

## **Launching Into the Great Unknown, Guided by the Great Teacher**

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I had the privilege of knowing David Getches for over a quarter of a century -- as a law professor, professional colleague and leader of the educational institution that launched my career in natural resources law. Even before meeting Professor Getches, I realized that we had something in common: we both migrated eastward from California to Colorado to pursue our dreams in “the West.” David was educated and began his professional career in southern California, before moving to Colorado and its mountains to found the Native American Rights Fund. As an undergrad at UC Berkeley in northern California, I grew to love the mountains through my college summer job of guiding whitewater river rafting trips in the Sierras and interior West. I came to CU Law School already motivated to pursue a career in water and natural resources law, and my exposure to Professor Getches solidified that career choice and my professional direction.

### *The Highest Calling: Using Law to Protect Rights and for the Public Good*

When I arrived at CU Law School in 1984, Professor Getches was on leave as Executive Director of the Colorado Department of Natural Resources, yet somehow he found time to continue teaching. I had him for Indian Law which he taught in a grueling three-hour session one evening a week. With no background in Indian law but an interest in western history, I was excited to learn how our nation’s legal system would take account of the rights of Native Americans. As David himself said, “Indian Law is, indeed, a field that excites the highest calling of the legal profession: using the rule of law in our majority-ruled democracy to protect minority rights.”

I recall vividly Professor Getches describing to the class his experience leading the trial team in U.S. v. Washington at the request of the U.S. Department of Justice, where I would later work. The litigation involved the extent of off-reservation treaty fishing rights of fourteen tribes in Washington. David advanced the bold and creative legal theory that the treaty’s promise of the right to take fish at “usual and accustomed places” and “in common with” territorial citizens entitled Indians to share equally and take up to half of the harvestable fish. The advocacy was not universally appreciated, as David described to the class climbing the courthouse steps daily and being subjected to verbal taunts from bystanders. Despite difficult odds and public sentiment, David prevailed on his theory and vindicated Indian treaty rights in the famous “Boldt Decision.”

Professor Getches’ Indian Law teachings stayed with me through my early legal career as a trial attorney with the Justice Department’s Environment & Natural Resources Division. I represented federal resource agencies such as the Forest Service and National Park Service in water right adjudications in which we claimed federal reserved water rights for instream flows. Having learned Indian Law with David’s guidance, and mindful of the federal government’s trust responsibility to Indian tribes, I took very

seriously the job of coordinating legal theories and evidence of claims advanced by both non-Indian federal agencies and tribal interests in proceedings like Oregon's Klamath Basin Adjudication and Idaho's Snake River Adjudication. The federal resource agencies and tribes had a shared interest in maintaining instream flows to protect fish habitat and other natural processes, fulfilling federal reservation purposes and treaty rights alike. As David described the shared interest, "Acceptance of the Indian philosophy of permanence means understanding how all human activity relates to the natural world."

### *Protecting the Lands and Resources of the American West*

In Professor Getches' Public Land Law course, I learned about the federal land systems comprising over half of the West: National Forests, National Parks, National Monuments and others. The legal authorities governing these lands – constitutional provisions, statutes, executive orders, judicial decisions – were complex yet Professor Getches' instruction brought them to life clearly and succinctly. I learned from Professor Getches the power of the law to achieve societal goals of resource conservation and historic preservation.

While working with the Justice Department, equipped and emboldened with knowledge of public land law as taught by Professor Getches, I took initiative and volunteered to represent President Clinton as counsel in federal court litigation challenging the President's establishment of the 1.7 million acre Grand Staircase-Escalante National Monument in Utah. Much to my surprise, my managers in Washington D.C. granted my request, and I proceeded to spend over seven years defending litigation in multiple forums challenging presidential establishment of national monuments comprising over four million acres of the American West.

Through his actions and words, Professor Getches taught his students to not fear thinking big and advancing creative legal theories, as he had done in achieving the Boldt Decision. With this inspiration, my co-counsel and I researched and briefed a novel legal theory: decisions establishing national monuments under the Antiquities Act by the chief of the Executive Branch, a delegation of constitutional Property Clause authority by the Congressional Branch, could not be scrutinized by the Judicial Branch. David had written a law review article highlighting the broad historical authority of the Executive to make public land withdrawals, which instilled confidence that we were on solid ground. In the middle of the litigation, however, the presidential election resulted in my client changing from President Clinton to President Bush, with uncertain implications. I remember running into David, and receiving reassurance as he remarked that civil servants like me "kept the ship of state moving in the right direction," although elections and political changes might veer the vessel somewhat in one direction or another. We continued to advocate our theory of limited judicial review, within the government and to the courts. In the end, we prevailed based on this theory in all of the national monument cases.

### *Waters Flowing Forever*

While I did not have David for Water Law, he nevertheless greatly influenced my work as a student and professional in this area as well, through presentations, writings and professional interaction. One of David's favorite areas of the water law was the legal regime governing the Colorado River, simply known as the "Law of the River." Spurred by David's work, I found myself actively seeking out cases related to the Colorado River. While serving as counsel for the Bureau of Reclamation, I enjoyed crossing paths with David the lawyer in a case involving the Law of the River in the context of a proposed transbasin diversion from the Gunnison River basin. Later I sought out additional cases related to the Colorado River, and ultimately became involved in judicial development of the Law of the River in cases involving states, water districts, tribes, environmental groups and Mexico.

David's influence on my work, and in the field of natural resources law, even extended beyond U.S. boundaries. Combining my passion for river running and interest in river conservation and management, in 1996 I had the opportunity to participate in the first of what would be several expeditions navigating endangered rivers in China. When I returned, I wrote an article on China's water and environmental laws and their relation to river conservation. A key reference source I used was a book by Chinese academics and government officials that grew out of a Sino-American conference on environmental law – an event that David was instrumental in organizing. My article was published in 1998 in the Colorado Journal of International Environmental Law – a publication that David was instrumental in getting off the ground.

A quote inscribed in the fountain in the courtyard of the Wolf Law Building, where many of us attended the moving memorial service to David Getches, reads: "*We have an unknown distance yet to run, an unknown river to explore – John Wesley Powell.*" This quote could equally describe my feeling running the Colorado River in the Grand Canyon for the first time, or arriving at CU Law School intent on pursuing a career in water and natural resources law. My exact direction and destination may have been unknown, yet the ways of this great teacher created an openness to exploration and taking on formidable challenges. Like the water of a great river continues to flow, the influence of Professor David Getches on those he taught, helped and worked with over many years will continue to live on forever.