

Welcome to CleanLaw from the Environmental and Energy Law Program at Harvard Law School.

In this episode, EELP senior attorney Erika Kranz speaks with Andy Mergen, clinical professor and faculty director of the Emmett Environmental Law and Policy Clinic here at Harvard Law School, and Sommer Engles, clinical instructor with the Clinic. They take listeners behind the scenes at the U.S. Department of Justice to explain the role of its Environment and Natural Resources Division, or ENRD.

Erika, Andy, and Sommer, all ENRD alums, describe how DOJ and ENRD fit within the federal government, what ENRD litigators do, and what it's like to represent federal agencies in court.

They also discuss what's involved in serving as a career, rather than politically appointed, attorney, and how ENRD works with — and sometimes has to push back on — its client agencies across the federal government. They also talk about recent shifts at the division in approaches to litigation and settlement and explain why those changes matter.

We hope you enjoy this podcast.

Erika Kranz:

Hi, I'm Erika Kranz, an attorney with the Environmental and Energy Law Program, and with me today are Andy Morgan, clinical professor and faculty director of the Emmett Environmental Law and Policy Clinic, and Sommer Engels, clinical instructor with the clinic. Andy and Sommer, thanks so much for speaking with me today.

Sommer Engels:

Hi, Erika.

Andy Mergen:

Hello.

Erika Kranz:

So, the three of us work together at Harvard Law School, but we have something else in common, we are all alumni of the Environment and Natural Resources Division at the Department of Justice, ENRD. But on June 28th, The Wall Street Journal published a lengthy opinion piece announcing ENRD's name was changing from the Environment and Natural Resources Division to the Energy and Natural Resources Division. Between that announcement and reporting over the last several months about large numbers of departures from ENRD and the agencies it works with, plus some work we've done thinking about changes we're seeing at the division, we thought this could be a good time to talk about ENRD.

Andy Mergen:

Yeah, listeners may have some sense of what agencies like the Environmental Protection Agency or the Department of Interior do, I think everyone understands those to be agencies that have an important role in terms of protecting or regulating the environment, but we wanted to help listeners understand ENRD's role, the Justice Department's role, and why it's important to talk through some of the changes we're seeing.

Erika Kranz:

And I'll flag that since we were all ENRD attorneys in the not so distant past, you might hear us slip up and talk as though we're still there, but of course we're not, we're speaking as former employees not representing the

Department of Justice at all today. So, to start us off, Sommer, can you take us from the top and tell us what the Department of Justice even is and then orient ENRD within it?

Sommer Engels:

So, DOJ is part of the executive branch headed by the Attorney General. And today we're going to be discussing only a very small slice of DOJ, one of its subject-matter-specific litigating divisions, Main Justice, which is located in D.C., and houses divisions with subject matter expertise: alongside ENRD, for example, there's the Criminal Division, Civil Division, Antitrust Division, Civil Rights Division, and National Security Division. And those divisions also work with another office within Main Justice, the Office of the Solicitor General. That office is responsible for representing the United States in the Supreme Court, and also for deciding whether and to what extent to appeal adverse decisions.

Erika Kranz:

But there are attorneys throughout the federal government, right? Not just at DOJ, but also in the agencies ENRD represents, like the Environmental Protection Agency, the Department of Agriculture, Interior, Energy... How is the work of attorneys in ENRD different? What are they adding to the mix?

Sommer Engels:

The attorneys within ENRD's client agencies are subject matter experts. They draft regulations and guidance and provide legal advice to agency components and policymakers. They also support litigation. They're essential to litigation teams because they know the ins and outs of programs being enforced or challenged, but they mostly do not appear in court. DOJ, on the other hand, is primarily responsible for court-facing representation of the client agencies.

Erika Kranz:

Got it. Okay. So, ENRD is part of DOJ, which means it's mostly litigating. And I know we're going to talk in a minute about the range of issues that ENRD handles, but Andy, I thought you could orient us in history, talk about how ENRD came to be, what it is today.

Andy Mergen:

Yeah, I'd love to. I love thinking about the history of the division and the Justice Department itself. Some listeners may know that the Justice Department was formed not at the founding by any means, but at the second founding, in some ways it's a creature of the Reconstruction Era founded in part to enforce the Reconstruction Era laws. And so, we're looking at the 1870 period, the Grant administration, and then in 1909, basically some 30, 40 years later, the Lands Division is created. And the Lands Division is created to deal with issues associated with the public lands. A third of the country is in federal ownership. Those are the national parks, the national forests, lands that are managed now by an agency called the Bureau of Land Management, but was not known by that name at all in 1909. The big change came in the 1970s when a huge number of environmental statutes that we talk about on this podcast a lot were enacted, from the National Environmental Policy Act through the Clean Air Act, Endangered Species Act, that really shifted the work of the division.

Sometimes we think of that period as running from 1969 to maybe 1990 when the Clean Air Act is substantially amended. I came to work in the division in 1989 when it was known as the Land and Natural Resources Division. In 1990, in the Bush administration, the name of the division was changed to the Environment and Natural Resources Division, sort of at the same time that the division was working really hard on these important amendments to the Clean Air Act. And the thought at the time was that putting environment in the name of the division really represented this significant change in the division's work.

Erika Kranz:

So, Andy, you've brought us through history up to the present day, Sommer, can you give us a little more detail about what exactly ENRD does today?

Sommer Engels:

ENRD has nine litigating sections divided largely by subject matter. Several are responsible for mostly defensive litigation concerning the agency compliance with an implementation of the Endangered Species Act, for example, the National Environmental Policy Act, statutes governing the management of public lands, and environmental statutes, like the Clean Air and Water Acts, Toxic Substances Control Act, and the like. Other sections within ENRD are responsible for civil and criminal enforcement actions in the federal courts, and still others have very specialized practice areas. So, ENRD's Tribal Resources section, for example, represents the United States in its trust capacity and support of tribes. The suits it brings seek to clarify water rights, protect treaty rights to hunt and fish, and defend reservation boundaries. The land acquisition section litigates to acquire private property for public purposes, and to ensure proper compensation under the Fifth Amendment's takings clause. And ENRD's Law and Policy section advises the division's political leadership on legal and policy questions.

Last but not least, the appellate section, one especially near and dear to each of us, works with each of these sections to defend favorable decisions on appeal or to pursue appeals of adverse decisions in federal courts, and sometimes state Supreme Courts as well. ENRD's work really runs the gamut. ENRD's work also presents some weedy administrative law issues and complex jurisdictional questions. In fact, some of the primary Supreme Court cases on federal court jurisdiction and administrative law were handled by ENRD.

Erika Kranz:

With all of those different angles and issues that ENRD handles, there must be some interesting dynamics that the division has to navigate. Andy, you oversaw the appellate section, and I know that gave you a broad view of the division's work. Can you touch on that?

Andy Mergen:

There are some inherent tensions. There is both enforcement and defensive work, there is work done on behalf of Native communities and tribes, in support of their treaty rights to acquire land and to trust, and there is also a component of the division that defends against breach of trust claims brought by Native tribes and Native communities. Part of the role of the Department of Justice is to sort out those tensions, and it's not an easy thing to do. And cases can involve environmental statutes, but also agencies with other mandates. So, there's frequently a national security component to some of the work. There's often First Amendment issues associated with religious use and occupancy of public lands. All of these things make the work incredibly complicated. And there's also the procedural and substantive requirements around this kind of work.

Erika Kranz:

And sometimes there are even tensions between agencies, right? You might have one agency that perhaps is not 100% on board with what another agency has done, right?

Andy Mergen:

Right. And that's where I think it's sort of an awkward situation. Before the Department of Justice files a case or decides to appeal, it wants to get the federal family together to make sure that there is certainty about what

arguments should be made and what are the consequences of a particular position. And the Department of Justice and ENRD in particular has often played a role in sorting out those positions.

Erika Kranz:

Sort of related to that, I'm hoping, Andy, that you can help explain ENRD's role or non-role in setting policy. We know that agencies like EPA, or Interior, or NOAA, or Department of Agriculture, they issue regulations, they implement policy through individual decisions, what's ENRD's role in any of that, or other ways that it can set or sway policy?

Andy Mergen:

Yeah. So, the policy role is an important one. First, I guess I just start again going back to the multitude of agencies that the Department of Justice, I almost said we, even though it's been a long time, that the Department of Justice represents. And some of those agencies have conflicting responsibilities and some administer statutes together. For instance, the Endangered Species Act is administered both by the Fish and Wildlife Service for terrestrial species primarily, and by NOAA for ocean-going species. And so, we say ENRD doesn't set policy, but it has to work through those conflicts. And then there's the role of the ENRD as a rule of law and law enforcement agency. So, there are all sorts of policy type decisions associated with when to enforce, prosecutorial discretion, civil environmental enforcement. How a lot of that works is that for criminal cases, the FBI or the Coast Guard might make a recommendation to DOJ, go after these environmental bad guys.

And then there's a conversation about whether there's enough evidence and whether this is the kind of crime that we should be pursuing. And those are all policy decisions in which DOJ has a significant role. Settlements is another area too. The DOJ has traditionally had a lot of process associated with how cases are settled, and what sort of principles should animate settlements, and what sort of things are obtainable in a settlement against the government. So, there's a lot of room for policy at the Justice Department, but we would be wrong to think of it as a policymaking agency.

And the one last thing I'd say is that I mentioned prosecutorial discretion and decisions to make enforcement, but there are also a whole host of issues around access to courts. Does somebody have standing? Is the person situated to seek redress in the courts? And DOJ has to make decisions about that routinely in litigation, and that too has both a legal component and a policy component as well.

Erika Kranz:

I want to bring this down to the level of individual attorneys at DOJ to try to make this feel a little more concrete, and give you a sense of what their jobs are like and what their responsibilities are. And to do that, I thought we could each at least start by talking about our own experience since between us we have some 50 years of experience at ENRD. Sommer, why don't you start us off, tell us how you came to ENRD and why you stayed?

Sommer Engels:

I worked in ENRD for 10 years total for, immediately after college, as a paralegal on the appellate section, and just over six as an attorney back in ENRD appellate after law school and a clerkship. And I joined ENRD as an attorney through the Honors program, which hires young attorneys from law school, clerkships, and fellowships. I think that ENRD attracts brilliant and hardworking attorneys who are kind and committed public servants, and the division's work is meaty and interesting. Attorneys have a high degree of responsibility. If you're staffed as the primary line attorney on a case, you're responsible for mastering the facts and the law, you get to think strategically about how the briefs and memos you sign should be structured and presented, and you engage closely with staff and attorneys at the client agency. The thing I particularly loved about working in ENRD is the

fact that each case presented an opportunity to learn something new about a region of the country, a critter, an industry, a pollutant, a public health issue.

So, in my time at DOJ as an attorney, I presented more than a dozen arguments in federal appellate courts across the country, and my first oral argument was within the first six months of my time on the job, which is not a unique experience for many young attorneys in the division. Attorneys within the division and in client agencies have deep expertise, many of the cases cited in the briefs I worked on were litigated by my colleagues, so I always appreciated the opportunity to walk down the hall and be able to ask my colleagues about their work. And working ENRD appellate is especially fun because we worked both with trial counsel and with agency counsel, but also closely with the Office of the Solicitor General on some cases, recommending for or against appeal and sometimes cert in cases we've lost in the lower courts. These discussions and written recommendations present another opportunity to exercise legal judgment. We were thinking, what arguments can we make? What's the best way to serve our client's interests either within or outside of court?

Andy Mergen:

I just want to plus one everything that Sommer said about what a fantastic place ENRD was to work, and how collegial the culture is. People are not competing with each other, it's really about trying to get the best answer to questions and to best represent the institutional interests of the United States. I started in the Honors program right out of law school, I had worked in ENRD when I was a law student, and that had convinced me that that's where I wanted to be. I will say that one of the things that I really enjoyed about the job was, when you're dealing with lands and natural resources, I think it helps your advocacy where possible to go see them.

And I spent time tracking red wolves in North Carolina with the Fish and Wildlife Service. I rafted the Lochsa River in Idaho as we were working on federal water rights claims for the Forest Service in Idaho. I worked side-by-side attorneys with Mescalero Apache Tribe in New Mexico, as we worked through their water rights claims. Made a number of trips to Lake Clark in Alaska as we worked on those cases for the National Park Service. So, in addition to having wonderful colleagues that also came with some great work vacations.

Erika Kranz:

I too joined ENRD through the Honors program after spending a semester as an intern during law school. And before I came to the appellate section, I first was an attorney for a few years in the land acquisition section. So, I had a little bit of a different experience there. But part of that experience I think shows some of the diversity of what ENRD does. The land acquisition section, as Sommer mentioned, handles eminent domain litigation for the federal government, and I worked on cases representing the Navy, acquiring desert land for a bombing range, and for the National Park Service, acquiring land for the Flight 93 National Memorial. And also for the Bonneville Power Administration, making sure that there was a corridor available for a high voltage transmission line. So, none of my work travel is quite as adventurous maybe as Andy's, but I did see some parts of the country that I'm not sure I would've seen otherwise through that work.

And in appellate, I worked on forest projects, and endangered species projects, and lots of Fifth Amendment takings litigation, and I think between the three of us, we worked on probably a little bit of everything that the division does during our time there. The other thing that I think our experiences reflect is something common, that people tend to stay at ENRD for a long time. Another important thing that we have in common is we were all what's called career attorneys as opposed to political appointees within the division. And Sommer, I thought perhaps you could help our listeners understand what does that mean?

Sommer Engels:

Yes. So, most of the hundreds of attorneys within ENRD are career attorneys who stay from administration to administration. Each section also has career managers. And these career attorney teams coordinate with clients,

drafts briefs, present oral arguments in court, and make recommendations for or against appeal. ENRD, like all divisions within Main Justice, also has political leadership. At the top is the assistant attorney general, the AAG, who is Senate confirmed, and they're supported by several deputy assistant attorneys general, each of whom works with a subsection of ENRD's sections, reviewing briefs and overseeing the work of each. Now, I'll note as an aside that as of our recording, the top political attorney in ENRD is the principal deputy assistant attorney general. The division currently has no Senate-confirmed assistant attorney general. I'd also flag that although career attorneys can end up working on politically hot button issues, most of ENRD's work is pretty stable from administration to administration.

The federal government and ENRD's client agencies conduct a lot of important and apolitical work that tends to fly under the radar. That work in those cases don't make the news, because of news coverage, sometimes the bread and butter of ENRD's work can appear more political than it really is.

Erika Kranz:

Now, I'm hoping that you can spin that out a little bit more and say more about what makes working for ENRD different than say working for an environmental organization or for a law firm on environmental law issues. Some of that I think has to do with the relationship between ENRD and its clients, and some of it has to do with the relationship between ENRD and the courts. So, can you start us off, Sommer?

Sommer Engels:

Yes. So, the role of a litigator at DOJ is unique, but the DOJ is a repeat player in the courts. It appears over and over, often with the same client, and in cases implicating the same statutes and doctrines. DOJ attorneys must therefore think not only about the case before them, but also about the precedent it may set in the future. DOJ attorneys work with a host of agency clients, and some clients' interests may not be entirely aligned with those of another client. These inter-agency conflicts need to be navigated as well and may influence the scope and sort of arguments that DOJ presents in court. As a result, relationships DOJ has with its clients are sometimes different from the relationships a private firm may have with its clients. DOJ has the ultimate decisional authority and can say no.

A client agency may want to appeal an adverse decision, say they're committed to undertaking a particular project or pursuing a particular policy, and they may readily believe that the district court got it wrong. But ultimately, DOJ's Office of the Solicitor General is the one that decides whether the government will appeal a loss. And if so, what arguments to make.

Erika Kranz:

So, the relationship between ENRD and its client agencies is a little different than in the private sector. How does that translate to the individual attorney's experience? Are there differences in a DOJ attorney's obligations? And I know a lot of attorneys probably come to ENRD because they care deeply about the environment or environmental issues, how do you think the connection between the individual views of one attorney about the subject area, how does that connect to the work of DOJ as an institution?

Sommer Engels:

Just as in private practice or practice within an environmental organization, the client's position may not align with that of the primary attorney. And no matter the practice setting and personal preference of the attorney, it's the attorney's obligation to provide zealous and honest representation, and that's absolutely true at DOJ as well.

Andy Mergen:

Sommer has raised a really important point about an attorney's role. When we talk about we have 50 years of experience, probably most of that is me, we have to be honest about that. And in my role as an attorney for the government, I defended agency policy decisions that would not have reflected my policy preferences. And I think for any law students who are listening, part of your time in law school is navigating what sort of jobs you want to do, and how you think about your role, and where your lines are. And certainly I think there are many folks who graduate from law school and would not want to work for the federal government because some of that work may not align with their values. But for me, it was always a privilege to represent the US, even though the policy choices may not have been my own.

I think most people who served in the Department of Justice really have strong feelings about what it means to stand in court and to say that you represent the United States. I mean, this is a complicated country that has committed a lot of wrongs, but it's also a country that I think has worked pretty hard over time to remedy those things. I always felt it was really a privilege to represent the US, and I always felt the gravity of that position. And one of the things about DOJ is that it has a super strong institutional culture. We understand that this is a public service and a public trust, meaning that the decisions and actions that we take must be made in the best interests of the American people. And that's in the Justice Manual, which is the manual that provides guidance to Justice Department attorneys.

Judge Wald, who was Chief Justice of the D.C. Circuit for some years and a highly regarded jurist, wrote a lot about the role of government attorneys in her court, and she thought a lot about it. And she sort of reduced it to some Cs, expectations for competence from DOJ lawyers, candor, credibility, civility, and consistency. And one of the things that we pay a lot of attention to as former DOJ lawyers is the briefs that get filed. Because I think for all of us in our experience as DOJ lawyers, when we talked to judges or heard from judges, they would often say they started with the government's brief because they expected the government's brief to be credible and candid about the positions. We all think of ourselves as officers of the court, the institutional culture strived for an accurate and fair presentation of the law.

We also worked on the institutional interests of the executive branch. And so, many of my colleagues who worked for environmental NGO groups or civil rights organizations would sometimes be quite critical about the positions that DOJ might've taken with regard to access to courts. But DOJ takes a lot of those positions understanding that it is an institutional actor, that it's in court more than anywhere else. I'm happy to talk about it, but there are many times where we strove hard to make sure that people did have access to courts.

Erika Kranz:

So, I think that's all really important background that takes us into our next topic, which is some unusual things that we've been seeing at ENRD lately. And I want to preface all of this by saying there are still many people in ENRD who are working unflaggingly to uphold all of the standards that we just talked about, and we don't at all mean to diminish the work that they are doing to apply the law in fair and accurate ways. But we've identified a few unusual things that we've seen lately, and Sommer, why don't you start us off with that?

Sommer Engels:

Yes. In September 2025, we saw the United States via ENRD and the Solicitor General's Office make an unasked for filing in the Supreme Court, urging the Court to take a case about whether state law tort claims relating to damage from climate change could go forward. And that filing was unique in two respects. First, the United States filed without what we call a CVSG, a call for views of the Solicitor General, which is often the filing that prompts the United States to file an amicus brief. The filing also represented a new approach to these sorts of cases, taking a pretty aggressive stance on some constitutional issues that the government had previously avoided.

Erika Kranz:

Right. And DOJ through ENRD has now made those constitutional arguments at the merit stage in that case as well. It's really centering these constitutional arguments that it had avoided before. And we've also seen some changes in ENRD under this administration that have to do with enforcement of environmental laws. First, there's been lots of reporting about a decline in the division bringing environmental enforcement cases. Now, EPA handles its own administrative enforcement for matters that tend to be at the less complex and less serious end of the spectrum. But for more complex and more serious violations, EPA will refer those matters to ENRD, and the division will then decide whether to bring a civil enforcement suit or a criminal prosecution about the alleged violation. Groups looking at numbers from the first year of this administration saw that the numbers of civil enforcement cases brought by ENRD were way down, something like 70, 80% down versus the first year of the Biden administration.

And interestingly, the first year of the Biden administration, those numbers looked a lot like the first year of the first Trump administration, there was really not that much difference. But this administration, the numbers are quite different. And consent decrees, there have been some changes there as well. Consent decrees are basically judicially enforceable settlement agreements, and they're the way that most civil enforcement cases end up being resolved. The number of consent decrees filed with courts have also gone way down. And the other thing that at least some of these groups have been seeing in the data from the first year of the Trump administration is that the average financial penalties in those settlements were also down. So, I think together those three data points, the number of cases, the consent decrees, and then the penalties in the consent decrees, those really paint a picture of environmental enforcement at ENRD that's seen a pretty significant decline.

On the criminal side, we haven't seen quite the same broad analysis of numbers, so I don't have a full picture to report there, but there's still been some interesting developments. In January of 2026, a memo came down from a high level political appointee at DOJ about defeat device cases. Now, defeat devices are devices installed on cars that let cars emit more pollution than is allowed, and then escape detection in emissions testing. This memo told prosecutors to stop bringing criminal prosecutions about defeat devices and to drop pending cases. The new policy was reportedly championed by ENRD political leadership. I do want to acknowledge that the decision to bring a criminal enforcement case always involves a lot of nuance, and there's long been controversy about it. But the upshot of this blanket order was to override the conclusions of career attorneys who had considered and rejected the very same legal theory that now is the basis of this memo directing them to drop these cases.

Andy Mergen:

There's some other things that we've been tracking as well. When I worked at the Department of Justice, it was a big deal to sue states because they're sovereigns in our system, they're part of our "federalism." And it's not to say that we didn't sue states. In the ENRD, the Justice Department would sue states to vindicate, for instance, the treaty rights of tribal communities and tribes. Now, we see a pretty aggressive approach to suing states on climate-related or adjacent litigation, lawsuits against Michigan and Hawaii to prevent them from pursuing actions against fossil fuel companies, pretty aggressive approaches to climate superfund laws in New York and Vermont, which have developed these liability mechanisms to redress harms from climate change.

Erika Kranz:

The other thing that we've seen just recently in the enforcement world is about citizen suits. Lots of environmental statutes like the Clean Air Act, for instance, have provisions that allow private citizens or groups to sue alleged violators of environmental laws. Now, there's case law supporting the idea that when a group brings a citizen suit, the suit has a more limited scope than an enforcement action that the government can



bring. And sometimes the government does get involved in these cases. It might argue, for instance, that it's diligently prosecuting its own enforcement action and that then takes precedence, or it might argue that groups bringing a citizen suit case are seeking some kind of impermissible relief. Those things have happened before, but this spring in a citizen suit about alleged Clean Air Act violations by a data center. The government through ENRD went farther than we've seen it go before.

It's arguing now that when EPA has elected not to enforce a federal environmental statute against a polluter, then neither may anyone else as a matter of basic constitutional principles. Now, that's an extension of an argument we've seen industry make before, but it's a first for the government as far as we can tell. And it's a pretty bold move, especially when you think about that in combination with the decline in environmental enforcement by the government. If the government has its way in this citizen suit argument, that could limit the ability of groups or individuals to use these citizen suit provisions to fill enforcement gaps or put pressure on federal regulators. And these were provisions that Congress created to allow just that.

Andy Mergen:

One of the things that always concerned me, and I want to say that these issues are all really tricky, but there were always accusations that the government engaged in a sue-and-settle strategy, cutting deals and settlements with plaintiffs to achieve results that might be more easily achieved in litigation than through traditional administrative processes, like rulemakings and the like. And we're paying special attention to those because those are criticisms that have been lodged against the government for a really long time. In my time at DOJ, I really didn't see that, and the career institutional culture resisted those kinds of settlements. But I think as Erika and others have documented, there's more of that stuff that seems to be going on now.

Erika Kranz:

Yeah. Under the settlements umbrella, one thing that we're certainly seeing is some pretty unusual settlement agreements recently that have led to the cancellation of several offshore wind leases in exchange for the expenditure of some truly substantial amounts of public funds, in ways that have raised some serious eyebrows and appear unprecedented. We've also seen the government through ENRD in some instances ask courts to help the government effectuate changes in policy and avoid going through a notice-and-comment rulemaking process that really would be the right way to do it.

Sommer Engels:

There've also been large numbers of departures among career attorneys. We've read reporting from earlier this year that said 140 attorneys, about one third of ENRD's career attorneys have left since the beginning of the second Trump administration.

Andy Mergen:

One other thing we're observing in ENRD right now is what feels to me a little bit like an increased politicization. We are seeing more high profile cases being handled by political appointees. I want to be clear that there was always some of that, although I spent 33 years there and it was pretty rare for political appointees to argue cases. Certainly I worked on Navy sonar litigation, and our assistant attorney general presented arguments to the court of appeals in those cases. In order to, I think, communicate the gravity of the national security concerns that the administration perceived. With this administration, everything seems like an emergency and a national security concern, so maybe that is part of the reason we're seeing so many more cases handled by political appointees. I think there was always that degree, but if everything is an emergency and everything's a matter of national security, then maybe everything is political.

Erika Kranz:

Well, that brings us back to where we started, the renaming of the Environment and Natural Resource Division as the Energy and Natural Resources Division. Andy, I know you've done some thinking about this, can you help our listeners understand the context around this and why it makes sense to you or maybe not?

Andy Mergen:

Well, I think first of all, I mean, probably I take this really personally because I was there when the name changed the first time. And as people who know me know that my time in the Justice Department is such a big part of my identity. It is worth noting though that the name was changed previously to add environment by a Republican administration. And the reason for that is that that administration perceived environment and natural resources as not being redundant, which is what the current administration has said about the name change, but understood instead that "environment" captured something, relation to water and air and things like that, and natural resources or parks or forests, they communicated different things. What is going on here with Energy and Natural Resources I think can only be understood to curry favor with the current administration's emphasis on energy security. Again, I think that a lot of this doesn't add up because energy to this administration does not appear to include renewable forms of energy, like wind and solar, so it's not all types of energy.

Also, I worked in the division a long time and defended a lot of fossil fuel projects under Democratic administrations, and remember when Barack Obama went to Cushing, Oklahoma to sort of say, I'm declaring that we are now an energy secure nation, and he was leaning into fossil fuels. So, it's not as if the Trump administration invented fossil energy by any means. I don't want to worry too much about this, the name can always be changed back, but it sure seems like a change entirely for politics. And I'll say that the folks who love the Division have always sort of resisted those changes in the past, that Environment and Natural Resources Division doesn't capture all of the work by any means that the Division does, but is a fair summary in a way that where so much energy work is done by other agencies, agencies that have their own litigation authority, their own barristers, like FERC and NRC, it just doesn't really seem like a fair moniker to me. I admit I'm biased, it sure seems political.

Erika Kranz:

Well, I think you can count all three of us among people who would say they love ENRD and have some complicated feelings about what's going on there now. As we're coming to the close here, Sommer, any sort of final thoughts about ENRD and how our listeners, especially law students, maybe should think about the Division today?

Sommer Engels:

Yeah, I want to start by reiterating a point you made earlier, Erika, and that is that many people remain in ENRD. These people are hardworking and ethical public servants, who adhere to norms, and act in line with long-term institutional interests. And as it often is with public service, their work just doesn't make the news and they're still there. As far as a listener interested in applying for ENRD or thinking about whether a job at ENRD might be in their future, I'd say that they shouldn't necessarily write off the opportunity.

Andy Mergen:

Yeah, I would just say like any other job, you have to do your due diligence. And I think the question is what sort of work are you going to be doing, and who are you going to be your mentors, your supervisors? And what are the opportunities there to really learn? Speaking for myself, I went to ENRD not thinking that I would stay more than 30 years, which is what I did, I went to acquire a set of skills that I thought I could take elsewhere, and I

knew that DOJ was a great place to acquire skills, and it still is a great place to acquire skills. And I definitely want to double down on Erika and Sommer's point that we have many friends in ENRD. They're good mentors, they're excellent lawyers. I often pinched myself that I was in rooms, conference rooms where important decisions were being made by people who were incredibly good lawyers and thoughtful people.

Erika Kranz:

All right. Well, thank you both so very, very much for talking with me today about this subject that's so close to our hearts, and our own personal and professional histories. Andy, Sommer, thanks so much.

Andy Mergen:

Thank you.

Sommer Engels:

Thank you.