merton, a famous Trappist monk. And he quotes Melville about silence. He refers to the silence of the Tibetan in Tibet of the flags flapping in the funeral, flags flapping in the silence, so on. So it's too long to read here, but it's worth memorializing. I think in the history. So then you see...then you turn to the table of contents only then...and yes, I would just say that the background introduction is a very important history of all of this and then the scope of the overflight problem. Introductory chapters are loaded with very meaningful information, which was having a special resonance to me after having read that essay and based on the juncture that I was at within the Sierra Club in Los Angeles. So that was the.. I think answers that opening question.

TM: Nice. So this report then went to Congress?

DH: Yes, it was all in before them as they adjourned in '94. And one of the things that happened at the...at just before adjournment which I should,...which is relevant was that within a month or two of my receiving this report, we came to the final showdown in Congress as to whether they were going to pass the California Desert Protection Act. This was in the closing days just before the Gingrich revolution came in with that election in early November. So this was the last chance with Clinton and the Democrats. And we came to October 8 for the final vote in the Senate, and it was a hair raising vote because... it was tied and that wanting to break the tie had...was the Senator from Illinois who accidentally locked herself in her garage. I saw this in Flagstaff in a motel on the television on the way back from my sound monitoring work. But I stayed at a motel and they carried that session of the senate live when they had the drama of Moseley Braun was her name. And Moseley Braun locked in her own garage and couldn't get to the senate floor for at least an hour to cast what would be the deciding vote on the California Desert Protection Act as a Democrat. They got her out of the garage. Somehow she got out of the garage and made it just in time. And Braun broke the tie. I still remember on television.

TM: So you mean the garage door opener broke? She's locked inside her garage?

DH: She's locked in her home garage...

TM: and she's probably, you know

DH: Frantic.

TM: calling for help. And people finally get the door open.

DH: The senate...that's right. It's one of the great dramas of the California Desert Protection Act which enlarged so much wilderness in three new parks and so on. So that mattered to the Sierra Club in Los Angeles. No question about it. It was a...the ultimate...I'll never forget on the television. I still remember Senator Diane Feinstein of California running up when she saw Moseley Braun enter the senate chamber and throwing her arms around her. Floor manager for the bill was Diane Feinstein So it sticks in my mind because this was important that that upped the anti in terms of silence as a value because the slogan of space, solitude, and silence was the logo basically of the movement for the California Desert Protection Act. So that...then I came back to deal... pick up my pieces...find another apartment...resume... I changed apartments at that point. And now I was in LA and we had to deal with...I think it was in the first month, I finally got Wes Henry's report. In the first month I was back that this report was laid on my desk, which ratified in its own way all that work I'd been doing in Zion with the sound monitoring machine and so forth. So it a great convergence of events elevating for me. Then you come to the report itself, and then you've got...you find you've got to wade through all the technical kind of stuff mixed in with the motive stuff. And you wind up with some of the early measurements that I may have mentioned last time in terms of sound values for four Grand Canyon points. Separation Canyon, Bright Angel Point, Toroweap and Point Sublime as centerpieces of the foundation on which lead natural science...the baseline for the natural quiet... the natural quiet argument and on what it would necessarily...it would have to proceed from this data, this Grand Canyon data. So, you know, I...it would take too long I think to give too much of a...it goes through wildlife...it...a lot there...a whole chapter on...chapter five had to do with the wildlife, but also on

visitor enjoyment. So these are all tremendously important topics. We didn't know which one would be...like the most...there were visitor surveys, you know, so many people interviewed...back country and front country stopping points, perceptions of park managers. They interviewed aircraft users and owners, in terms of, you know, what access modes they were using. They got into the objective management objectives for where natural quiet would be most important. For example, the pertinent zones were back country use zone and the river corridor use zone so right there... they knew where that...that was the place where you had to restore and maintain natural quiet by protecting the wilderness character of remote areas. That's the core objective. And the fact is that Grand Canyon was supposed to be 94% managed for wilderness by the park service because since the late 70s it had had that designation. In fact, the whole intention...in the...as you remember from the mid 70s was they were going to make all this wilderness. Only to be derailed by the problems particularly I think at that point maybe it was the river corridor that it derailed it, or Hatch...in the Hatch brothers. So that's all. I didn't know all that history at this time. You learn [laugh] you have to inner-weave these things over time and it takes time. But you're trying to read the...here I am, a new person in an office with 40 fires going on, you know, electoral politics and conservation politics and so on. And I'm confronted suddenly out of the blue with this book and these maps. And one showing the bulk of Grand Canyon in red because it's violating their natural quiet standard as proposed in here. The thing that made it go from east to west in the red, it was the problem of the jets. The high level that was revealed in there because they knew they had the jet problem and the law said aircraft. It didn't say air tours. It said aircraft. As the source of the problem that needed to be remedied. So you wind up with early illustrations showing how far out the sound goes for each of these vista points from a single say twin otter or a bell jet ranger, 15 miles radius noise. And so the report got to...finally...you got to the lack of a substantial restoration of natural quiet in the Grand Canyon National Park on page 10.4, where although there had been progress, yes, there had been some progress in curbing certain air tour excesses. Nonetheless, it says the regulation, in spite of the best efforts of all involved, the regulation has not resulted in a substantial restoration of natural quiet in the park. And the continuing growth in traffic may diminish or negate progress today. So the NPS believes that improvements to the SFAR are necessary.

And so then came a series of recommendations to Congress of the back of the book, listing therefore priorities actually for several other national parks because the law addressed other national parks. Here's Bryce on one of the lists. I'm just speaking to the southwest parks. Here's Zion on another list as a priority for...and I'd been measuring noise in Zion. So, you know, all this noted. And then for the Grand Canyon, it went through the...all kinds of things about the recommendation, but this was where the recommendation came that it was, you know, that the standard had to be at 50% or more of the acreage kept to below 25% time audible, and that was in this report. So that is now out on the table very clearly as to what the park service, which had the right, the interior...that means the interior department could...was allowed to propose that standard. I mean, that's...and everybody knew then that that's what the standard was. And so then there were...the next step would, of course, was going to be hearings. There would be hearings. Congress would hold hearings. And you would...and there was one I wasn't able to...I...didn't...can't...it may have even happened in the period I was...I think it was the first year even before I could get back to LA, you know, but it was underway. And so you come to what was the next shoe to drop. And then the next shoe to drop... and this was the other startling moment for me was all of a sudden in April of 1996, somebody in the Sierra Club office brought me the federal register for April 25th of 1996. And there was the notice from an executive

director of the president...and it was to begin the rule making on restoring the natural quiet of the Grand Canyon. And the rule making stated that standard and it stated a number of procedural things that would then go on to implement it. And it gave a deadline. It gave two deadlines. One deadline was to be December 31st of that same year for the FAA to produce a plan that would make immediate and substantial progress towards the restoration of the quiet. And then it established a longer period to ultimately get to the full what they call substantial restoration of natural quiet. And I remember when that report was brought to me, I looked this over and I said, oh my god. I'm here at this desk at this moment and this report has probably changed my life. I mean, the implications of this because now you're beginning a battle royal because now you're under the authority of the president and you have a tangible numerical goal that has to be achieved. And there's going to be a fight. And do I want to immerse myself in this for this many years that it will take?

TM: Did you get a sense at the time of who the players in the fight were going to be? Did you understand at that time the role that the FAA would play in support of the flights and to the detriment of the concepts in your report that the national park service put out?

DH: Yeah. There was enough understanding to know that this was heavy, and it would be like you say that the FAA as the lead agency would run the rule making. The only thing is they were under a law and they were under a timeline. So I understood that now is where push comes to shove.

TM: But the FAA was under multiple laws. One was the restoration of natural quiet, and the other one was the promotion of air flights.

DH: Yeah, they still had the promotion mandate, although somewhere in the Clinton administration that was taken away from them by executive directive from Clinton. But just like Trump does stuff like that now, he makes his moves that he can make. But they had that and we knew that the promotion of aviation was part of it. And that's why this intricate song and dance had to go on between the two agencies because you had one was the mission to maintain wilderness character within the park system and the other to promote aviation wherever and whenever it could. So yes, that informed me of all dimensions of it in terms of how a congress might operate on this. It was not that well understood by me at that point. I did not understand all of it. I'd never been to a congressional hearing. And then furthermore, the Congress had just become Newt Gingrich's congress. And I remember Rick Ernenwein who was one of the principal consultants for the park within the park service who wrote this book telling me many years later that the Democrats should have got all this done while they still had the full power, which was ended. That effectively ended on January 3 of 1995 when the new senate was seated.

TM: It'd be hard to argue I think that the Park...I mean, if they had gotten a report out earlier, maybe that

DH: It might've made a difference. It could have made a difference because the FAA would have been back further into a corner. In fact, I will say from my memory here that it did come finally after a whole bunch of stuff. We had to...we got lawyered up during that next six months. We were lawyered up with earth justice attorney Robert Wiygul becoming the lead attorney working

with a coalition of Sierra Club members. And we were lawyered up. I began actually doing a series of things from my emotional base. I had the...there was all kinds of things where we were still trying to establish among our own people the transcendent importance of natural quiet that...that Iyer had prefaced this report with. And so I remember posting...beginning to post a number of items to a list serve that Robert Wiygul established of 25 coalition members, which were more perhaps literary even semi poetic, dealing with the importance of the underlying need to preserve that actual quiet...why that mattered. You're trying to get as much as you can, but it's going to be a fight. But you need to...like with Iyer, you have to put out why this is...this matters. So I did...that was some of what I contributed even as we waded into all the, you know, you have to...you're going to wind up with comments on the first wave of rule making. The FAA is now under deadline, so there's a series of deadlines in 1996 where the public has to have an opportunity to comment. There have to be all, you know, all kinds of stuff, which leads to a December 31 date. December 31, 1996 where it's push comes to shove because there has to be a federal action on that day. And in fact, the federal action took place on that day of all things on New Year's Eve. I was in Santa Barbara visiting a friend. And I remember a...what was supposed to have been a vacation trip being interrupted by the, you know, the publication of the press release and all this stuff that finally came out on December the 31st. And I have inside information from the people who know in Washington that actually the FAA went to Gore and told Vice President Gore and told him that we are basically...we're not inclined to do this. And they tried to back out at the last minute and Gore basically told them, yes, you will. And there's...you had no alternative. And if you defy us here, there will be severe consequences. So it appeared. That's inside information from...I can't remember if it was Ernenwein or not, but I would just say it was...to me that seemed of authoritative inside information I wouldn't have known otherwise. So the FAA was in a state of defiance. Of course well they might be because they had the problem of the jets. When you look at it, what are they going to do? You're going to had to move jet routes, the way it looked. But even to just deal with air tours, it looked like you had to do all these things, and that's where Clinton instituted the curfew on the east end was part of that directive. That was one of the major things, and the no fight below the rim was another one. So there were two main points that were revealed to the public right there. And of course, aircrew operators objected to that, but they...saw that something was going to happen. And the modeling was suggesting that the air tours alone were violating the 25% of...50% of acreage standard. So they knew they were gonna...there was going to be a push back on just the air tours. They could see that. So, you know, what happened after that was immediate legal pile on. Everyone was in court in the beginning of 19...the next year, everybody's in court. As soon as the FAA can publish a...well...you could then get a series of rule making. You go into rule making so you have draft rules and you're going to have public hearings and so forth. So all this characterized 1997.

TM: Dick, I'm confused. It sounded like you appreciated it right away that they were...dragging their feet. This was nothing that they wanted to pay much attention to. I get that. The December 31st, 1996 federal action, did that precipitate the litigation? And if so, on what grounds was the litigation? Does that question even make sense? I mean...cause you mentioned that there was a bunch of litigation that started...

DH: Yeah. Let me...I'm going into a chronology that I have to find that chronology though.

If I can find that again. I resent it. Because all of these timeline things in 1997 are...what happened in 1997 is accessible on the email. So there a series of dates in there that the record shows where in '97 these things occurred. And so maybe...what was your question? Maybe I can just answer that

TM: My question is...you mentioned litigation started in 1997.

DH: That's correct.

TM: And my question is on what grounds who was litigating for what? Do you remember?

DH: Well, I think that the air tour operators litigated against the Park Services noise assessments. They had their own noise consultants. They didn't believe it was as bad as that. And even this standard used to, for example, they didn't like the standard for natural quiet being based on percent of time audible. And where...how you calculated that. So now you're getting into audibility and then you're getting into problems of spectrum because noise is heard across a whole spectral frequency. So the average might not be the same as that certain frequencies that you're starting to pick up like the piccolo in the orchestra compared to the drum or something. And so one argument had to do with where does...where is the actual floor of natural quiet? At what decibel level is that? And it turns out you've got to have it quiet enough to hear, say the piccolo as well as the drum. So that meant that you're dealing with noise that might be adverse at levels much to the surprise I think of some of the air tour industry as low in the canyon as say 10 or 15 decibels. That's a shock to an industry that up to then had only been regulated by the 65 DNL standard, which basically pauses that noise is acceptable everywhere. As long as it doesn't average more than 65 decibels for some period of time like a day...whole day average at 65 decibels. And you...we saw that in some of the...first environmental assessment that came out about this. FAA put the 65 then standard in there and insisted on that standard. And here we are arguing about at what point in the....this is a logarithmic scale, so every 10 decibels another 10 power magnification on either direction. So you're telling me about 1 millionth of levels 65 or less. I mean, they were shocked to confront the meaning of that in terms of calculating substantial restoration of natural quiet. So they spent much of '97 attacking with their sound consultants attacking anything that the park service put out about the floor. Or...major adverse impacts at what level. They didn't accept audibility and the way the park service understood audibility.

TM: But I can see the problem right away is I have two government agencies. One government agency is trying to protect a resource. A second government agency is trying to protect the machines that are impacting the first agency's resource.

DH: That's correct.

TM: And so right away the process was set to failure because I mean, the two agencies have two different goals and mission statements.

DH: Yes, which informs them emotionally as well just because of who's drawn to these agencies.

TM: Sure. You know, one agency's job is to promote aviation. The other agency's job is to protect natural resources.

DH: That's correct. And that's the conflict.

TM: And it reminds me of the Echo Park Dam Fight where the bureau of reclamation whose job is to control the water resources. And the park service was trying to control the resource when the water resources are in the park. Then these two agencies were a conflict.

DH: That's correct.

TM: And so in this case, the Park Service as an agency has to rely on the Federal Aviation Administration to set the standards for the park services resources?

DH: Yes.

TM: Well there's a terrible problem right there.

DH: Well, you had an irreconcilable conflict from certainly the FAA was...we were shocked at the 65 they just brought that out in boiler plate.

TM: Did they bring that out in December 31 1996 or was that December 31 1996 announcement saying that they were going to go ahead and start a rule making process?

DH: They were going to have to do the rule making now. They were going to do a rule making. And the idea of the rule making was... I think to Clinton...if I remember the idea was to have that in place by the middle of May of 1997. It'd be rather fast rule making, you know, based on now that they had their marching orders. Well, they had made their...they had record...I mean, they had a way of proceeding what they had to have a final rule by the middle of May. And then there was going to be more maneuvering at that point. Even as we geared up to attack the idea that substantial meant only 50% acreage because the fact that we were only going to 50 or more, but 50 or more is a kind of a throw away word when you think about it, you know? That's...if you don't define that, all you're saying is you're allowing some leeway for...yes, you have to have a margin of safety in getting over 50 that's true. You might not want to have 51 because then there are going to be arguments about the math. And you know whether that was enough covered, but that 50 was considered by us grossly as with good reason knowing where they wanted to put the 50% of the acreage under the noise. So we argue that was a going to be a central thing that the lawyers were gearing up to attack in court. And they did. And when we got this case in front of Merrick Garland's court, we were arguing about that as maybe the...I would think is just the core thing.

TM: Okay. I'm just trying to understand this. So bear with me. The Park's report set out a standard for natural quiet.

DH: Right.

TM: Which...based on park service data and study of natural quiet set a very high bar as one would expect for the preservation of natural quiet.

DH: Higher than they'd seen. Yes. Higher bar.

TM: Right. And the FAA came in with a different bar, a much lower bar. Is that, I mean, just trying to paraphrase what was happening here by May of 1997. So then the litigation was prompted by saying, look, the park has justified this standard. FAA is now justifying a much weaker standard.

DH: Yeah.

TM: And so the litigation that was started as you mentioned in Merrick Garland's court was a fight over the standard, is that correct?

DH: It was a fight over the standard. I think that it became a fight over two parts of that standard. One was over the...just the absolute level in acreage. So that was one fight over the 50% acreage benchmark.

TM: So the park said...so the FAA said 50% of the park.

DH: Yeah. Well 50 or more the parks said...well, the law said 50 or more. And we thought that substantial was much more than 50.

TM: And that was a backstop by the NPS report, is that correct?

DH: Yeah, well, it's wilderness character. Is wilderness is 94% of the park. And so we said that 50 was inadequate. It would be a much higher figure, significantly higher figure. Without naming a precise figure, 50 didn't cut it. And so the argument was over what the correct...that 50 was inadequate, grossly inadequate. And it had to be elevated considerably. So we

TM: So that was

DH: we attacked the 50.

TM: So that was one point. There were two points you mentioned. One was the...

DH: And the other was which day do you measure it. In other words the FAA wanted to measure this on average day. The average day of the 365. So...

TM: But how were they defining average?

DH: Well, you just...well, there are two ways to do it. One would be the mean day. That is the one hundred eighty third day in the rank order you would take the mean day.

TM: Is that what the FAA wanted?

DH: No, I think that what they did was they wanted the average day...they wanted the average day. So you'd have to average all of the 365 days up into...you would just average whatever the SAR acreage was on the average day. So we attacked that. And there were other arguments about the noise science coming from the air tour operator.

TM: Okay. So let's talk about the average day for a minute.

DH: Yeah.

TM: So the question is, here's the acreage we want to look at.

DH: Right.

TM: And then the next question with the noise level that we're going to look at that's the average and clearly visitation to the park goes up and down throughout the year. And sometimes the weather's really bad, so the tour flights don't fly. The jets are pretty much continuous year-around.

DH: Yeah, that's right. And you still got that in this picture there that's part of it.

TM: Right. Right. But if you picked a mean day, one day middle of the year, it will put you in peak visitation time

DH: Yeah, it probably would.

TM: versus say a January day.

DH: Yes, that's right. Which is the low end.

TM: Which would be the low end. So I'm just trying to understand the focus points of the litigation.

DH: That's right. Well, there was a Grand Canyon one and a Grand Canyon two case. By the way I should say that emerged from this. In other words, you had a kind of an iterative process that went on with the initial rule and then another final rule. And each time you get a rule, you get to litigate over it, you know? So over time those were the two benchmarks that were coming. Now we can check the chronology in the record for which one happened on which date and which argument, if there were two arguments before the court that were coming. But I think the first main argument made from our side was the problem of the 50%. What we were getting out of Clinton's initial step here was not...it was not enough. That was inadequate. We didn't see a plan to go any higher. So that's what went to the court.

TM: Okay. So litigating...when a federal agency does planning, there are windows for litigation.

DH: Yes, there are.

TM: And it sounds as though the FAA windows for litigation were a little different from the park services windows for litigation.

DH: Well, it was...FAA is a lead agency, so you're going to go by the agency's windows. That's right.

TM: And their first window for litigation was during their rule making process...their initial at the end of their initial rule making. And then you could litigate again at the end of their final rule making.

DH: Yes, something like that. We can check that record but, yeah, that's the broad brush of it. Otherwise we'll get lost in the weeds here.

TM: Absolutely. Absolutely. Okay. All right. I'm still a little lost on this...I believe it's time audible. The...which day that you're going to measure this average sound, was that addressed in the Park Service report at all or was this something that came up as an issue out of the FAA rule making?

DH: It came out of the rule making. I don't think that the day is...that's not specified in the recommendations or in the initial proposal.

TM: And do you remember roughly what the FAA was looking at and what the conservation community was looking at as far as how to measure this average noise on any specific day? We're quite in the weeds here, but I'm just...because of these...this was a key point in litigation I'm trying to understand it.

DH: Well, best available science.

TM: Sure.

DH: And both sides would come in and say we have the best available science. And the FAA...and the industry said our best available science is what our consultants say it is. And the Park Service came in and said best available science is what our consultants use.

TM: Okay. And what they were looking at was sort of an average amount of noise every day or per day.

DH: Well...audibility was the only thing that they had going. The park service didn't have another standard. They didn't have any standard about loudness, which was in retrospect was quite a defect. That was quite a defect. And the Park Service paid for that defect dearly. We don't know still to this day how that got left out. Things like Lmax, which is the peak noise of a given flight, for example or peak LEQ, which is the average noise over say a minute or over an hour over at given location points or even in the interest like a composite of location points. You...we did...they didn't have...they left that out of the standard. It was only about percent time audible.

TM: Okay. So if the percent time audible of noise was really low, but the noise that you heard was really loud, they had no coverage for that.

DH: They had no control over loud noise. None. So if you could have like heavy surf...and the height of the waves didn't matter. The only thing you were measuring is just whether there were waves or not. That's all that counted. So clearly that should have been in there from the beginning in retrospect.

TM: And did you get a chance to introduce that? Did the conservation community get a chance to introduce them?

DH: They never...as far as I remember we never properly...we did not deal. The best we could get to was peak day as the...for the audibility floor being brought up...but not in...we never introduced any other standard like LEQ or Lmaxs or number of events above things like that. There was no basis in the science that we had. We went for what was on the table. And we talked about that. So

TM: All right. I'm still unclear on this. An average day. But let's keep going. Hopefully it will....all make sense

DH: Well, all right. The average day is just the...would be the median day. The hundred eighty third day.

TM: Is that what the FAA wanted?

DH: Well, let's see

TM: I mean what did the conservation community want as a value for an average day's worth of noise?

DH: Well, we didn't accept the average day. In the end we said it has to be peak day. And the park service had said it would be peak day too. The park service somewhere in the rule making here issued a statement, which referred to peak day, but they...what they did...they...it was kind of buried in a footnote somewhere. They were afraid. It was very clear that the park service is intimidated, but they sneaked it in somewhere in the report. And it took some sleuthing by the...our lawyers and the court to dig that back out again. That peak day, whatever that was, was the benchmark for whether the standard was being violated, whatever the peak day was. We never got into serious arguments about average day in the end because we prevailed on peak day. I mean, we prevailed in the second lawsuit about peak day.

TM: Okay. And the concept with peak day was out of 365 days, one day is the loudest.

DH: That's right. And that was determined based on the data that had then as August 8th. So that's when it peaks. And of course we've learned since then that this day naturally, it does vary. It's not always August 8th. But for the purposes of the court looking at this under the law it had then we had to go with that.

TM: Okay. So I have a landscape and we're going to look at arguments over how big the landscape is. 50% of the park. 94% of the park. Here's a landscape. And on that landscape, there's going to be a loudest day on this landscape. So it was the concept then to decrease that loudest day so it never gets that high.

DH: You would have to have the loudest day...would have to be less than...it would have to be more than 50 point...50 plus one restored to 25% or less time audible. The loudest day could be no more than that. If you had anything more than that, you'd be violating that rule.

TM: Okay. So let me make sure I understand this. So the concept was that on the loudest day, that loud noise was only audible for 25% of the day or less.

DH: That's right. 25% of time that...that's correct.

TM: Over this geographical area.

DH: That's correct.

TM: Okay. Thank you. I'm just trying to boil this down into something understandable, I mean, I don't mean to over simplify it, but I just want to get it down to where I can understand the concepts. Great. Thank you. All right. So that May 1997 deadline of the FAA was to produce a rule making.

DH: Then you had to have a rule. So that everything's under the rule. Final rule. And then you can go to court after that.

TM: Okay. And so they did that. They came out with a rule. The Conservation community went to court on what you're calling Grand Canyon one litigation?

DH: Grand Canyon one. Yeah, that was Grand Canyon one. And the air tour operators piled on too with all their points. I mean, they piled in there with all things about noise measurements. And I can't remember all of the things that they said. They did not prevail on any of what they put in the court basically did not support the air tour operators. But they...the question is, would they support what we were saying about the...or more that it should be way over 50. And I only...if we're getting to what happened then finally that decision was released in the...in September of...took til' '98. Yeah. It took til' September '98 we finally got a decision out of Merrick Garland's court. That was in litigation for a year and a half with all the more tinkering meanwhile from the agencies. But we got that ruling then. And what do you want me to talk about the court reasoning on that? I mean

TM: Yeah. What was that ruling in 1998? Cause that would have been two and a quarter years of litigation?

DH: Well, rule making and litigation, that's right. It took from January 1 of '97 through to the final arguments in front of the court, which must've been in the spring of '98 and then the court

rules later that summer. And several months later I got word of it. I was already in Utah by then, but...by the middle of '98 we had a court ruling since about a year and a half.

TM: Oh, I'm sorry. Yes. Thank you.

DH: Yeah. You can check against the chronology

TM: Yeah.

DH: that's online. But

TM: No, I was off by a year. Thank you.

DH: that's right. So it took that long to get Garland's opinion.

TM: Which was?

DH: Which was that substantial...and what he did in the opinion, he went to Webster's dictionary as actually they often do. I've seen since that this is common. They'll go and... a word like substantial is a big problem word. It's a big wiggle word for Congress. You have a congress that doesn't really want to face up to idea of an absolute standard or set an absolute standard. And so they just throw a word out there like substantial or substantially restore. And so we argued for all kinds of reasons that it should have been much higher than 50, that we didn't think that was substantial. But Garland comes back with a dictionary definition, which goes through a range. Actually Webster's when you look that up, you'll find that there's about six meanings that are considered substantial. And Garland would not choose one of them. He just said, well, the lead agency, that's the FAA, is entitled to use this word substantial within the dictionary definition that Webster has so it is in the main, something like that. In the main is okay. If you're over 50, it's okay. It's in the main, it's substantially restored. So that's basically the gist of where it came out. Although there were more stringent definitions to be sure, but this would get you into the idea of whether the court is going to make law or just have...this is the argument plaguing America right now to this day. It's the same argument whether the court makes law or just implements and enforces just the plain meaning as to the extent that Congress gave it meaning.

TM: Right. So this rule...opinion, a legal opinion by Judge Garland basically said the size as defined by the FAA, 50% or greater is going to be the size.

DH: That's right.

TM: Okay, So that was a loss.

DH: It was a loss. We saw that as unsatisfactory. I think we hadn't got the peak day in yet, that came in the next...in the Grand Canyon two case. But that was a loss for the Grand Canyon one case. This still had all kinds of nuts and bolts to be done. We still have a problem with jets and so on and so on. So obviously this thing was going to wind for a while. So it...we knew it wasn't all settled right there cause you had to have this wave of rulemaking, but then you ended up in

another wave and meanwhile, the park service changed to put in another unexpected standard because they introduced the concept of noticeability versus audibility as the baseline for certain zones of the canyon. That noticeability was okay. That's the same as audibility plus 10 decibels. So that came in there as a way to kind of fudge it. I don't know who made that deal. We would have to go into this. I heard that in retrospect that some people...somebody in the park service. And I don't know if it was Wes Henry...may have cut some deal with the devil. It wasn't totally vetted properly inside the service before it came out. But that's where we had noticeability versus audibility as a way to set the audibility floor. I mean, you...the law said audible, but the park service accepted noticeability for the developed areas. Now that's a rather small part in the park is not in the end. When we look back on this, in retrospect, it doesn't make a great deal of difference to add 10 decibels to that floor in the areas that they added it, which is just the South Rim village...area...you know, area on the south side mostly.

TM: North Rim developed area?

DH: All that is is Bright Angel point.

TM: Well, it's the Bright Angel corridor. It's the Phantom ranch. It's the north and south Kaibab trails. It connects the North Rim and South Rim.

DH: That's right. Yeah, that right. So they had this...they had certain amount of acreage in there, but that wasn't going to affect it all that much. But an awful lot of energy was expended all over that on both sides. Awful lot of energy. And to this day, it's an intellectual question. Maybe that's okay intellectually to have a baseline like that. On the other hand, maybe not because not all of the noticeability area is subject to auto noise and the pound of feet and

TM: The train whistle and

DH: Train...was...is...it was not a...it was a kind of a...just a construct that somebody wanted to make a deal. Show that they are willing to make a deal. So it was a construct and made this deal.

TM: And for the developed areas as you mentioned with the buses and the Harley Davis motorcycles and the masses of people...

DH: But that's at the peak of day. You had quiet times where you didn't hear anything.

TM: And also the overflights...certainly the high flyers called the jets were flying over the developed areas.

DH: That's correct.

TM: They were also flying over the undeveloped areas. And the air tours were not flying over the developed areas. They were flying over the undeveloped areas.

DH: That's correct.

TM: So the concept of noticeability in the developed areas, I can see why that could be argued as that standard there is a little higher in the developed areas versus the wilderness areas of the park.

DH: Well, so you'd call it a weaker standard in the developed areas.

TM: Yes.

DH: It's a weaker noise standard. So they allow the extra 10 decibels.

TM: And of course then there is the next problem of the weaker standard isn't a sharp land line on the ground as you go from a developed area to a wilderness area.

DH: No, there's not really. It's not...It doesn't really work that way. It's the thing...is the way that the park service in its infinite wisdom zones the Park you know, but that's all they have to go on in terms of authority. Otherwise it's subjective. So they're going to look at that map and say, oh, here's this zone and here's this zone.

TM: Okay. All right. Thank you for saying that. That makes sense. So that Garland ruling

DH: He was the chief justice on the bench. He authored the opinion. On the case. He was chief justice on the case.

TM: All right. Meanwhile, the FAA has done its preliminary rule making and is now heading to do its final rule making, is that right?

DH: Right. Oh, but there were mistakes the FAA had made. So...and they even caught them...because the park service caught some of the mistakes or questioned certain things.

TM: How did they make mistakes?

DH: Well, one of the mistakes that they made was that they had underestimated the number of airplanes by 50%. That was a big embarrassment. They had to withdraw rule making for a while until they straightened that one out.

TM: Who caught that?

DH: I don't even know the history of how they had identified the error. I don't know who caught it.

TM: This reminds me of evaporation figures coming from the Bureau of Reclamation, which under scrutiny realized they were 50% decreased over the actual number.

DH: Yeah, that's right. There was an error in the...a serious error by the FAA. And so all of this tended to protract everything. You would delay a rule because now we had to go back and...not that it's going to make a whole lot of difference the way you had the corridors aligned because you're still going to find those same corridors and you're adding...you're just adding more

airplanes inside of these defined corridors. And so it's not going to actually make a huge difference in terms of the percent of acreage.

TM: No, but the noise would be substantial.

DH: Yes, but they didn't have any control over Lmax, which is the peak noise or number of events above a certain level. They didn't have any supplemental metrics like that in there. So all that does is increase the acreage a little bit. How much I don't even know. It would have been...we didn't know. You had to model...that's the only effect, it would be an incremental change in the acreage. It was compliant versus not compliant.

If you put in all...that... because you already had them channeled and then set up flying every which way then you only get a modest benefit from putting in the correction for the actual number of airplanes.

TM: Even with more flights if they're

DH: Even more flights

TM: But they're in the corridor

DH: Yeah, that's right. Cause you have

TM: except

DH: no control over the

TM: except the jets

DH: peak levels.

TM: flying over through the

DH: Well, that's a whole other issue is the jets.

TM: Right.

DH: You know that that's an overlay.

TM: Right.

DH: That's an overlay

TM: With that number

DH: which is going to make it difficult to resolve the law if you still didn't have it resolved.

TM: Yeah. If that number...if the jets...the high flyers were underestimated, that would make a difference because now the entire park is being affected adversely.

DH: Well, theoretically, although it depends on the number of jets. But yes, that's right. I mean, the jets are so many though that they're going to give you 100%. It's going to be 100%. 100%...well, actually they were at any given location point, the mean was about 40%..48%...50%...45% time audible from the jets. So the jets are creating a pervasive overlay which is already driving the whole thing into noncompliance anyway if you use aircraft as the base. So that's a problem. You know, and that was all...that underlay everything because people...you've got all these things to argue about. And two agencies. The government don't like each other. And they're getting worn out. What are you going to get with all of this? You know...it...the Congress just kicked that football so far down the road carelessly without knowing what it was doing.

TM: You know I wonder, this issue was brought up in the 1940s. The issue of aircraft over national parks. And it wasn't addressed then.

DH: No, it wasn't.

TM: And so expecting it to be addressed 50 years later...

DH: In this situation it was a pretty long shot though. It was addressed by a ban in 1948 over one unit. Truman and executive order had you...I think boundary waters wilderness actually. Maybe it wasn't a park unit, but it was a wilderness unit. And he made a ban. That was the model that should have been brought forward. But it wasn't. But the model was there. It had been done by the executive directive or order.

TM: But still, Congress did not address that issue.

DH: Which issue? You mean the

TM: The concept of giving the park service the ability to manage its airspace.

DH: No, it...they left the lead agency as the FAA and they basically told the two sides to work it out. And Reagan put in...had put in a presidential statement attached to the law that's told the park service to listen carefully to the FAA. In other words...that's an important part of that record cause that set a tone that the park service is subservient here and you'd better pay attention. You better respect what the FAA tells you. That was in the signing statement, which had no force of law, but it set a tone, which was never reversed by Clinton. Clinton never came in and said anything different. He just came out with his executive directive to do something under the law, which at that time still included the jets. So they did what they did in the sequence that's in the record. And it's there on the park service website for everyone to see today.

TM: Okay. So this brings us up to...close of 1998.

DH: Right. And the decision was about to come out.

TM: Which decision is the final rule making decision, is that right?

DH: I think the chronology will show, but earlier in '98 they had come out with a thing we could sue on, which would have been the final rule. So we...there was a rule and we sued over it. Both sides piled on.

TM: And this is GC 2 that you're talking now?

DH: And I'm talking about GC 1 at that point as GC 1 was argued about during the period '96, '97 and 8. And then you came out with a ruling we call Grand Canyon one.

TM: Okay. And that final rule came out when?

DH: Well, it came out I guess it was in August...about August of...we can check the date, but about August of maybe early September of 1998.

TM: Okay. Just about the time that the Garland opinion came out.

DH: Well, that's the...that is the Garland opinion. I mean, that made the...that upheld the rule. It allowed it to go forward at that point because you had to wait for court, you know. So that's that enabled further work after that ruling.

TM: How so?

DH: Well, then you had to implement based on what the court had ruled. So you had to then move towards a rule that conformed with that.

TM: Okay. So it allowed the FAA then to implement a final rule.

DH: Yes, that's right. Which was supposed to...I think been done by 2000. They missed that date too...

TM: Based on that litigation?

DH: Yeah, based on the litigation. Litigation settled what could be in the rule.

TM: Okay. All right.

DH: Well, I don't think we had any rule effective before 2000. The record will show you're over that line before you get a final all the jot and tittle of a rule.

TM: Okay. It's very complex and I'm just trying to figure out..

DH: that's right. And of course I could...maybe we need to...maybe between now and then I need to just go review the chronology and fine tune a little bit with you in terms of what

TM: because that final rule came out and the issue was not resolved then.

DH: No, it was not resolved. You still haven't resolved the jets among other things. And you still haven't resolved peak day. That's another thing you haven't resolved. It's just all Clinton's directive had said was that there would be substantial progress. Something substantial had to be done. The FAA resisted even that. And then Gore told him, yes, you will do this much and the curfew was really big when they put that in.

TM: Okay. Well maybe this is a good time to tie up this part eight interview.

DH: Right.

TM: And we'll pick up part nine talking about and jets and peak day and what happened.

DH: That's right. What happened then and I'll try to have the...maybe I'll print out some of this and if there's any little thing to correct in the dates that can be done right there. But you know, maybe I'll bring that in as a printed thing.

TM: That sounds great. Is there anything else you want to put in the material we just covered?

DH: Well, no, except that the material was mostly about the litigation. So it didn't have much to do with my...what was happening with me. And maybe I should say that what happened with me was that once we got through all the '97 gone to court, then there was a kind of a lull where my role within the chapter was beginning to feel more and more problematic because I had become this...kind of like specialist. But the job entailed many many facets. The job of conservation coordinator for the chapter. There are many issues including LA electoral politics and all kinds of things where it seemed to me I was not a very good match in the end for going on much more if I really had heart and soul now sucked into the natural quiet stuff and the problems of other parks even beyond Grand Canyon. So I was coming to another of these career questioning moments. What would I do? And out of the blue, there came a little announcement that I picked up from the Southern Utah Wilderness Alliance in the spring of...nine...early... it was early in '98 I picked up an announcement that said they needed somebody on the ground in Zion National Park who would table right there in the park on behalf of the Southern Utah Wilderness Act for millions and millions of acres of red rock wilderness.

That's the Red Rock Wilderness Act was the colloquial name. They wanted somebody to come and table I've done that kind of work. I had done it in Santa Barbara decades before and knew how to do it. I knew how to do it. I knew I could do it and goodness, that would...that was a way to leapfrog out and closer to these parks and have another beginning somehow especially in Zion. And to be put up by somebody who lived in Zion or near it in the home of Del Smith, who was in Rockville near Zion. So I applied and I got the job. So now I had a basis for resigning although it would mean a loss in salary indeterminate whatever. I was stuck in a position though just to take a chance to see what happened. And so I accepted the offer when it came from SUWA [Southern Utah Wilderness Alliance]. And I put in a resignation. I put it...put my letter of resignation in the mailbox of the conservation coordinator as to where that should go. Wouldn't you know, she didn't check her mail for two months. She was sort of A-wall too. She was a smart

person, but preoccupied. Actually that bought a little time for me because it kept the money coming in in my seat, cause I hadn't resigned until she got her mail and read it. So I wound up negotiating finally a conclusion later than I had thought, which was June 2nd of 1998. And I...that was the departure day from the Angeles chapter. And because I had to be in Zion within a week and a family with a place in Utah to stay in the intervening week, I had to be ready to go. So I had this grand exit in the first week of June from the chapter. There was some kind of a farewell dinner for me. I remember we had that. I do remember a great anxiety...personal anxiety about making such a leap of faith there in terms of my future.

TM: Well, going from Los Angeles and a vibrant LA community to Rockville, Utah, I can't think of a more dramatic change.

DH: It was a dramatic change, very, and risky. And I remember sleepless nights so much that I had to use sleeping pills the only time in my life in order to get through some of the anxiety that would creep up at times about whether this was what I was doing. This was a major leap of faith that most people would not make. The average person might not let's just put that way. But with the help of...there was people that talk to me about it and help got me the idea of doing the sleeping pills if I needed that to go through and I did it. And yes, they did tend to work. And so I got to the day where I could leave and drive away with all my things. And I drove into Utah. And first had a week right on the edge of what became the Grand Staircase National western edge...or the Grand Staircase National Monument right on the edge. The sister had a timeshare... my sister had family out there. So I have this nice...I mean, I have this thing to look forward to crossing the border. I had that and then I got to move in Del Smith's house in Rockville. And then I was installed with a canvassing table or a campaign table for the Red Rock right in front of the Zion administration building. Right on the lawn. The superintendent's office windows were right behind me. He could see me every day. And he knew who I was and supported it...is Don Falvey. We'll get to more on Falvey as we go on.

TM: You know what? Let's do...let's tighten this up right here and say let's pick this up at part nine on Zion tabling. And the superintendent.

DH: We can clean up a little loose edge here if we have it on the record. I mean, wouldn't make a difference. We'll mop up anything about the chronology at that point but I think we could go on with the things that happened at Utah. I've given you the overview of the way from what it felt like from the desk, you know?

TM: Absolutely. That will be good because there's a bunch of questions that I've got here now about you back in Zion. And

Well, that's fine.

TM: Great. Okay.

DH: You've got the kind of the stream of consciousness about what was going on in the final two three years at Sierra Club. Yes, that's right.

TM: Okay. Well with that, this will conclude the part eight oral history interview with Dick Hingson. My name is Tom Martin. Today is September 18th, 2019. And Dick, thank you very much.

DH: Okay. Thank you very much.