

ZETTERBERG & ZETTERBERG

ATTORNEYS AT LAW

319 HARVARD AVENUE

CLAREMONT, CALIFORNIA 91711



6782

Dr. Frank C. Craighead, Jr.

P.O. Box 156

Moose, Wyoming ~~93012~~

A handwritten signature in blue ink, appearing to be "F. Craighead".

STEPHEN I. ZETTERBERG
CHARLES L. ZETTERBERG
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FUNGLAN PERSIMMON

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TELEPHONE
(714) 621-2971

September 12, 1979

Honorable James Joseph, Esq.
Assistant Secretary of Interior
United States Department of Interior
Washington, D.C. 52701

Dear Jim:

After your last letter on the Walker case, I wrote you that I would be back to you at the proper time, and ask you for your consideration.

In the Texas City disaster, the Supreme Court sustained a Court of Appeals holding that the government activity that caused the Texas City explosion was within the discretionary exemption of the Federal Tort Claims Act. In the Senate Report (Report No. 2363, 83d Congress Second Session, at page 3) that Congress has jurisdiction to legislate in cases where relief is required, ". . . . for compassionate reasons or in equity and good conscience. . . . "

So the question is, do you, and for that matter, Secretary Andrus, have compassion? If you and the Secretary are just there to sign and approve what the Park Service does, and are only temporary spokesmen for a massive ongoing bureaucracy, without any humanness or compassion, and without the critical eye towards what your Park Service does, then you might just as well not be there.

The Park Service said that signs at the entrance to the park warned of the presence and danger of wild animals.

Incorrect and misleading. The signs at the entrance warned against feeding and molesting wild animals, and pictured a friendly black bear.

The Park Service stated that camping is prohibited except in designated areas.

Incorrect. A sign in the "RV" parking area, one side of the entrance, prohibited overnight "stopping" except in designated areas. The fact is, no literature of any kind

Mr. Joseph
9/12/79
Page 2

was given to the Walker boy when he entered the park. The ranger at the gate simply waved the car on through.

The Park Service states that the concessionaire's employee warned them that camping in unauthorized areas was dangerous.

Wrong. She let them out so they could go off the road to find a place to camp, and then she came back with them to visit the camp. After they had made camp, she did not tell them the camp was dangerous; she told them they would "catch hell" for not camping at a regular campground. But she still came to visit them.

As a matter of fact, there was no campground at Old Faithful, not for some 18 miles in either direction on the highway. The rangers knew this and the rangers knew that from 18 to 20 backpackers were camping out at Old Faithful every night, and they did not interfere with it because there was no other place for them to go.

As a matter of fact, they were not camping in an unauthorized area. They were in back country, and they were following proper "back country" camping procedure. It was termed a "fringe area" by one government witness, which is to say, back country, on the fringe of Old Faithful.

The Park Service says the concessionaire advised them to go to the ranger station to find a place to camp.

This is inaccurate and misleading. They told the concessionaire they wanted to go hiking in the back country, away from people and cars, and she told them to go to the ranger station. They were intending to go there the morning Harry Walker was killed.

The Interior Department's letter of October 5, 1977 to James O. Eastland implies a double meaning, that the concessionaire said they should go to the ranger station to obtain advice about precautions to take when camping in areas inhabited by grizzly bears.

Not so, and an unfair implication. Although the concessionaire had been to briefing sessions, she was never told about the grizzly bear danger resulting from closing of the garbage dumps. She was told about the animals and not to go hot-potting, but as far as bears were concerned, she didn't know the difference between a grizzly and a black bear. "We just lumped them all together." She was not told about the

grizzly bear operation, and yet the Park Service later revealed that it closed camps at Old Faithful because of the grizzly bear danger. The Park Service not only failed to warn the public, it failed to warn the employees.

The Park Service claimed that if the decedent had gone to the ranger station he would have obtained advice about precautions to take when camping in areas inhabited by grizzly bears.

Misleading. The Park Service had one pamphlet, "In Grizzly Country," about grizzly bears. It did not ever give these out at the entrance (although it passed out plenty of them to the backpackers after Walker was killed). These pamphlets instructed the reader that grizzly bears were seldom seen; they did not become car bums and did not enter camps. It advised that camping areas be chosen which were not next to running water, that were near trees, that were not on any trail ("grizzlies use trails, too"), and advised that food and fire circles be separate from tent. These and other cautions in the pamphlet were followed by the boys. They camped off the trail, not next to water; they kept their food tightly closed and sealed under a tarpaulin away from the tent. They had the fire circle away from the tent. They camped in a place that had not been camped in before.

The government set the measure of reasonable conduct for campers, and the boys met that measure.

In argument before the Court of Appeal the government lawyer argued that if they had stayed in regular assigned campgrounds, they would have been safe.

Wrong, as the trial judge and the experts well knew. The campgrounds were the least safe place to be. This argument by the government was simply appealing to the lack of sophistication of the Circuit Court of Appeals judges in matters that the trial court had become very sophisticated about after three weeks of testimony.

The Park Service made a big thing of signs advising visitors to stay on the boardwalk because of the danger of thermal areas.

Mr. Joseph
9/12/79
Page 4

This is irrelevant, and a red herring. As the trial judge said, "They might get their feet wet." I have pictures of rangers walking off the boardwalk in the same thermal area. The boys were equally careful as the rangers when walking the short distance from the boardwalk to the forest.

As to signs, after our Parratt case in Glacier Park, the Park Service posted metal signs at trails specifically warning of the danger of grizzly bears. The chief government scientist at Yellowstone knew of the Glacier signs, and stated that he did not know of a single such sign anywhere in Yellowstone Park. I questioned him trail by trail. There were no warning signs about grizzly bears, even though the Park Service knew the incidence of grizzly bear entry into human use areas had increased because of the garbage dump closing.

The Park Service claims, and the Interior Department letter of October 5, 1977 stated as a fact, that the boys "kept a very dirty camp, leaving quantities of cooked food lying around."

This is absolutely false. The ranger who inspected the camp testified that it was very obviously a clean, neat camp before the bear entered the camp. This misrepresentation amounts to a fraud upon the Judiciary Committee.

There was one pot of vegetables, hung on a branch of a tree away from the camp. There were three onions neatly stacked away from the camp. Neither vegetables nor onions was touched by the bear. There were canned, tin foods, suitable for backpacking, sealed and stored on a tarpaulin, and under a tarpaulin, away from the tent. There were a few pieces of paper properly placed in the fire circle, away from the tent, ready for burning. The cans, and an empty bottle, were outside the tent, and were clean. All of this was done in accordance with proper doctrine of camping "in grizzly country."

The Park Service claimed, in the October 5th letter, that the two men "surprised the bear in the camp."

This is untrue. The two men were walking in the forest, and not at their camp, when they met the bear. A trial judge asked for any evidence as to whether the bear had been at the camp when the boys approached. The expert testimony of Frank Craighead said that the bear was likely on its way

back to forage in the Old Faithful human development area when it met the boys. But for the dump closing, all grizzlies would remain in the uninhabited areas, and avoid humans.

The letter of the Interior Department of October 5, 1977, is significantly quiet about the bear that killed Harry Walker. The reason is, they have no answer.

A ranger termed this bear "a rogue bear." This bear had been trapped about eighteen months earlier in the garbage holding area at Old Faithful. No grizzly bear, except an incorrigible bear, a dangerous bear, enters an area of human habitation to approach a garbage holding area.

At that time the bear was trapped, tagged, and removed. At that time it was official government doctrine, and was the recommendation of the advisory committee to the park superintendent on procedures for closing the dumps, that grizzlies that were innured to humans be killed, given to a zoo, or at the very least transplanted over 50 miles. The rangers that trapped this bear could have, but did not, notice that the bear's teeth were poor and that it was old. They took this bear some twelve miles more or less up the road and dumped it in Gibbon Meadow. The committee on closing the dumps had already told the superintendent that too often bears are transplanted just a short distance, at the convenience of the rangers rather than the safety of humans. This bear had been seen from six to eight times in the Old Faithful area before it was trapped. At about the time it was trapped, a camp right on Firehole River had been ravaged by a bear, and the owner never found. The superintendent had presumed that there was a death, and had asked the F.B.I. to intervene. No body was ever found. At this time, with the knowledge that a grizzly had been entering Old Faithful, and the knowledge that a possible death had occurred, the rangers did not follow the Park Service doctrine, and took this bear and left it as a "time bomb" so that it later came back and killed Harry Walker.

The letter of October 5th, 1977, in the next-to-last paragraph, gives the sly implication that the bear that killed Harry Walker may not have been the bear that was tagged and transplanted eighteen months earlier. This was done by the language: ". . . that the estate's assertion of government negligence. . . in the handling of an incident 18 months before the attack occurred involving the bear they contend was the one that killed the decedent, are neither

legally nor factually supportable as found by the Court of Appeals."

This implication is a fraud upon Congress. There is no question that the bear that killed Harry Walker had been captured and identified eighteen months earlier, and tagged. As the expert testified, it was not only identified, but it should have been killed by the Park Service.

So you have a situation where the superintendent of the park failed to follow the recommendations of its own advisory committee, failed to heed warnings. Specifically, Yellowstone Park failed to give any warning of grizzly bear dangers to incoming visitors; failed to publicize or warn of the fact that the dumps had been closed and that grizzly bears would be about; failed to use alternative (carrion) feeding; failed to give out any warning material whatsoever identifying grizzly bears as being quite different and more dangerous than black bears; allowed bear jams to continue along the roads (it was disgust at the "intermingling" of humans and bears that made the young men seek the back country for camping); failed to warn their own concessionaires of the grizzly dangers; failed to warn backpackers known to be camping in the Old Faithful area; failed to eliminate or transplant the particular grizzly bear that killed Harry Walker, as required by advisory committee policies; failed to continue keeping track of bears by radio tracking and other devices, as recommended by the advisory committee - indeed, the superintendent ordered that the tracking device be removed. These are only a few of the items of carelessness by the Park Service at Yellowstone. These items were done after the park superintendent, as he admitted, was warned that improper procedures would result in a death at Yellowstone.

So we get back to the old question, Jim: Are you, and Mr. Andrus, simply visitors passing through the Interior Department, or are you going to do something about it? Scientific advisory committees seem to have no effect. And one of your Assistant Secretaries even signed a letter to the chairman of the Judiciary Committee of the United States Senate, incorporating many untruths.

Mr. Joseph
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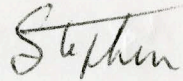
There are lots of cases where public and private bills have given relief in situations like the present. The leading precedent is the Texas City case, Public Law No. 86-381, September 25, 1969; Private Law 93-18, of October 18, 1973; Private Law 93-98, October 18, 1974; Private Law 89-290, September 9, 1966. These are all cases which recite, as the Court of Appeals did in the Walker case, that the case is outside the jurisdiction of the courts, being within the exception to the Federal Tort Claims Act. Why are you holding back approval? Is it to protect and perhaps to hide all of the errors and negligences that led up to the Walker death? Do you not think that the bureaucracy, at the top of which you sit, is doing its best to hide and protect itself from these errors?

So we come to the question of compassion. You have it within your power. Why not exercise a little compassion, in the circumstances of this case, and withdraw your objection, and help Senator Heflin get his bill through? Not only is it a matter of compassion, but it might in some small way make amends for the damage done to the Walker family. It would, specifically, enable Mr. Walker to obtain some machines which would help him run his small dairy farm in the absence of his dead son.

It might do another thing: it might have a positive effect within the Interior Department, within the bureaucracy.

How about it?

Sincerely,



Stephen I. Zetterberg

SIZ/tt

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(714) 621-2971

October 26, 1979

Dr. Frank C. Craighead, Jr.
P.O. Box 156
Moose, Wyoming 83012

Dear Frank:

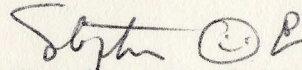
Senator Heflin is still trying to get Senator Simpson to pull out his objections to the Walker bill.

If you have any ideas, let me know.

Meanwhile, as you see, Secretary Andrus is having his problems with wildlife!

Give my regards to your wife.

Cordially yours,

A handwritten signature in dark ink, appearing to read "Stephen" followed by a stylized monogram or initials.

Stephen I. Zetterberg

SIZ/tt
enc.

three-year-old human rights movement.
then in a new crackdown against the
led in May and held by the police since

chairman, to study their own draft and
announce a resumption of the talks.

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Los Angeles Times

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4 Part II

WEDNESDAY, OCTOBER 17, 1979

A Snake in the Grass

When it came to the attention of C. Kenneth Dodd Jr. that Dominique's, an elegant Washington restaurant, was serving Pennsylvania timber rattlesnake (sauteed in red wine with mushrooms and shallots: starter, \$3.95; entree, \$8.95), he wrote the owner that the species is rapidly approaching extinction and would he please remove it from the menu.

The restaurateur did because the letter, written on Department of Interior stationery and bearing Dodd's title of Staff Herpetologist, Office of Endangered Species, had an official ring to it.

Not long after that, Dodd himself became an endangered species. He was given the sack by his bureaucratic superior in a letter teeming with reprimands sharper than a serpent's tooth. The most serious of them was that Dodd was wrong to use official stationery without clearing the matter on high.

But Dodd didn't know how high high was.

It turns out that the restaurant is one of the favorite haunts of Interior Secretary Cecil D. Andrus, who maintains a best-table, no-waiting relationship with the boniface, Dominique D'Ermo.

Andrus was furious that one of his underlings would barge into Dominique's kitchen, and he made two apologies to his host—one in person and one in a letter that said, "There are no prohibitions that I am aware of which would prevent you serving (rattlesnake) in your restaurant."

Andrus was not too aware. Pennsylvania law

forbids the commercial sale of rattlesnakes, and D'Ermo's purchase of the serpents from a Pennsylvania supplier could be a violation of federal laws that ban the interstate shipment of illegally taken game.

An injustice has been done to Dodd—and without as much as a warning rattle. He was only doing his job, and he does it very well. His annual performance evaluation ranks him as "the most productive branch biologist" in his department.

But a civil servant is lower than a snake's belly when he tangles with a Cabinet officer. Although Andrus will neither confirm nor deny that he was responsible for firing Dodd, the suspicion remains that he was.

The secretary will continue to receive the red-carpet treatment at Dominique's.

D'Ermo will continue to serve rattlesnake—but the Texas diamondback, which can be taken legally and which, according to his patrons, is slightly fatter and, therefore, even more succulent than the Pennsylvania species.

Dodd, then, is the only victim of the stew at Dominique's, but he intends to appeal his dismissal. "It's the damndest thing I've ever seen," he said. "I was doing what I was paid to do."

It seems to us that the Department of the Interior should not wait for the result of the appeal, but should put Dodd back on the payroll immediately.

If it doesn't, somebody in Washington will have made an asp of himself. □

Snake Steak and Gossip Lead to Aide's Dismissal

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, Oct. 12 — An Interior Department scientist who asked a local restaurant to stop serving rattlesnake steaks from a possibly endangered species has suddenly found that his own job is endangered.

The problem, the scientist found, is that rattlesnakes and gossip columnists do not mix, particularly when the meat of the rattler is served in a restaurant frequented by his boss, the Secretary of the Interior, Cecil D. Andrus.

On Sept. 11, C. Kenneth Dodd Jr., a 29-year-old herpetologist with the Interior Department's endangered species office, sent a letter on department stationery to Dominique D'Ermo, proprietor of Dominique's Restaurant, a downtown eating place popular with Government officials, journalists, business people and others who work in the area. Dominique's frequently advertises daily specials, including rattlesnake.

Mr. Dodd's letter cited evidence that the species of Pennsylvania timber rattlesnake being sautéed in red wine at the restaurant "is rapidly approaching extinction," and "respectfully" requested that it be removed from the menu.

Offending Dish Removed

Mr. D'Ermo wrote back shortly thereafter saying that the offending dish would be removed from the menu immediately.

But the poison had been planted. A widely followed gossip column in The Washington Star got wind of the exchange of correspondence and published a pithy synopsis. Among those who read the item was Secretary Andrus.

Mr. Andrus goes often to Dominique's and is friendly with the proprietor, according to Mr. D'Ermo, who said that the Interior Secretary preferred fresh fish to fresh rattlesnake.

But Mr. Andrus was reportedly angered by his subordinate's action. He wrote to Mr. D'Ermo saying that the Pennsylvania rattlesnake was not listed as threatened or endangered under the Endangered Species Act and asking that the restaurateur "accept my apologies for any inconvenience Mr. Dodd's letter may have caused." However, some of Mr. Dodd's defenders pointed out that Pennsylvania state law prohibits the commercial use of

reptiles, including the timber rattlesnake.

Then, on Wednesday, Mr. Dodd received a four-page letter from Lynn G. Greenwalt, director of the Interior Department's Fish and Wildlife Service, saying that the department intended to remove him from his position in 30 days.

Reasons for Dismissal

Among the reasons given for the dismissal was that Mr. Dodd had written "unauthorized correspondence which has jeopardized sensitive endangered species legislation which is essential to the continued operation of the U.S. Fish and Wildlife Service." Congress is now considering reauthorization legislation for the Endangered Species Act and Carter Administration officials are trying to turn back weakening amendments being prepared by the law's opponents.

Mr. Dodd was also accused of writing unauthorized correspondence that could "compromise any law enforcement investigation which may be undertaken by the service." Finally, Mr. Dodd was said to have violated rules of employee conduct by using department stationery.

Mr. Dodd, who has the right to appeal his dismissal, could not be reached today. However, several environmentalists expressed outrage over what they said was Mr. Andrus's action in having Mr. Dodd removed from his post.

Lewis Regenstein, executive vice president of the Fund for Animals, said, "The message that employees in the endangered species office have been sent is that if you really do your job and protect endangered species but happen to step on the wrong toes, you are in serious trouble."

Feels Sorry for Employee

Meanwhile, business is booming at Dominique's and Mr. D'Ermo says he can hardly keep up with the demand for rattlesnake. He is now serving Texas diamondback rattler, which is not endangered.

Mr. D'Ermo said that he would never dismiss any of his own employees unless they were caught stealing and that he feels very sorry for Mr. Dodd. But he does not understand what all the fuss was about in the first place.

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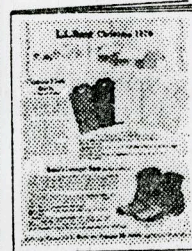
PUBLIC AUCTION

of the contents of the above bale airfreighted to be sold in Houston with the most important dealers south & southwest, The Theta Ar Sept. 26-30. The U.S.A. importer H able finance in the countries of contracted the carpets through Swiss Finance House Mercafinance S.A. met his liabilities promptly during months of June, July and August, and debt position, the airfreight was stopped before airfreighting to Houston, Tex now been ordered for auction to backlog of payment pending fresh m. Six only bales have been removed to
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United States Senate

WASHINGTON, D.C. 20510

OCT 26 1979

October 24, 1979

Mr. Stephen I. Zetterberg
Zetterberg & Zetterberg
319 Harvard Avenue
Claremont, California 91711

Dear Steve,

I trust the enclosed copy of my letter to
Secretary Andrus regarding S.889 will be of
some assistance. Thanks for your good words
and for your support, Steve.

With warm regards,

Cordially,



Alan Cranston

Enclosure

United States Senate

WASHINGTON, D.C. 20510

October 9, 1979

Honorable Cecil D. Andrus
Secretary of the Interior
Washington, D.C. 20240

Dear Cecil,

I am writing to ask that the Department reconsider its opposition to S.889, a bill for the relief of the family of Harry Eugene Walker who died in an attack by a grizzly bear in Yellowstone Park in 1972.

The courts have upheld the Department of the Interior on the legal principle that management of wildlife with respect to safety concerns is within the discretion of the Park Service and, therefore, not subject to the Federal Tort Claims Act. The Walker bill does not controvert that principle. The bill merely recognizes an equitable claim for relief given the fact that reasonable wildlife managers could have handled the closing of garbage dumps in Yellowstone and the problem bear in question in several different ways.

It is unfortunate that the bill has been elevated to the status of a "test" of the Department's discretionary power to manage wildlife in our national parks.

It is a misrepresentation of the bill to suggest that it would require the Department to be the guarantor of the safety of every visitor to the national parks. That's an impossibility.

Humans and bears don't interact very well in the wild. Some anthropologists and paleontologists theorize that cave bears may well have been the first species ever hunted to extinction by man. In any event, in the wild of our parks and other lands, grizzlies are protected from predation by man. Therefore, where

the land is used by people, they deserve some protection and guidance from the Park Service which manages the areas used by them and by bears.

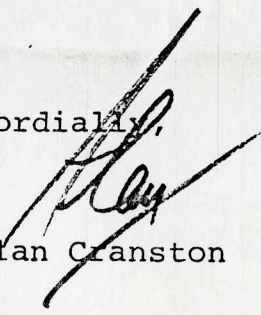
Unfortunately, the public has been encouraged by the federal government over many years to think of bears as cute and benevolent denizens of the forest. Recent experiences, and the Walker tragedy is one instance, have initiated a new public awareness that bears, and in particular grizzly bears, are extremely dangerous. But as the Park Service will be able to inform you, the level of knowledge about bears among the general public visiting our parks is incredibly low, although improving. Finally, as the Service well knows, an encounter in the wilderness on the part of an experienced camper or ranger may be handled with confidence and ease, whereas a more typical, inexperienced member of the general public may bring disaster upon himself in an identical situation.

The Walker bill is not the best forum for resolving these questions. I agree with the Courts that the matter is best left to the discretion of the Department.

Cecil, I raise these points simply to suggest that there are countervailing considerations in this case. On balance, it would be seen as a generous act on the part of the Department to accede to Congressional approval of the Walker relief bill. It certainly would not be seen as a concession of wrongful action by the Department.

With best regards,

Cordially,



Alan Cranston

STEPHEN I. ZETTERBERG
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September 5, 1979

Frank Craighead
P.O. Box 156
Moose, Wyoming 83012

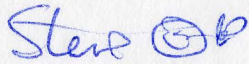
Dear Frank:

The Walker family sent me the enclosed short-short story on grizzlies at Glacier from the magazine, "People" for September 3rd.

Last weekend, hiking in Yosemite, we stayed at Vogelsang Camp. Our friends the Bergs hiked in from Merced to Vogelsang. Eating with us was a young man from Washington, D.C., who was attacked by a grizzly bear at Yellowstone. I forget the date. But he said that you or your brother John came in to talk with him. The bear pulled him out of a tree, stared at him, and then ambled off. Mrs. Berg listened to him; she said that she had purchased your Sierra Club book and found it very exciting reading.

Best personal regard to you and your wife, and to John,

Cordially,


Steve Zetterberg

SIZ/tt
enc.

STEPHEN I. ZETTERBERG
CHARLES L. ZETTERBERG
THERESA C. SHAW
FUNGLAN PERSIMMON

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(714) 621-2971

November 21, 1978

James A. Joseph Esq., Under Secretary
United States Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Dear Jim:

On the Walker Bill, don't give up yet, and don't come to a conclusion yet. You need an outside view, not an inside view. I am probably one of the best persons in the country to give it to you.

This is my third time around on federal tort claims actions against the Park Service. At the level where facts could be examined and determined - trial level - there was recovery based upon Park Service negligence. Understanding was never had by Park Service personnel, only by opposing trial attorneys. Understanding of the continuing negligence and carelessness of the Park Service and its continuing danger to the visiting public, has never yet filtered up. If the Interior Department had accepted my offer of help and suggestions back in 1962-63, at least one death by grizzly bear would have been avoided in Glacier Park.

Here too is a similar situation, and here too, Interior is closing to protect itself against outsiders (you, me, and congressional action). Inadvertance and "active guard" type situations are not relevant. An NBC News Reporter called to tell me that the Park Services is continuing the identical negligent practices that it exhibited in the Walker case.

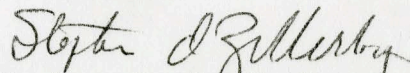
So hold your final judgment. You and Secretary Andrus may be able to do something for the public that has not been possible in years. If you have the courage to protect the Alaskan wilderness, you can have the courage and intelligence to break through the shell that has surrounded and protected the careless and callous procedures of the Park Service for years.

I hope, at a time mutually convenient, we will be able to confer further on the Walker Bill, and I believe you and Secretary Andrus will want to support my approach, not only as to correction of the causative practices within the Park Service, but as

James A. Joseph, Esq.
November 21, 1978
Page Two

to the Walker Bill. You will never get it from the inside;
there are Rangers who know the story, but they are hounded.
I can give at least one example.

Sincerely,


Stephen I. Zetterberg

SIZ:am



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 13 1978

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Mr. Stephen I. Zetterberg
Zetterberg & Zetterberg
Attorneys at Law
319 Harvard Avenue
Claremont, California, 91711

Dear Steve:

I have received your letter of October 1, 1978, relating to the Walker Bill, S. 1476. As a result, I requested one of my personal staff to review the entire record in the Walker trial and appeal. After this extended review, I must regretfully conclude that the Department cannot support payment to the estate of Mr. Walker.

Although I may personally sympathize with the Walker family, I would find it difficult to conclude that compensation in this case would be justified even under an extended liability policy for the National Parks. Specifically, an extended liability policy theoretically would attempt to insure reimbursement to those persons who suffered injury through inadvertence or act of God type situation. Mr. Walker on the other hand appears to have intentionally persisted in denying himself access to warnings, failing to check in at the Visitor Center, and camping in a prohibited area. As the Appeals Court found, Mr. Walker's conduct constituted contributory negligence which would bar recovery in any event.

I realize you strongly disagree with this position. However, I have personally spent a great deal of time reviewing this matter, and I cannot in good conscience reach the conclusion you urge upon me.

Sincerely,

James A. Joseph
Under Secretary

STEPHEN I. ZETTERBERG
CHARLES L. ZETTERBERG
THERESA C. SHAW
FUNGLAN PERSIMMON

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TELEPHONE
(714) 621-2971

October 10, 1978

Dr. Frank C. Craighead, Jr.
P.O. Box 156
Moose, Wyoming 83012

Dear Frank:

A quick check this morning, but I could not find exactly the things you wanted.

In looking for them, I found some things that might perhaps be helpful.*

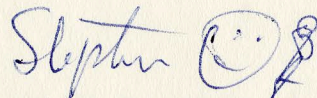
We still have all the transcripts, the depositions, and summaries of depositions.

I do remember, with Martha Shell, some reference to hippie types (backpackers), but I can't remember who made the statement.

Many of the statements in the Government's letter to the Judiciary Committee are downright false.

I enclose copies of correspondence with James Joseph, Under Secretary of the Interior.

Very truly yours,



Stephen I. Zetterberg

SIZ:cj

Encs.*

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TELEPHONE
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Sunday Oct. 1, 1978 - at home
(self-typed)

Hon James Joseph
Under Secretary of Interior
Washington, D.C.

Dear Jim:

Thanks for your letter of Sept. 25. It shows your personal interest and attention. It also shows where you are misinformed, perhaps misled (as was scientific figure A. Starker Leopold), and indicates how Interior can support the Walker bill, S. 1476 to both the credit and benefit of Interior.

I assume there is always a continuing review of National Park policies, and the National Science Foundation specifically has indicated that such continuing review should be done on grizzly policies. But such "redoing" is not necessary to give the Walker family relief. Consider these items:

1. The Walker death was a "one-time" event caused by NPS bungling, and probably deliberate mishandling, of the closing of the dumps. The Leopold committee set government policies for the dump closing. The policies were there, and adopted; they were not followed. Is it Interior policy to back up the negligence of NPS? That is what refusal to back the bill does.

2. There is no suggestion, in court or congress, that the Interior would become, as you say, "virtual insurer" by passing the bill. The Appeals decision, however full of dicta, has given Interior a "certificate" that would prevent this. Every lawyer using the case in the future can argue that the law is against Interior being an insurer. The bill doesn't change that. Lawyers will also see that our case was not against the government as an insurer, but for negligence.

3. At the Walker death, Yellowstone NPS gave no warning of the one-time grizzly dangers of the dump closing; gave out no literature on entrance to anyone on grizzly habits; gave no information to hitchhikers - backpackers riding with employees (until after Walker died); completely disregarded its own policies of transplanting or killing a dangerous bear, so the troublesome bear that killed Walker easily returned to the visitor area. NPS buries the distinction between grizzlies and black bears; the Appeals court never grasped this, and it may be that even the appeals government lawyer did not even understand. Both trial lawyers understood, as did the trial judge - the real source of what you call "nonprejudiced review" of this case.

4. It appeared in the trial evidence that what the NPS did was risk visitor death deliberately. Anderson knew the grizzlies

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epis Sent to ()
K. Walker
Zetterberg
J. Marchionello

would spread out into visitor areas when the dumps were closed. He tried to close off the garbage when he first became superintendent, and found the incidence of bear-human confrontations increased sharply. So he made the decision to close the dumps knowing there would be dangers to the visiting public. But he violated both Leopold Committee policy and good sense by not warning anyone of the dangerous operation under way. He made a calculated risk by not telling the public, including Walker, and including the concessionaire employees, so Yellowstone would put on a good front for visiting dignitaries due the day Walker was killed. The particular bear came back, like NPS and Anderson must have known it would; it went to the area above Old Faithful, which but for the dump closings grizzlies would not frequent, and he met and killed Walker as he walked in the woods (not, as your colleague's letter to Judiciary said, at the camp).

5. This brings up the discretionary exemption. The fact that Superintendent Anderson deliberately violated his own advisory committee policies in closing the dumps takes Interior out of the Federal Tort Claims Act. It was a bad decision, but it was a discretionary decision. This was our biggest trial problem - the basis on which we were reversed. It's like this: Anderson's handling of bear # 172, and of the dump closing, was so bad that it is as if he decided to risk death for some visitor or visitors. The importance of this, in the light of the last sentence of your Sept. 25 letter, is that you, Interior, have a case which says that even if you do it bad, if you decide to do it, you are protected.

What I am saying, there is no way that granting the Walker family relief will set any kind of precedent with which you will be stuck. In the first place, the basic hazard, causing death and danger, was a one-time hazardous operation of closing the garbage dumps, open for 80 years. In the second place, you have an appellate decision, dicta or no, that the government is not an insurer. Thirdly, you have an appellate decision that says the grizzly operations are discretionary with the NPS. In short, you are protected precisely from the risks you say (someone told you?) would make Interior an insurer. On the contrary, you are free to be compassionate, to give relief to the Walker family.

Jim, this case has been reviewed by one nonprejudiced person, chosen, trained, picked, duty-bound to give unprejudiced review to the facts here, and he found the government liable. Short of hearing witnesses for a month of trial, no other person but the trial judge, the two lawyers who opposed each other at the trial level, and the nationally known expert, Frank Craighead - who sat through the trial - will have this kind of picture. Certainly not the appellate court, which didn't even hear full argument, and which never realized the distinction between black and grizzly bears (so it decided the case on the "discretionary exemption").

I know there is a lot of political interplay within the NPS to protect the people who caused this death, and to boil misinformation to the top (witness Interior's letter to the Senate Judiciary, wherein your colleague was coused to give Judiciary downright false information). But under the Texas City procedure, Congress and the President can give relief, without revising or violating any Interior guidelines, and without (as you say) becoming a "virtual insurer." Now is the time you can bring a little humanity into that big monolith where you sit.

Please help. I'll come back, if you want. Steve Zetterberg

Contributed
to HarveySTATEMENT FOR INQUISITIVE VISITORS CONCERNING BEAR INCIDENT

Harry Eugene Walker, age 25, of Anniston, Alabama was fatally injured about 1 a.m. Sunday, June 25 northeast of Old Faithful Geyser. He and a companion, Phillip Howard Bradberry, age 25, of Oxford, Alabama were camping in an area east of Grand Geyser.

? The bear was raiding the food supply of the camp when the two men returned. The bear charged and attacked Walker, who was carrying the flashlight. Bradberry ran to the Old Faithful Inn and reported the incident to rangers. The rangers began an immediate search; but because of darkness and Bradberry's inability to give a detailed description of the location, the body and campsite were not discovered until 5:30 a.m. Sunday.

The body was removed to the Old Faithful dispensary and subsequently taken to the Lowery Funeral Home in Livingston, Montana.

The camp had a considerable amount of food on the ground with dirty dishes and cooking utensils still containing cooked food plus being in an area where camping is prohibited. The area was closed off to visitors. Rangers patrolled the area all day Sunday in search of the bear in the event that he returned to the scene.

Sunday night snares were set at the campsite. During the night a 400 pound female grizzly was captured. Monday morning, with the evidence at hand, rangers in the Old Faithful area had reasons to believe that the bear captured was the same bear involved in the incident. The bear was taken to Montana State University for an autopsy. The laboratory examination produced sufficient evidence to conclude that the animal was the same animal responsible for Mr. Walker's death.

Although, we greatly regret that this tragedy occurred, we do not feel that enactment of S. 1476 is justified under the circumstances.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

ROBERT HERBST,
Assistant Secretary.

COST

The enactment of this legislation involves no direct additional expenditure to the Government.

○

ESTATE OF HARRY EUGENE WALKER, DECEASED

MARCH 9 (legislative day, FEBRUARY 6), 1978.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 1476]

The Committee on the Judiciary, to which was referred the bill (S. 1476) for the relief of the estate of Harry Eugene Walker, deceased, formerly of Anniston, Ala., having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

On page 1, lines 6 and 7, strike "\$87,417.67" and insert in lieu thereof "\$98,998.67".

On page 2, line 2, strike "thereof", and insert in lieu thereof "of \$87,417.67".

PURPOSE OF THE AMENDMENTS

The purpose of the amendments is to include the actual cost of the litigation involved in this case, in the award of relief. The second amendment, to section 2 of the bill, restricts the amount which may be paid or delivered to or received by any agent or attorney to 10 percent of \$87,417.67.

PURPOSE

The purpose of the proposed legislation is to direct the Secretary of the Treasury to pay to the estate of Harry Eugene Walker, deceased, the sum of \$98,998.67 in full satisfaction of all claims of said estate against the United States arising out of the death of Harry Eugene Walker as a result of his being attacked by a grizzly bear in Yellowstone National Park.

STATEMENT

Harry Eugene Walker was killed and partially eaten by a grizzly bear in the fringe areas of Old Faithful Visitors' Center the night of June 24-25, 1972.

The park ranger on duty when decedent entered the park at the north entrance permitted decedent to enter without paying the usual admission charge. Prior to decedent's death, the Park Service had approved the closing of backcountry garbage dumps about 4 miles from the Old Faithful Visitors' Center area which had been used by grizzly bears for years as a source of food. Such abrupt closure was an extremely hazardous action, and the Park Service had been warned by a nationally recognized expert (Dr. Frank Craighead) that an abrupt closure would cause a change in the movements and habits of the grizzly bears and that they would tend to go into the campgrounds in search of food. The Service attempted the abrupt program for closing the dumps rather than the phasing-out procedure recommended by Dr. Craighead.

The bear who killed decedent was an old female that had been captured and transported approximately 18 miles from the Old Faithful area in October of 1970. According to Dr. Craighead this distance was insufficient to prevent the bear from returning.

A civil action was brought on behalf of the surviving parents and sister and results in a judgment on behalf of the plaintiffs for a total of \$87,417.67.

The judgment of the trial court was reversed by the Court of Appeals for the Ninth Circuit, and the action was dismissed. The Court of Appeals held that the discretionary exemption contained in 28 U.S.C. section 2680(a) (the Tort Claims Act) barred a recovery. In dicta, the court further stated that it disagreed with the trial court and noted that the decedent had been contributorily negligent. The comparative negligence law enacted by Wyoming in 1973 was not retroactive and therefore would not apply.

The committee notes that both the Park Service pamphlet, "In Grizzly Country," and Dr. Craighead held that the best and safest campsite in grizzly country is not in an established campground, and not on a trail, but is at an off-trail place similar to the campsite chosen by the decedent and his camping companion. The Court of Appeals, however, referred to the campsite of the boys as "unauthorized."

The committee realizes that the legal remedies have been exhausted in this case, as evidenced by the decision of the court. There are, however, other considerations involved. The particularly tragic and horrible circumstances must be considered. Further, the controversy surrounding the closing of the dumps, as well as the prior removal of the bear, are very relevant. Hindsight has proven that Dr. Craighead and his fellow experts were correct in their estimate of the situation, and the Park Service, while acting within its discretion, was in error. Therefore, the committee feels that, morally and equitably, relief should be granted. The amount involved is that determined by the district court. The court was influenced in its findings by the fact that decedent operated the family dairy farm in Alabama, and that he was expected to operate the farm in his father's illness and retirement. The court determined the amount for each their entitled to recovery, his father, mother, and younger sister, in the total amount involved.

In addition to the amount noted above, the actual cost incurred by the Walker family in the lawsuits was \$11,580, including court cost. It is the opinion of the committee that this amount should be included in the relief. The total amount involved, therefore, is \$98,998.67.

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In view of all the circumstances of the case, the committee feels that relief is warranted in spite of the objections of the Department of the Interior. The committee recommends that the bill do pass.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 5, 1977.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your committee has requested the views of this Department on S. 1476, a bill for the relief of the estate of Harry Eugene Walker, deceased, formerly of Anniston, Ala.

We recommend that the bill not be enacted.

S. 1476 authorizes and directs the Secretary of the Treasury to pay to the estate of Harry Eugene Walker, deceased, the sum of \$87,417.67 in full satisfaction of all claims against the United States arising out of the death of Harry Eugene Walker as a result of his being attacked by a grizzly bear in Yellowstone National Park.

On December 3, 1976, the U.S. Court of Appeals, Ninth Circuit, denied relief to the estate of Mr. Walker on the grounds that the deceased's own conduct within Yellowstone National Park amounted to contributory negligence (546 F. 2d 1355 (1976)).

A petition for a writ of certiorari to the Supreme Court was denied on June 20, 1977.

Harry E. Walker and his companion, Phil Bradberry, hitchhiked into Yellowstone National Park on June 22, 1972, in a car driven by a concessioner's employee. Signs at the entrance to the park warned of the presence and danger of wild animals and advised that camping is prohibited except in designated areas. The concessioner's employee, who gave them the ride into the park, warned them that camping in unauthorized areas was dangerous and advised them to go to the ranger station to find a place to camp where they would have obtained advice about precautions to take when camping in areas inhabited by grizzly bears.

Despite this, the two young men followed the boardwalks into the Upper Geyser Basin where Old Faithful Geyser is located and left the boardwalk ignoring the plentiful warning signs to stay on the boardwalk because of the ever present danger of boiling water in the pools. They crossed between two of the hottest thermal pools in the basin and entered the forest, hiked up the hillside about a mile and one-half and camped in an unauthorized area. They kept a very dirty camp leaving quantities of cooked food lying around. As a result, a grizzly bear was attracted to their camp and, several nights later when the two men returned late in the evening and surprised the bear in the camp, Harry Walker was attacked and killed by the bear.

It is our view that the estate's assertions of Government negligence based principally upon the adoption of a bear management plan by the park in 1970 and in the handling of an incident 18 months before the attack occurred involving the bear they contend was the one that killed decedent, are neither legally nor factually supportable as found by the Court of Appeals.

Frank -
this is not it; but may help
59

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DENNIS G. MARTIN, as Adminis-
trator of the Estate of HARRY
EUGENE WALKER, Deceased,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Civil 72-3044-AAH

Yosemite National Park, California, Thursday, Nov. 1, 1973

DEPOSITION OF

JAMES H. BRADY

-oOo-

Reported by: Durward E. Hope, CSR
Official Reporter

RIGG, HOPE & SAUNDERS

OFFICIAL COURT REPORTERS

COUNTY COURTS BUILDING, MERCED, CALIFORNIA 95340

TELEPHONE 209-722-7411, EXT. 208

COPY

"accidents."

MR. ZETTERBERG: Q. That means by incident, I mean contact or observations? Let's just say contacts in one way or another between humans and grizzly bears in your Sub-District.

A. Between humans and grizzly bears?

MR. SPIVAK: Again I'm not clear. Are you including sightings which might be a contact, or are you referring to an injury which is a physical contact. I think the question is still not clear.

MR. ZETTERBERG: Q. I am not including binocular type sighting. I mean presence of grizzly bears that were reported in the area of the developed or in the area of Upper Geyser Basin.

A. The question was did I notice an increase?

Q. Yes.

A. In what year, sir?

Q. That would be in 19 -- anytime after the closing of the Rabbit Creek Dump.

A. In 1970 in the Old Faithful developed area there was an observable increase in the number of bears seen in the Old Faithful area.

Q. You are talking about grizzly bears now? I am not talking about black bears.

A. No, I am referring here in that statement to grizzly bears, yes, sir.

Q. Now do you know when all of the open garbage dumps in the Park were closed by?

A. What year?

1 occurred after the Walker boy's death.

2 A. No, sir.

3 Q. And --

4 A. Well, you know, if you have other information I would
5 be happy to listen to it, but so far --

6 Q. You were aware that there were large numbers of
7 back-packers and campers in the Old Faithful area in June,
8 1972, before the Walker boy's death, were you not?

9 A. Yes.

10 Q. And you were aware, were you not, that they slept
11 out in the Old Faithful area alongside the road and trees
12 and so on?

13 MR. SPIVAK: Objection, leading.

14 THE WITNESS: I'm not sure exactly what you are looking
15 for. The question was, was I aware that there were back-
16 packers that were sleeping in the Old Faithful area during
17 June of 1972?

18 Q. Yes.

19 A. Well, my answer to that is yes, there were back-packers
20 that were sleeping illegally in closed areas, in the Old
21 Faithful area in June of 1972.

22 Q. You were aware of that before June 25, 1972, were you
23 not?

24 A. Yes, sir.

25 Q. In fact, wasn't there a change in the regulations
26 regarding hitchhiking about this time? Park regulations
27 regarding hitchhiking.

28 A. Are you referring to the Code of Federal Regulations,

1 the statute in reference to hitchhikers?

2 Q. Park regulations in reference to hitchhiking.

3 A. You don't mean Park policy, but Code of Federal
4 Regulations?

5 Q. No, Park policy.

6 A. There is a difference, obviously.

7 Q. I mean at this time was there not a change being
8 processed in the administration of Yellowstone Park to make it
9 easier for hitchhikers to be able to hitchhike without
10 objection by the Park authorities?

11 A. I am not sure what you mean by a change exactly, but I
12 could, you know, identify the condition that was prevalent
13 at that time.

14 Q. Were there any regulations against hitchhiking in the
15 Park as of June 25, 1972?

16 A. To my knowledge the only thing against hitchhiking
17 statutorially was a section of the Code of Federal Regulations
18 on hitchhiking itself. That generally wasn't vigorously
19 informed.

20 Q. Who was in charge of law enforcement of hitchhiking
21 at the Park in 1972?

22 A. In charge of law enforcement?

23 Q. Yes. Was that Jerry Phillips at that time?

24 A. In 1972 Jerry Phillips was the law enforcement
25 officer for the Park Service at Mammoth.

26 Q. In general, all throughout the Park there were lots
27 of hitchhikers and back-packers, were there not?

28 A. You use hitchhiking and back-packing interchangeably?

1 That's what you meant?

2 Q. Yes, that is the back-packers who were without vehicles.

3 A. Back-packers without vehicles were common in Yellow-
4 stone throughout the summer season, yes.

5 Q. And you were aware that when the sun went down they
6 didn't all go to Grants Village in one direction or to
7 Madison the other direction to spend the night, were you not?

8 A. They did not all --

9 Q. They did not all leave Old Faithful and go 13 or 14
10 miles in a northwesterly direction or 17 or 18 miles in an
11 easterly direction to spend the night?

12 MR. SPIVAK: Objection, leading.

13 THE WITNESS: The question is?

14 MR. ZETTERBERG: Q. You were aware that they were staying
15 in your District without having ^{any} 7 accomodations other than the
16 blue sky overhead?

17 MR. SPIVAK: Objection. Also it's argumentative.

18 MR. ZETTERBERG: Q. Were you not alert to the possibility
19 that on occasions that did occur?

20 A. Yes.

21 Q. Well as a matter of fact hadn't you heard all the
22 time and you knew?

23 A. Yes, every day.

24 MR. SPIVAK: Object to the form of the question.

25 THE WITNESS: During the summer, you mean?

26 MR. ZETTERBERG: Q. Yes. ^{A.} During the summer months
27 that was common that hitchhikers were walking through the
28 area or back-packers traveled through the area. We contacted

1 person to be in the back country or to be in the area near the
2 Old Faithful campgrounds, if you are like sleeping out or
3 camping out?

4 A. Well, near the Old Faithful campgrounds? There aren't
5 any, so --

6 Q. I mean, I'm asking you if it's more dangerous in your
7 opinion to be camped within say half mile of the Old Faithful
8 campground or back at one of the campsites?

9 A. You mean within half a mile of the Old Faithful area?
10 You said Old Faithful campground.

11 Q. Old Faithful area.

12 A. As opposed to your camping out in the back country
13 further distance away?

14 Q. Yes.

15 A. I would as a matter of opinion feel that it would be
16 less desirable to sleep within the immediate proximity of
17 Old Faithful than it would be some distance away from it.

18 Q. Why is that?

19 A. Mostly because of not having established sites or
20 control factors immediately around the Old Faithful area.
21 Otherwise, what I am trying to say is there were no designated
22 campsites within a half mile of Old Faithful.

23 Q. Yes.

24 A. From the developed area I am talking about the
25 District, but within a half mile peripherery, radius, buffer
26 zone, fringe area of Old Faithful, there were no campsites
27 established. And people that would be staying in that
28 particular zone wouldn't necessarily be under any control of

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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 DENNIS G. MARTIN, as Administrator)	Civil No. 72-3044-AAH
12 of the Estate of HARRY EUGENE)	
12 WALKER, Deceased,)	
13)	
13 Plaintiff,)	
14)	
14 vs.)	
15)	
15 UNITED STATES OF AMERICA,)	
16)	
16 Defendant.)	
17)	

18
19 SUMMARY OF DEPOSITION
20 OF
21 PHILLIP HOWARD BRADBERRY
22
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1 the cattle. He called Harry "energetic," and Harry seemed to know
2 what he was doing. Phillip actually helped Harry on the Walker
3 farm a dozen or more times. He remembers the time when Mr. Walker
4 was ill and having back problems and wasn't able to do the work
5 so "we all pitched in and helped Harry because it was left up to
6 Harry to do it to get it done. And Harry had other things to do,
7 work sometimes on construction, sometimes he drove mail truck, and,
8 so, we pitched in and helped Harry a lot, actually" (94-96).
9 Phillip had seen Harry drink but had never seen him drunk. "He
10 seldom drank, to tell you the truth" (96). Then Phillip described
11 his own jobs and work, including doing gardening on the Dorman
12 farm (97, 98).

13 4. On re-cross examination, Mr. Spivak asked Bradberry
14 about bear pilings (100). On re-direct, Mr. Zetterberg had Mr.
15 Bradberry read certain portions of the Michael Scott Connelly
16 deposition which was taken November 1, 1973, concerning the comments
17 about "rogue" bear. Commenting on the Connelly deposition, Mr.
18 Bradberry stated (104), "I don't care what this [Conerly] deposi-
19 tion says, I know what was said to me on the record. . . . I don't
20 care what that says, I know what was said to me . . . I was told
21 it was a 'rogue' bear, and I asked why and they said it had been
22 tagged. And I said, 'What do you mean by that?' They said, well,
23 'it wasn't supposed to be in the area.' And it was with the
24 officer in the back seat and two in the front that were discussing
25 entirely different things along the way. They were talking of
26 football, as a matter of fact." (104-105). Bradberry describes
27 his camp as "very orderly" (109). There was "no trash, no food
28 of any sort scattered around, you know, like thrown-away, or any-
29 thing. Everything was neat and in place. And just the only way
30 I could explain it would be a neat camp site. You have to be a
31 camper to know what I'm talking about" (110). He further describes
32 the campsite and how it was before the attack (110-112).

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11 DENNIS G. MARTIN, as Administrator)	Civil No. 72-3044-AAH
12 of the Estate of HARRY EUGENE)	
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16)	
17 vs.)	
18)	
19 UNITED STATES OF AMERICA,)	
20)	
21 Defendant.)	
22)	

23 SUMMARY OF DEPOSITION
24 OF
25 VIKKI SCHLICHT, NOW
26 VIKKI SEARER
27
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29
30
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1
2 SUMMARY OF DEPOSITION OF VIKKI SCHLICHT, NOW
3 VIKKI SEARER
4

5 (Vikki's deposition was taken as a witness on behalf of
6 defendants, on April 20, 1973, at Yellowstone National Park.)
7

8 Vikki was a maid at Old Faithful, picked up hitchhikers
9 Harry Walker and Phillip Bradberry ("Crow") June 22, 2:00 p.m.,
10 at the K.O.A. Campground in Livingston. They entered the park at
11 the Gardiner Ranger Station in Montana. They paid no fee. She
12 had an employee decal. "I just pointed out my sticker as I was
13 going through and he [the ranger] just waved me through and didn't
14 stop at all." (4,5)

15 Pages 10 through 15 are Vikki, at Mr. Spivak's request,
16 reading her statement given to rangers the morning Harry was
17 killed. Page 12 tells of her trip to the campsite. Page 13
18 relates her conversation with Harry about his farm in Alabama,
19 and his horse named Commanche, and that he wanted to see the U.S.
20 and Canada and that he wanted to take Vikki home to see his farm
21 in Alabama. Also, he was going to wire for money and have her
22 pick the money up (13).

23 On the way into the park from Livingston they saw a
24 "bear jam" with a bear with his head in the window of a car. She
25 told the boys that bears were not tame. She knew a bear had killed
26 two girls in Glacier (14) but she didn't discuss this with them
27 (16).

28 Harry had come to the girls' dorm, and there were bulletin
29 boards in the girls' dorm, but she did not remember any with bear
30 warnings. They didn't have anything to do with camping or bears
31 (17, 18). They asked her about a permit, but they thought if they
32 would get a permit, they would have to be camped where there were a

1 whole bunch of people, campers, little kids, and dogs and such
2 running around, and they wanted to be by themselves (19, 20).
3 At the deposition, she reiterated, "There was talk of Canada and
4 California and back down to Alabama" (20). She described going
5 up to the campsite (21). There was teasing about animals at the
6 campsite (15). When she went to work with the company, a man
7 told her about the rules of the park, about what you couldn't do
8 about the animals and the geysers and the hot pots, and you
9 couldn't go hot-potting (18).

10 At pages 24 and 25 she described the camp, with food off
11 to one side covered with a tarp, and "all I remember seeing is
12 canned stuff" and an empty 7-Up bottle, no open cans, two loaves
13 of bread. "I don't remember seeing any garbage except this 7-Up
14 bottle" (25).

15 When she had orientation talks from the ranger, she was
16 not given any folders or any information that she could remember,
17 but she had seen the red folder printed "Danger," which is number
18 17 to the Williamson deposition (28). She wasn't given this folder
19 when she came in the park. She picked it up in a room that she was
20 cleaning (28, 29). She talks about signs at the entrance to the
21 park (29, 30, and 6, 7). She doesn't remember the "don't feed
22 the animals" coming into the park, but there were such signs
23 through the park (30).

24 A bear jam is what park employees call cars lined up on
25 both sides of the highway stopped and looking at a bear. It was
26 like the one in Voyager Magazine, which was on the lounge in the
27 Superintendent's Office at the time of taking of the deposition,
28 except that the one in the magazine had cars on one side only
29 and the one when she brought Harry Walker into the park had cars
30 on both sides. There was a bear and two cubs, and people were
31 playing tag with the bear, and it had its head all the way through
32 the window up to its shoulders. Vikki didn't stop, she just worked

1 her way through down the middle between the cars (31-33). She
2 remembers talking with Harry, and Phil, about tourist conditions
3 with the animals. Harry and Phil were "most amazed with the way
4 the tourists reacted and the way they got out and mingled with
5 the bears. We discussed it considerably." The boys agreed with
6 Vikki that the tourists were stupid. "The most person I ever
7 talked to was Harry so when we talked about the bears he was, he
8 too thought it was ridiculous for these people to be feeding the
9 bears." Harry talked about camping in Alabama and they could just
10 go out anywhere in the woods in the forest. There were no rangers
11 at the bear jam and she had seen other bear jams when she was in
12 the park (34-36). Harry and Phil were talking about cutting out
13 all of the roads and just making a hiking path through the park
14 so that it would be more of a nature site (36-37). She felt that
15 seeing the bear jam turned the boys off on tourists (37).

16 Pages 38 to 40, she again describes her conversations
17 with Harry about Alabama; about Harry's horse Commanche which he
18 was "very proud of that horse," that he was staying with some
19 guys that were not his family and he wanted to show her the farm
20 where the horse was. There was talk about schooling, and how he
21 was divorced from his wife and how Harry told her that Alabama
22 was "hot and dry, but that he thought I would like it."

23 Pages 41-42, there was a recollection of joking about
24 bears; the boys didn't have any park folder on bears. Harry did
25 not want to have anything to do with people or park rangers--he
26 didn't like a lot of people. He would rather be by himself. He
27 loved nature and things to do with animals and he didn't like the
28 "hustle and bustle of the city and the smog and all that sort of
29 stuff which was mainly what we talked about."

30 The examination ended on Mr. Spivak's question and answer
31 as follows (page 46):
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DENNIS G. MARTIN, as
Administrator of the
Estate of Harry Eugene
Walker, deceased,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Civil 73-3044-AAH

ORAL DEPOSITION OF MICHAEL WEINBLATT

APPEARANCES:

For the Plaintiff: MESSRS. ZETTERBERG & ZETTERBERG
Attorneys at Law
By: Dennis G. Martin, Esq.
319 Harvard Avenue
Claremont, California 91711

For the Defendant: WILLIAM SPIVAK, JR., Esq.
Asst. United States Attorney
1100 U. S. Courthouse
Los Angeles, California 90012

PAUL D. BUCHANAN
Official Court Reporter
SIXTH JUDICIAL DISTRICT - POCAATELLO, IDAHO

1 fire pit. Between the tent and the fire pit.

2 Q Where was the chewing gum?

3 A The chewing gum was located next to one of
4 the backpacks.

5 Q Which was somewhat adjacent to the red tarp?

6 A Right.

7 Q Can you reconstruct in your mind how this
8 food looked before the bear came through based on your
9 observations at the time?

10 A Very obviously, the food was all neatly
11 placed outside the tent on the red tarp, and by the
12 food I am talking about the original Exhibit I from
13 Lines 1, sack of flour, down to the matches, they were
14 all placed next to the tent on the red tarp.

15 Q On the ground?

16 A On the ground.

17 Q Which of the items would have emitted an
18 odor?

19 MR. MARTIN: Objection to the form of the
20 question. If you could ask him which ones did rather
21 than would have.

22 Q (By Mr. Spivak) I am trying to get a recon-
23 struction before the bear came through. It tore the sack
24 of ^{flour} ~~four~~ for sure.

25 A Many of the items were cans. Whether there

1 the food on it.

2 Q You entered from the side of the campsite
3 that was closest to where the tree was that had the
4 pot, is that true?

5 A No, I came in from the other side.

6 Q You said this was a dirty campsite. That
7 was a reference to their being food in the area, not a
8 reference to whether or not the campsite was sloppy --

9 A No, it was with reference to the appearance
10 of the campsite, the pots and pans, the fire pit.

11 Q All right. Originally you said the campsite
12 had been ransacked pretty well by the grizzly bear,
13 however, so this is a reconstruction of the way you
14 think things may have looked in the pre-grizzly bear
15 period --

16 A The pots and pans --

17 Q Just answer the question. Is that true?

18 A Could you repeat the question?

19 Q I will rephrase it. You stated and the
20 photographs show that the campsite was ransacked by the
21 grizzly bear, and your statement that the campsite
22 itself was messy is partly based on a reconstruction
23 by you of what you think the campsite must have looked
24 like before, is that true?

25 A Yes.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 2 1978

SEP 25 1978

Stephen I. Zetterberg, Esquire
Zetterberg & Zetterberg
Attorneys at Law
319 Harvard Avenue
Claremont, California 91711

Dear Steve:

After a review of the Department's position on S. 1476, I have decided that the Office of Management and Budget should not be asked to reverse the Administration's position.

The Circuit Court's findings do not automatically preclude the Department from supporting such a bill. However, we must maintain a systematic position rather than deal with individual cases on an ad hoc basis. We cannot support payments to the Estate of Mr. Walker without redoing our general policies on liability in the National Parks. If we become the virtual insurer of safety in the Parks, we may limit the kind of experience we can offer our visitors.

I have gone somewhat outside the normal channels to provide a nonprejudiced review of this case. Nonetheless, we are maintaining our previous position.

Sincerely,

UNDER SECRETARY

1 Q And also at some point in your deposition
2 you said that the food clearly was arranged neatly on
3 the tarp. Is that true?

4 A The canned food, I imagine before the grizzly
5 came there, was placed on the tarp.

6 MR. MARTIN: That's all.

7 REDIRECT EXAMINATION

8 BY MR. SPIVAK:

9 Q I think counsel tried to draw your attention
10 to other parks or other geography. I would like to
11 bring your attention back to Yellowstone Park right
12 here. I notice in Defendant's Exhibit A to the Schroeder
13 deposition the statement is made, "Use dry, prepackaged
14 foods and avoid greasy, odorous foods such as bacon and
15 ham." What's the purpose behind that?

16 A Well, it's the whole idea of odors attract-
17 ing animals.

18 Q And particularly grizzly bears?

19 A Particular bears, yes.

20 Q Then you testified some about clothing.
21 I notice the statement, "It's best not to sleep in the
22 clothes you wore when cooking." What's the reason for
23 that statement?

24 A The reason is that cooking odors sometimes
25 become enmeshed in your clothing so that you smell like

United States Senate

WASHINGTON, D.C. 20510

April 6, 1978

Mr. Frank Craighead
P.O. Box 156
Moose, Wyoming 83012

Dear Frank:

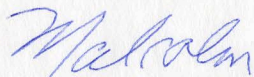
Your interest in the private relief bill for Harry Walker's estate is welcome. Thank you for your thoughtfulness in enclosing the material from the Central District Court of California.

For your information, I am enclosing a copy of a letter to Senator Sparkman in which I outline my objections to this bill. It is important to note that these objections do not center on the professional testimony given at the trial or the compassionate motives of the bill. Instead, they focus on the fact that the wrongful death claim was not substantiated by the Ninth Circuit Court or the Supreme Court.

Enactment of S. 1476 would set some major precedents in our national park system, and I will not support such action through a bill where there has been no debate or expert testimony. To date, there has been no such exchange in the Senate.

Again, let me emphasize that your comments and opinions are always welcome. If you have further questions after reading my letter to Senator Sparkman, please let me know.

Sincerely,



Malcolm Wallop
United States Senator

MW:rw
Enclosure

October 15, 1978

Mr. Stephen I. Zetterberg
319 Harvard Avenue
Claremont, California 91711

Dear Steve:

I am sending you a copy of a rough draft of the appendix in my book on the grizzly. It deals with management suggestions. I am making some changes in this and editing it, but it will be essentially what I am sending you. You may use this for your own information but I would prefer that it not be passed on to anyone else in its entirety at this time unless you let me know to whom you wish to send it. The suggestion relative to a private insurance policy may interest you.

Frank Craighead
Sincerely,

× Frank Craighead

P.S. Received the Xerox material. It is hepful. Thanks

United States Senate

WASHINGTON, D.C. 20510

March 27, 1978

The Honorable John Sparkman
Suite 3203
Dirksen Senate Office Building
Washington, D.C. 20510

Dear John:

The untimely death of Harry E. Walker in a 1972 grizzly bear incident in Yellowstone National Park is both tragic and unfortunate. As a result, the compassionate motives associated with private relief bill, S. 1476, are above question. But in addition to compensating the Walker estate, this bill has far-reaching ramifications for the entire national park system and consequently merits the close scrutiny of Congress.

The relatives and friends of Harry Walker have suffered through long and painful proceedings over a period of several years. Nevertheless, Congress also has a responsibility to the officials who are charged with managing our national areas. Expeditious passage of S. 1476, without understanding the broad implications of the bill, will not serve the interest of justice.

As you know, S. 1476 would award \$98,998.67 to the Walker estate for the "satisfaction of all claims of such estate against the United States arising out of (Harry Walker's) death..." Those claims stem from charges that Yellowstone National Park officials were negligent in implementing a bear management program in 1970 which, in part, rapidly closed garbage dumps frequented by bears. Testimony by experts conflicted on how quickly the dumps should be closed. One group alleged that a sudden closure would disrupt bear movements and perhaps increase their interaction with humans. Others felt that the longer the bears had garbage to feed upon the more they would rely on it, and new generations of cubs would become accustomed to that source of food. In spite of disagreements on timing, all of the experts advising the Park Service on this program agreed that the dumps should be closed.

In a wrongful death action, the Central District Court of California found that the Park Service was solely responsible for Mr. Walker's

The Honorable John Sparkman
Page 2
March 27, 1978

death and awarded the plaintiffs \$87,417.67. The Ninth Circuit Court of Appeals reversed that decision and remanded it to the trial court for dismissal. The Supreme Court let the appeals court decision stand by denying a petition of certiorari.

It is important to note that the appeals court did not overturn the district court decision on a legal technicality. It commented, instead, that "a mistake had been committed by the trial judge in certain findings and in entering judgement for the plaintiff." Congressional action would contradict and ignore the circuit court's reasoned opinion that the findings of fact of the lower court were "clearly erroneous."

Also, the enactment of this bill would set new guidelines for the interpretation of the Federal Court Claims Act as applied to our national parks system. The appeals court referred to congressional intent in their written opinion, *Martin, Administrator of the Estate of Harry Walker vs. United States of America*. They stated, "It was not the intention of the Congress as we read the Federal Tort Claims Act and the enactment relating to Yellowstone Park, to make the defendant, the United States of America, an insurer of the safety of all Yellowstone National Park visitors. Approval of the trial judge's findings and order would, in effect, do that." The panel further noted, "To require the Park Service to search out from among the 25,000 daily visitors on the days the decedent and Bradberry (an uninjured companion) were in the park those two and any others who had entered the park without paying and without receiving the warning bulletins and to hold that failure to warn such individuals is actual negligence is for the Congress and not for the courts. To date, as we read the Federal Tort Claims Act and the acts relating to Yellowstone in particular, and other national parks generally, the Congress has not intended such broad coverage." If the Congress sees fit to grapple with these policy questions, it should do so with careful consideration and not inadvertently by the passage of a seemingly innocuous private relief bill.

The appeals court found that the National Park Service officials had used discretion in implementing the bear management program and were therefore protected by the "discretionary exemption" section (28 U.S.C. 2680 (a)) of the Federal Tort Claims Act. There is disagreement among the circuit courts on how this statute should be interpreted. Before acting on this private relief bill, Congress

The Honorable John Sparkman
Page 3
March 27, 1978

should carefully evaluate the potential impact on the "discretionary exemption" section of the Federal Tort Claims Act.

In essence, this private relief bill underscores a multitude of conflicting priorities in our national parks today. Each year, more people are discovering the wonders of these areas. But as enterprising visitors search for solitude and adventure, they place an inevitable stress on the natural environment. It is here that the need for sound resource management and visitor protection programs becomes apparent. How can large influxes of people be safely accommodated while still preserving and protecting the integrity of these areas for future generations? Often, as was the case in the bear management program in Yellowstone, a decision becomes a matter of judgement because there is very little data on the subject.

Congress clearly has an oversight responsibility over park management programs. However, that function should be conducted in a forum which has the benefit of testimony from people familiar with the problems. The unanswered questions raised in S. 1476 are compelling enough to warrant discussion on the floor of the Senate, or, more preferably, in the Judiciary Committee. Therefore, I respectfully request your support in recommitting S. 1476 to the Judiciary Committee.

If you have additional questions, please contact me personally or Rob Wallace of my staff. The number is 224-6441.

Sincerely,

Malcolm Wallop
United States Senator

MW:rw

STEPHEN I. ZETTERBERG
CHARLES L. ZETTERBERG
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TELEPHONE
(714) 621-2971

October 25, 1978

Dr. Frank C. Craighead, Jr.
P.O. Box 156
Moose, Wyoming 83012

Dear Frank:

I enclose my letter, addressed to you and the Sierra Club, regarding your new book. I had one of the other lawyers in the office review the material, so as to be sure that we had an opinion which was unbiased.

I don't know if the Sierra Club has its own attorneys, but I hope the letter is helpful to them. If you can convince them to send two books to us, both Terri and I would appreciate having a copy in its final form.

I was interested in your idea about insurance. It is well known that requiring companies to purchase workmen's compensation insurance has had the effect of increasing work safety in two ways: first, the insurance companies ride herd on the carelessness of the companies, and second, the companies try to get low rates, which are available only when they have safety devices installed. The gap in applying it to the National Park Service is that if the premium is paid by the tourists rather than by the Park Service, the Park Service will have no incentive to be safe. The problem is to make the insurers ride herd on the Park Service.

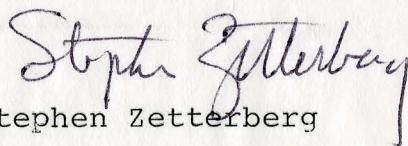
Of course, lawsuits do the same thing. Lawsuits necessarily are based upon negligence of the government, and if lawsuits are allowed on this basis, they will tend to make the government be more careful. Where it breaks down is in the "discretionary exemption," which gives the government a cop out. In a way, lawsuits have the same effect as insurance; but if you could get the government responsible for the insurance premiums, then the insurance companies would likely force the government to be more careful.

Insurance would have the effect of calling the visitors' attention to the risks, and perhaps making them more careful. Certainly insurance should be explored.

Dr. Frank C. Craighead, Jr.
October 25, 1978
Page 2

Frank, maybe if you could even get me a third volume of your book, I could send it with a cover letter to Jim Joseph, Undersecretary of the Interior, and could use it to point up some of the problems that need correcting.

Best regards,


Stephen Zetterberg

SIZ:cj

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(714) 621-2971

October 24, 1978

Diana Landau, Associate Editor
Sierra Club Books
530 Bush Street
San Francisco, California 94108

Dr. Frank C. Craighead, Jr.
P.O. Box 156
Moose, Wyoming 83012

Dear Diana Landau and Frank Craighead:

We have the manuscript of Dr. Craighead's TRACK OF THE GRIZZLY, sent by your letter dated October 10, 1978, plus a manuscript of an appendix sent by Frank Craighead under date of October 15, 1978. Although we have had some difficulty reading a few portions of the manuscript, we feel that we can give an opinion concerning the book.

The following comments are made considering the California law applicable, and considering recent constitutional cases relating to the application of the First Amendment to published materials.

The California Civil Code, section 45, defines libel within the traditional common-law definition, as:

"A false and unprivileged publication by writing . . . which exposes any person to hatred, contempt, ridicule or obliquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation."

The definition itself includes the two principal defenses: truth and privilege. Truth is a complete defense. The truth of statements is something initially for Dr. Craighead to determine. My own familiarity with grizzly bears, and with the literature on grizzly bears, and with the material dealt with in the book, gives me the impression that Dr. Craighead has facts and documentation to back the text he has written.

To be actionable, a statement must be "unprivileged." A short comment on privilege, as applicable here, would be in order.

Diana Landau, Associate Editor, Sierra Club Books
Dr. Frank C. Craighead, Jr.
October 24, 1978
Page 2

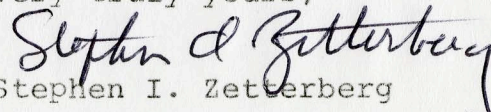
The privilege we are dealing with in this kind of book is a "qualified privilege." The law has allowed statements, which might otherwise be libelous, where they are made to protect some "recognized interest," and are made in good faith and without malice.

The common law privilege of "fair comment" means an expression of opinion on matters of public interest, such as matters concerning the conduct of public officials. California cases have recognized this privilege as extending even to false statements of fact, so long as malice is not proved.

Slightly different from the common law privilege of "fair comment," is the constitutional right established by the landmark case of New York Times vs. Sullivan (1964), 376 U.S. 254. By this case, fair comment was brought within the protection of the First Amendment, and made an element subject to the protection of constitutional due process. The New York Times rule protects false statements of fact as well as opinions, so long as they are not made with knowledge of falsity or in reckless disregard of the truth. The rule has been applied to defamatory publications directed at (1) public officials [New York Times vs. Sullivan, *supra*; St. Amant vs. Thompson (1968), 390 U.S. 727], and includes officials who are in the lower ranks of government employees [Rosenblatt vs. Baer (1966), 383 U.S. 75]; (2) private individuals involved in an event of public or general interest [Rosenblum vs. Metromedia (1971), 403 U.S. 29].

The subject matter of grizzly bears involves a matter of importance on issues of public and general interest. Presumably the reason for the First Amendment, as well as for the common law "qualified privilege," is to encourage public examination and discussion, and public information, on matters of public interest. The individuals involved in the grizzly bear controversy are subject to the right of the public to know, which means the right of fair comment. While fair comment need not always be accurate, and may be based on mistakes of fact, I would feel that Dr. Craighead is such an expert, and has such documentation, that his view is particularly valuable, and should be within the protection, both of the defense of truth and the defense of "fair comment."

Very truly yours,


Stephen I. Zetterberg

SIZ:cj