

INTERVIEWEE: Clyde O. Martz

INTERVIEWER: T. H. Baker

DATE : January 13, 1969, his office, Department of Justice, Washington,  
D.C.

B: This is the interview with Clyde O. Martz, who is the Assistant Attorney General in the Land and Natural Resources Division [of the] Department of Justice.

Let me begin here by summarizing very briefly your career subject to your corrections and additions. You were born in Nebraska, graduated from the University of Nebraska, and then from Harvard Law School in the 1940's. You were a professor of law at the University of Colorado, and after that in the 1960's, with a Denver law firm. You've done a good deal of consultant work both nationally and in the State of Colorado. You're the author, co-author, editor of several works, mostly in water and mining law. You've been Assistant Attorney General here since January 1968. Is that essentially it?

M: I believe that's a good capsule.

B: Is there anything that ought to be added in there?

M: I had some military service as a lieutenant in the Navy, winning the Silver Star, the Bronze Star, a Letter of Commendation. I served as Judicial Administrator for the State of Colorado for one year.

B: That's the position that resulted in a division of the Colorado Judiciary System, is that right?

M: That is correct.

B: At any time in your career, have you had any direct political activity in the sense of open partisan campaigning?

M: No active political activity. I have, of course, supported candidates

for various political offices. I've been a member of the Democratic party all my life. I served as precinct chairman and worked with county chairmen in Boulder back in the 1950's.

B: Prior to your becoming the Assistant Attorney General here, had you had any direct or indirect contacts with Mr. Johnson?

M: No, I had not.

B: Did you know Mr. [Nicholas de B.] Katzenbach or Mr. [Ramsey] Clark?

M: I had met Mr. Clark on the occasion of his giving a commencement address at the University of Denver in June 1967. I am sure that my appointment here stems more from my background in the natural resources and property area and the need for someone with that background for this particular position than it did from any particular association in politics prior to the time of the appointment.

B: That was my next question. Precisely how did you get the position as Assistant Attorney General in the Land and Natural Resources Division?

M: Ed Weisl [Jr.], my predecessor in the Division, was moved to the Civil Division in the fall of 1967, leaving a vacancy in Lands. I don't know firsthand how my name came to the attention of Mr. Clark and Mr. Christopher. My first knowledge that I was under consideration came from a telephone call from Warren Christopher, the Deputy Attorney General, in early October 1967 to determine if I would be interested in a stint of public service in the Johnson Administration; and if I was interested, in submitting my name for further consideration.

As I've often said, no man can pass up this kind of an opportunity in the continuum of life's experience if it comes along. So I promptly said, "Of course I would be interested, if I was qualified and suited for an appointment." I was invited back and visited about it for a day. They said they'd submit my name for FBI investigation, and political investigation, and so forth, and let me know.

B: The "they" in that case would have been Mr. Christopher and Mr. Clark?

M: Yes.

B: Do you know--perhaps you know now--does the Justice Department keep on hand a kind of file of prospective employees?

M: I guess I don't know the answer to that firsthand. It uses John Macy's files as a source of information. I have understood from Mr. Christopher that the Justice Department gets names suggested from the Hill and from other sources. As to the extent to which a file is kept of names within the Justice Department on a continuing basis, I'm not qualified to answer.

B: When you were considering and being considered for the job, did you and Mr. Clark or Mr. Christopher discuss policy aspects?

M: Yes, very definitely.

B: What was the nature of that kind of thing?

M: Mr. Clark discussed basically the objectives of the Johnson Administration, conservation of natural resources, protection of public lands, and in stimulating the use of lands suitable for private entry. He discussed the Colorado River cases, the eastern-western slope controversies in Colorado, the desire of the Administration to protect the water rights of the United States that stood on the reservation theory. He wanted me to give him my philosophy on each of these matters to determine whether I felt I could support those policies.

B: Was the question of conflict of interest raised? Had you in any way as an attorney been involved in the Lower Colorado dispute?

M: I had not been involved in that dispute though the subject of conflict of interest was thoroughly explored.

I did have a number of oil and gas and mining and water clients. I did not have any client who was engaged in any litigation with the

government or seeking any benefit from the government. But Mr. Clark made it clear that I would have to withdraw from all board positions I was holding, and would be precluded from representing any interests, direct or indirect, that I had represented in private practice. Of course, this was exactly what I would expect to do, and I cut all ties with private practice and with private clients when I made the decision to come.

B: Were you in any way still connected with the University of Colorado?

M: No. I was an adjunct professor at the University of Denver at the time of my appointment--a position that entitled me to lecture at the law school if I had the time and inclination. I would take a course every year or two in the evenings, but had no regular teaching--

B: I asked because I know that in some--probably all--of the divisions. here in Justice there is a deliberate attempt to maintain liaison between the law schools and the government service. I was wondering if your appointment was perhaps a part of that.

M: It may well have been.

B: During this period when you were deciding to take the job, did you have any contact with Mr. Johnson himself?

M: No, I did not. Though I understood from the Democratic National Committeeman from Colorado that he had visited with Mr. Johnson about me, so that Mr. Johnson was aware of the consideration of me for the appointment, and was directly concerned with what I had done in Colorado.

B: And presumably did not veto you.

M: He obviously did not.

B: Incidentally, in late 1967 and early 1968, did you have any idea of the amount of time you might be letting yourself in for, the length of your term?

- M: I made a commitment for the remainder of the Johnson Administration. That meant one year, or five years, depending upon the vicissitudes of politics.
- B: As of a few months after your confirmation, it turned out to be just one year.
- M: That was a big disappointment.
- B: Personal or political?
- M: Both. I thought that Mr. Johnson could have been reelected, and that had he stayed in the race, we might have avoided some of the friction within the Democratic party--some of the friction between the parties--that we experienced during the summer and fall.
- B: Did you participate actively in the political affairs of this last year?
- M: Well, financially, yes, to some extent--personally, no. The job didn't permit any participation in politics. I don't think Mr. Johnson wanted it.
- B: It must be in a way frustrating. I would assume that it takes a certain amount of time to learn your job here or to learn your way around. Is that correct?
- M: I have a good staff--good leadership in the career service. They provided me with unusual support in getting background in Division policies and operations quickly. In the spring, before Mr. Johnson withdrew, we reshaped the organization of the Division in order to get Division lawyers into the courts on a more intensive basis, assuming responsibilities that had theretofore been delegated to the United States attorneys. We started an intensive program in litigation to improve the confidence of the young lawyers as trial lawyers so they could provide effective litigating support in the field. These were

long-range programs. It would take several years to bring them to complete fruition.

I must say I suffered a personal disappointment when Mr. Johnson withdrew and it became uncertain whether the Administration would continue, because it tended to restrict me in the kind of innovations I felt I could try in fairness to the career people. It's one thing if you have four or five years ahead to build a program. It's quite another thing if you're facing only nine months and the question of whether it's fair to the men to reshape their organization when they have no assurance that these programs would continue.

B: Is there a converse to that? Is there a certain reluctance on the part of the permanent people to lend their active support to such plans under those circumstances?

M: I'm sure there is. The lame duck period is a very difficult one. I had, I think, unqualified support from both leaders and general lawyers up until November 6. But there has been a big change since November 6. It's awfully hard to reshape someone, or some institution, when they know that your time is dated.

B: Actually, almost all of your section chiefs are long time permanent people, aren't they?

M: The average period of service of the lawyers of the Division is twenty-two years.

B: Which means they've seen an awfully lot of Assistant Attorneys General come and go.

M: Right.

B: How do you find the caliber of these men--their professional competence and so on?

M: It varies. I've got twenty men who are as fine trial lawyers as you'll

find anywhere in the country. I've got, maybe, fifty others who are competent trial lawyers but have lost their motivation under the umbrella of career service protection. I've got another twenty or thirty lawyers that are doing an adequate job so that they're not removed, but their performance is disappointing. One of the big tasks that we have in a Division that has this kind of tenure--this twenty years or more service already--is to provide stimuli to get these competent fifty to get remotivated and perform to the reasonable limits of their capabilities, and to try to find jobs for the twenty or thirty I mentioned who are really drifting to get performance comparable to their compensation.

B: Was this part of the motivation for the reorganization?

M: Yes. There were two motivations for the reorganization. One was to provide stimuli to the long-time lawyers within the Division. The other was to train young people to take the places of those that were going to be retiring in the next four or five years. When you have a team of lawyers of that kind of experience it's hard to train young men without a program designed for that purpose because the old men have the competence. They take the leadership. They take the cases. It's easy for the section chiefs to assign responsibility to a man who he knows can assume it and leave the younger man to do office work, research work, non-litigative assignments.

B: Have you had an opportunity in your tenure to be involved in recruiting--getting new men?

M: Yes.

B: How has that developed?

M: We have recruited about twenty men in the last year--young men. Two types. One is young honor students out of school. We've set up a

special program for them to get them into court quickly, to give them responsibility and experience and hope that they will stay for a reasonable period of time with the Division but recognizing that that kind of man is looking for experience and probably will move on to something else after four or five years.

B: Do you find that your Division can pretty well take the best available out of law schools?

M: The whole Department can. We're getting applications, under the Honor Graduate Program, of men standing near the tops of their classes in prestige law schools, state law schools.

B: Is that because of the greater opportunity for immediate trial work, and so on, that the Department furnishes, as opposed to private firms?

M: Yes. The Department can offer responsibility to a young lawyer much more rapidly than a private firm can because the government is not dealing with a private concerned client.

The difficulty a firm has is that no matter how competent a young man is in assuming responsibility, a corporation cannot accept the fact that a man a year out of law school is handling its significant litigation. Whereas in government, you can evaluate the capabilities of the man apart from such considerations. If the man has the ability and is willing to work, he can do as effective a job as any man with five or ten years experience. And they do. I have one boy that started a year ago who has already completed five arguments in the Court of Appeals and has written briefs in seven other cases, a record that just couldn't be matched anywhere in the private sector.

B: How about salaries? Now that the private firms are beginning to offer these increasingly large salaries, is government still going to be able to attract the good young men?

M: Yes. I don't really think salary has a whole lot to do with the decision of the kind of men we want for government service. If a man is looking for money, he's not going to come into government service even if we matched the starting salaries, because he would know that the time he was getting in a law firm would be building up his future income at a much more rapid rate than what he would get in government. But there is, fortunately, in the legal profession a very substantial number of qualified people who hold dear to the oath of their profession and feel responsibility--and a great desire for public service--and they're going to come into government even if we didn't pay half what they could make on the outside.

B: How about keeping the really good ones?

M: I don't think salary would keep them either. Again, some of my long-term men in the Division are fellows who have had much greater opportunities salary-wise outside, but who are completely dedicated to public service and get a satisfaction out of it that could be unmatched elsewhere. This has nothing to do with their remuneration.

Conversely, all of the young men who come into government because of the opportunity for experience and a desire to whet their lives in public services may want to have a broader experience than the government can offer and will move on to something else. Actually, some, I suspect, would move on before they get caught by the umbrella of career protection, which is a damning thing really--something I think that we ought to look at very carefully.

B: Actually, there's very little you, for example, could do to say, fire or remove the permanent people in the Division, is there?

M: Well, I have forced retirement of several. I've been prepared to fight any objection through the Civil Service Commission because I think we

have a responsibility to get value for payments we make for employment.

At the same time, there's a big difference between the kind of work that a man will do to get by, and the kind of work he's capable of doing. I suspect that even the best lawyers in the Division would be producing fifty percent more in private practice just because of the pressure that they would feel to produce.

The tendency here is to give one's attention to one significant case, to lateral to someone else another related case that is coming to trial at the same time. In private practice the attorney would be juggling several laws at the same time and doing each of his assignments equally well.

B: There has been some Congressional criticism of slowness in your Division. Senator Jackson has complained particularly about delays in Indian Claims Affairs. Is that related to the kind of thing you're talking about?

M: Our feeling is the responsibility for delay is not traceable to the Department of Justice in Indian Claims. The Department has appealed to trial lawyers to meet the calendar of the Indian Claims Commission as fully as the Commission has set the calendar. As a matter of fact, we've taken the lead in requesting the cases be calendared for hearing before the Commission. I think that the problem there is a combination of the lack of staffing of the Indian Claims Commission to make decisions in cases once a record has been obtained. We still have cases that have been tried two or three years ago that have not been decided because of lack of staff, and due to delays of claimant's counsel in preparing cases for trial--delays that are due to the fact that the Indians cannot pay compensation to counsel until an award is

obtained. It takes, at the very minimum, three-to-five years to get an award. It takes a substantial investment of funds on the part of private counsel to secure the anthropological and valuation data except for the Law firms that are able to commit fifty or a hundred thousand dollars over three or four or five years of preparation.

B: You're referring to this complicated business of deciding, say, what the valuation of the Seminole lands in Florida was in 1832 and so on?

M: Right. You have in each of these Indian Claims cases three phases. The first is determining whether there is liability on the part of the United States. This depends upon considerable factual investigation as to who occupy what land at what particular point in history. It requires an anthropological investigation of the hunting habits of the Indians and the like.

Once that determination is made, the valuation of the land at that particular date has to be established by an entirely different crew of appraisers. These birds have to go into the Archives to get their information, and they're terribly expensive.

Then, finally, after evaluation is determined, we have a third phase of establishing offsets against the award based upon gratuities that were given to the tribes by the United States over the entire period. This requires a General Accounting Office investigation of every penny that was allocated to the tribe from 18--whatever it was--40, to the present time, and what the money was spent for. This is pretty complicated, so that if there is fault for delay in the Indians Claims cases, I think it stems from the character of the case and from inadequate staffing on the Indian Claims Commission for the job. The Commission has requested funds for the enlargement of its staff another fifty percent this coming fiscal year. I understand there is some doubt whether it can get that.

- B: There seems to have been a great increase in these Indian Claims Affairs. Is there any particular reason for that?
- M: Congress in 1946 decided to settle the claims of the Indians in mass rather than settling claims on an ad hoc basis by special legislation. So in 1946 Congress provided that all Indians would have to file their claims against the government before 1951, or they'd be forever barred. Some five hundred claims were filed by 1951. These are the claims that have been considered by the Indian Claims Commission and the Court of Claims since that time.
- B: Other aspects of your position here involve you in a good deal of intergovernmental relationships with the Interior Department particularly. To put it about as unsubtly as possible, how do you get along with Mr. Udall?
- M: I'll be more general, if I may. We get along very well with our client agencies. We believe this Division is the lawyer for some thirty-one federal agencies. As a lawyer or law firm, its obligation is to provide the very best service for the client that we can. We are torn sometimes in making the decision to prosecute a particular case where we may personally have some question about the administrative policy of a client agency, but believe that our responsibility is to determine whether a case can be pursued under the law with the reasonable opportunity of success. If we can, then the policy question as to whether the matter should be pursued in court or not is in the client agency.
- B: Is it always in the client agency? Does your Division have any independent initiative in choosing what cases to bring?
- M: We make the decision in each case as to whether to bring the case, but the request for litigation is initiated in each case by the client

agency. We review the trial report. We may have conferences with the legal personnel of the agency, if we have reservations about filing suit--generally work out by discussion and agreement a course of action that is acceptable to the agency and which we believe is sound legally.

B: In theory your Division would review a prospective case as a case in law, looking at it from a standpoint of acceptability in the courts and so on. But in actual practice your Division must also take into consideration policy and political factors. I'm getting to the question of the policy decision to bring cases. Although in theory that would be in the requesting agency, in practice your Division must have something to do with it.

M: We're concerned with the political and policy implications of particular litigation. As an example, we had a question raised several weeks ago as to whether the United States would file an action against owners of some mining claims that had been located on lands withdrawn by the Atomic Energy Commission, in the late 1940's and early 1950's, at a time when the Atomic Energy Commission was encouraging miners to locate on the lands whether they had made discoveries prior to the establishment of withdrawal or not, where the miners pursuant to that encouragement had made substantial financial commitments and had produced substantial amounts of uranium ore over the years.

One agency, Interior, seeking to apply the mining law literally wanted an action brought to challenge the validity of the claims and to seek trespassory damages from the miners for all the uranium that had been removed from public lands during this period when they were operating under the license of the Atomic Energy Commission. The Atomic Energy Commission took the position that whether they had

mining claims that were technically valid or not they were furthering the government uranium procurement program at a critical period in the nation's history. They didn't want us now to turn around and bite the hand that fed us and sue for recovery.

We assumed, I think, independent policy initiative in that case to determine what we thought was best for the government.

B: Do your decisions in that kind of case--which amounts in effect to sort of refereeing between various agencies--do they ever have to go up to the higher level?

M: They certainly have a right to go to a higher level. We worked it out in that case, and in each of this type of case that we've had, by conferences with the agencies. I don't act as an arbiter in the sense of saying, "This policy is going to be followed regardless of what you think." In each case, we have sat down and have taken a position ourselves, have developed it with both agencies, and in the end of the conference have reached the consensus that a particular course is right.

B: Was this done on a basis of one of your attorneys with the respective agency's legal counsel, or does it get to you and the agency's heads?

M: Whenever we have a disagreement between agencies, it comes to me. And it will be with an Assistant Secretary, or a solicitor at Interior, or a person in comparable office of any of the other agencies.

B: In some of the areas that your Division is involved in, the organizational structure looks immensely complicated. For example, air and water pollution. There seems to be just an almost infinite variety of agencies who have one aspect of that or some claim to it. Does this make it difficult to carry out policy in that area?

M: No, for the reason that there is very little litigation at this stage of the development of the law on air and water pollution. Federal

activities in these areas is largely administrative and there is as you have said, fractionalization of responsibility among the agencies. The only time we get in the picture is where enforcement proceedings are initiated after Administrative action has been completed--or conceivably an appeal could be taken from Administrative action on the part of an aggrieved.

B: Aren't you called on for advisory service? Although much litigation may not be involved, there are very complicated legal questions of responsibility say, federal, local, and so on.

M: We have designated in our Division one man, Walter Kiechel, as counsel on air pollution matters for the various agencies, and have advised the agencies that any questions they have with respect to their regulations, for instance, should be taken to him.

B: I was going to ask about another area of your work within Lands itself. I know the Department has been trying back, in Mr. Weisl's tenure, to clarify some of the law of valuation. Have you had much success in that?

M: We hope we're making progress on a case by case basis. One of the considerations which is always given to the appeal of a case is whether there is a question that needs clarification by an appellate court. Since in land acquisition the defendant in the case, the land owner, is always the displaced person we feel that he should be inconvenienced as little as possible and that we shouldn't force an appeal simply because we may have some moderate disagreement in the valuation result of a jury. If both sides have submitted valuation evidence and the jury tends to believe the witnesses of the land owner more than it believes the government witnesses, we take that as our licks and try to meet it in the future by better preparation, better trial advocacy.

We don't appeal those cases, but we do appeal any case, regardless of the amount, if it involves a question where clarification of law is needed or where a step in the development of the federal law of eminent domain may be secured. We have been in the process of preparing a condemnation handbook--this is being done under the supervision of Roger [P.] Marquis, the Chief of the Appellate Section--that provides a guide for United States attorneys and all lawyers in federal eminent domain law by stating the principle and setting out the cases that have established it to secure uniformity in brief writing and argument in the various courts.

We've, also, this year instituted a program of developing position statements of the Division which are promulgated as Division directives to the field and to the Division on matters where there has been uncertainty--such things as the settlement policy in the Division. The response to this request for discovery and trial of the kind of title that can be accepted by the United States insofar as a land owner wants to reserve a right, to reserve minerals, so as to have uniformity in acquisition policy.

We've also set up an interagency Land Acquisition counsel, representing all the land acquisition agencies, which are now meeting every two months, working through some six subcommittees in developing criteria for acquisition of lands and uniform appraisal and uniform acquisition practices.

B: You have sort of a general educational program for the U.S. Attorneys too, don't you, in addition to this handbook that's in preparation?

M: Yes. We have had in past years conferences and seminars on land acquisition here in Washington for those assistants in the field who have heavy condemnation loads. This year we've modified that plan by

going out to the field. We have four regions and are setting up four regional conferences which all of the land attorneys can attend, and which the lawyers from Division concerned with land acquisition and that area and representatives of the client agencies, particularly the Corps of Engineers in the area, will attend.

B: In recent years there have been at least two task forces in this area on land acquisition policy and on compensation. Do you find that a useful device--the task force system?

M: Yes, very much so. The Interagency Land Acquisition Conference I described is an outgrowth of those two task force studies, and is designed to do the same type of thing that was done by those task forces, only on a continuing basis, not a crash program; namely to investigate a problem, find a solution which is considered by all the representing agencies to be in the best interest of the government and finding a way to implement it cooperatively.

B: Do you get involved in new legislation? Have you made suggestions for legislative clarification in some of these matters?

M: Yes. I have a legislative assistant, Ed [Edward] Lazowska, who has the adjoining office and does coordinate the activities of the Division in the legislative area. He does two kinds of things. The first is to review legislation on the request of committees on the Hill--or agencies--to prepare legislative reports on that. The second function is to coordinate the responsibilities of the Division in finding where legislation is needed and developing the legislation, preparing the supporting reports, and getting it through the Deputy's office and onto the Hill, and supporting it on the Hill.

B: Have you gotten any legislation in your year's tenure?

M: We have developed legislation. We have not secured any. We have five

items on the legislative program this year, four of them are continuations from last year. Last year the Department as a whole was so involved in the Safe Streets Program and related legislative programs that the decision was made not to push matters of less sensitivity and less immediate importance. So they were deferred, but I understand they will be introduced this year.

B: That brings up a question I was going to ask later, but I might as well put it in now. Has the involvement of the Department generally in, as you say, these sensitive matters--these controversial crime matters for the last year or longer--has this had an effect on morale in the Department?

M: Not in this Division. We assumed that we were responsible in a particular area, and ours does not happen to be a sensitive area. But the fact that others may be under greater pressures, have more funds given to them, doesn't reduce our responsibility for the work assigned to us. I don't really think it has had any negative effect on morale. As a matter of fact, lawyers from this Division in considerable numbers have volunteered to help out during the April and May Resurrection City difficulties, working on security assignments and also processing cases in the local courts.

B: They did that on a voluntary basis?

M: Yes.

B: Does the Land and Natural Resources Division ever get the feeling that it's kind of being left out, that the emphasis in these other areas is--?

M: I don't really think so. I frankly think the kind of litigation that this Division has is choice. It has some of the most fascinating litigation that you'll find anywhere in the country, and certainly

more fascinating than anything that you'll find in the Department of Justice. As a challenge to the litigator, I am firmly in the belief that most of the lawyers who are competent and are here, are here because of their great interest in this very complex type of litigation.

B: Does it make any difference that the present Attorney General, Mr. Clark, was once head of this Division? Does he show a continuing interest in it?

M: Oh yes. He was a great Assistant Attorney General down here and is loved by the Division. He loves the Division.

B: I know he has said that he enjoyed his tenure here. Obviously, he enjoyed the kind of litigation the Division had.

M: I suppose this is very real in the morale of the Division. The Division is proud that their Assistant Attorney General is now Attorney General. I think they do feel that no matter what kind of pressures Ramsey has to work in other areas, he isn't going to forget the Lands Division. He never has. He has certainly given us all the support that we've ever requested.

B: Is Mr. Clark liked generally in the Department?

M: Yes, I think so.

B: And respected too?

M: And respected.

B: In spite of all the controversy that has swirled around him.

M: Well, he has a controversial job. He's a focal point of philosophical conflicts. He's a very sincere person. He has made a personal commitment to justice as he understands it. He doesn't waiver from that regardless of criticism he gets. I had not known him, as I said, before I came here. I know him only from what I have observed in the Department. I think of him as being one of the truly great men I've known.

B: Quite a compliment. You mentioned that your Division is not a sensitive one. Occasionally it is. For example, it's not too long ago that the offshore lands business was quite an area of controversy, and I believe that is still in litigation, isn't it--the United States versus Texas and Louisiana? I don't want to pry into--

M: And other cases are pending. We have cases which are being presently considered in the Solicitor's office.

B: Does it make any difference in that area that the President of the United States and the Attorney General are Texans?

M: None at all.

B: Does it give you any feeling of having to, say, lean over backwards to avoid any appearances?

M: Never given it any thought, as I'm sure they haven't. This litigation was going on when Mr. Clark was running the Division, and it made no difference.

B: Actually, the issue long predates both of their tenures anyway.

M: Yes. When I said the work of the Division was not sensitive, I think I should qualify that. The responsibility of the Division is not sensitive in the sense of Anti-Trust or Civil Rights. But I think that a great percentage of the litigation of the Division does have nationwide impact and nationwide interest.

B: You mean in the sense of the law you're formulating in the land acquisition and resources and so on?

M: And the controversies. The controversies of the Colorado River, the interstate controversy between Colorado and New Mexico and Texas on the Rio Grande. The Great Lakes level water controversy. Your oil shale cases now pending in the Ninth and Tenth Circuit.

B: When you're involved in those cases, do you have a kind of sense of the

future. That is, it doesn't take much perception to realize that this matter, for example, of the diversion of water rights is going to become increasingly important. And that these cases are probably going to be setting long standing precedents.

M: Very much so. This is the excitement of the area--that you are involved in making history in the kind of cases that the lawyers here--

B: And this means of course, as we were discussing earlier, your involvement in policy as well as just plain law.

M: Well, you can't separate law and policy because if you're building law, you're making policy determinations. But, philosophically, we believe that the questions of policy should be resolved in the first instance by the agency responsible for the administration of a particular program. We're advisers to such agencies, and we'll assist perhaps in making the policy determination, but we'll rarely make it ourselves.

B: Do you ever in these cases receive any pressures, or attempted pressures, from various lobbying groups--the Sierra Club and conservation, that kind of thing? Or would that be felt at the agency?

M: We get a lot of interesting cases--in certain cases from people on the Hill. I've never known it to be any problem. It is a case where someone from an office will call and say inquiry has been made of the office as to what we're doing in a particular case. They've always made it clear to me that they're not seeking to have us make a decision one way or the other--it's a matter of tactics--but they want us to know that they're interested in the case and would like to be kept advised. We make a record in the file of such inquiries just to let it be known that they were made. But so far as I know, they've never had any effect whatever on decisions and did not ask that they have that effect. No one has said, "Would you do this because of my request."

B: Do such inquiries speed up the process of litigation?

M: They can't help but bring the case to our attention. We hope that we move litigation as rapidly as possible without requests in particular cases. But we do have about 15,000 cases pending. Obviously you can't look at each one of them every day. If someone makes inquiries about a particular case, you do focus on it and make some decision with respect to it.

B: One final question. How have you found government service? That is, did you come into it with any preconceptions that you've had to abandon since--outside of the frustration you mentioned earlier at your shortened service?

M: Well, it has been very satisfying to me. I found in this particular job more administration than I had anticipated because of the volume of cases and the responsibility an Assistant Attorney General has in keeping the organization going to handle it, which precludes me from doing as much actual trial work and appellate work as I had hoped to get.

When I came back I thought of this as an opportunity to do a substantial amount of litigation personally. I've done some, but it has been limited by the pressures of the job. I find that I spend most of my time with administration.

But I'm very proud of the general quality of the government service. I think that the lawyers in government are a very competent group as a whole. The young men are enthusiastic because they're getting responsibility, and they respond well to responsibility. The older men have had such a wealth of experience that they're just highly competent as litigators or whatever assignment they have.

At the same time, if I may add to this, I have already alluded to

the fact that I am greatly troubled by the effect career protection has on the men. I think every one of these lawyers would be a better lawyer if he didn't have that career protection.

B: Have you offered any possible solution to that problem?

M: Yes. In our transition recommendations to the Attorney General, we've suggested a thorough investigation of this--

B: May I interject here, sir, does the "we" refer to the Lands Division--

M: The Lands Division. Ramsey asked that each Division consider the needs of the whole Department, or the whole government, and to make recommendations for him to review and to pass on to the next administration if they could not be implemented before the end. We had some meetings within the Division and found a great deal of concurrence about the need for something--

B: What was your suggestion on this matter of the umbrella of protection?

M: That career protection be limited to a period of time of ten or fifteen years--ten years being the minimum to extend beyond any particular administration to prevent change simply because the Administration changes.

B: For purely political reasons.

M: Then in lieu of the present program that continues a man on to thirty years unless he does something pretty bad, we would require reappointment at the end of a period of time based upon his then-present qualifications for the job.

B: Would that be reappointment then for another fixed period?

M: Yes.

B: Would the reappointment be for another ten-year--?

M: Yes. It would have to be long enough to prevent his exposure by a change of Administration. But the point of this is that at some fixed

periods in his career life, he has to demonstrate on the basis of his record that he's qualified to continue. He would not, we think, in that situation have the kind of security that a person gets after about fifteen years where he knows that he just has to do something real bad before anyone is going to succeed in kicking him out at that time before he earns his retirement. I think the government would save money by this kind of a change because it would get greater productivity out of the long term.

B: Do you have any hope for these recommendations being accepted, or being put into effect?

M: Not on the basis of our recommendation but if this kind of recommendation came from a number of sectors of government service, I should think that the Civil Service Commission--which is cognizant of the problem--would do something.

B: The problem, I gather, is hardly unique to your Division or any other given agency.

M: Conversely, in going to the other end of the spectrum, we have the problem of the United States Attorneys' offices not having career protection. Right now, we're moving at an extremely slow pace in the land acquisition group of the Lands Division because the United States Attorneys' offices are being decimated by retirements. Several have only one or two lawyers left in them. I called out to Northern Ohio last week because we had some settings that we worked real hard to get, and the United States Attorney advised that they were going to have to continue them. They couldn't get the time for preparing the cases for trial. So I tried to put some pressure on them to reconsider and we'd get some men out to help them. He said, 'Well, we just feel terrible about this, but we only have three men in the office, and all

of them are being used to keep the arraignments and criminal work going on the men who are restrained." Of course that has to be given top priority. So the Lands business comes to a halt.

This would not occur if there was not going to be a great change in the personnel of the United States Attorneys' offices in January-- in this month.

B: I've heard others with the same difficulties, and they have recommended what amounts to a professionalization of the U.S. Attorneys' system. I assume you would concur in that.

M: Right. It needs it desperately. But when we get it, it has to be qualified the same way I'm suggesting qualification on the other.

B: I was going to say, otherwise, you'd go to the other extreme and get eventually a too permanent coprs there I guess.

M: Right.

B: We certainly appreciate your time. Is there anything else you feel should be added to this kind of record?

M: No, I believe not.

B: Would you like an opportunity for posterity to evaluate Lyndon Johnson?

M: Yes.

B: Please do.

M: I think Johnson has been a remarkably good President. He has utilized men in jobs such as mine because of some special qualification that they have for the job. He has appointed a number of men out of the career service because of their experience. His appointments have not been based upon past political favors, though I'm sure he is pleased to reward a political favor if the man has the other qualifications.

He has encouraged the highest performance of service on the part of the Establishment. He has delegated to the appointed officers the

discretion to act responsibly without as far as I know in my experience, any political interference. He has never directed us--obviously not directly, but even indirectly--to move in a particular way because of political consideration. It has been a pleasure to serve in his Administration.

B: Can you also see weaknesses or faults in the man?

M: No man is perfect and it shows a weakness in my evaluation not to point to some fault. But I must say candidly I have had no personal experience of a fault. There have been claims that he's vain, he's concerned about his personal image. But, my golly, this is something that makes a man great. If a man is not concerned as to how history sees him, he's not going to be concerned as to how he lives and acts from day to day.

He has not had a particularly good television appearance. I had not been nearly so impressed with him as a sincere person by seeing him on television through the years as I have been on the few occasions where I've been at meetings where he has addressed the meeting personally.

The man has a very broad dimension in my mind and will go down in history as a great President.

B: Is there anything else you'd like to add?

M: Don't know of anything.

B: Thank you very much.

GENERAL SERVICES ADMINISTRATION  
NATIONAL ARCHIVES AND RECORDS SERVICE

Gift of Personal Statement

By Clyde O. Martz

to the

Lyndon Baines Johnson Library

In accordance with Sec. 507 of the Federal Property and Administrative Services Act of 1949, as amended (44 U.S.C. 397) and regulations issued thereunder (41 CFR 101-10), I, Clyde O. Martz, hereinafter referred to as the donor, hereby give, donate, and convey to the United States of America for eventual deposit in the proposed Lyndon Baines Johnson Library, and for administration therein by the authorities thereof, a tape and transcript of a personal statement approved by me and prepared for the purpose of deposit in the Lyndon Baines Johnson Library. The gift of this material is made subject to the following terms and conditions:

1. Title to the material transferred hereunder, and all literary property rights, will pass to the United States as of the date of the delivery of this material into the physical custody of the Archivist of the United States.
2. It is the donor's wish to make the material donated to the United States of America by terms of this instrument available for research as soon as it has been deposited in the Lyndon Baines Johnson Library.
3. A revision of this stipulation governing access to the material for research may be entered into between the donor and the Archivist of the United States, or his designee, if it appears desirable.
4. The material donated to the United States pursuant to the foregoing shall be kept intact permanently in the Lyndon Baines Johnson Library.

Signed

Clyde O. Martz

Date

June 1, 1973

Accepted

Sam J. Winick  
Archivist of the United States

Date

September 4, 1974