

Jim Blackburn

Interviewed by Jen Brown

June 30, 2022

Houston, Texas

Transcribed by Alyssa Lucas

**[Jen Brown]:** All right, we are recording. It is June 30, 2022. This is Jen Brown. I'm in Houston, Texas, with Jim Blackburn for an oral history. So, to begin, do I have your permission to record?

**[Jim Blackburn]:** Absolutely.

**[Brown]:** Okay, thanks. Um, to start, so since this is—I want a, like a little bit of a background of your life and environmental law and then also kind of focus a little bit on the whooping crane case, *TAP v. Shaw* [*The Aransas Project v. Shaw et al.*], but can you tell me, can you start off by telling me your background?

**[Blackburn]:** Sure. I was raised in South Texas in the Rio Grande Valley by parents from Central Louisiana, and my mother was a little bit like a, I think she always felt like she lived in a foreign land in South Texas, and always drug us back to Central Louisiana for every holiday, and so I learned to hunt and fish not only from my dad but also from my uncles in Central Louisiana and got real comfortable with the bayous and with the swamps of Central Louisiana, but I also learned the outdoors in South Texas as well, and I went to school for my undergraduate at the University of Texas and then went to law school at the University of Texas and figured out about halfway through law school that I really hated law, uh, which of course horrified my wife at that time who was working so I could go to law school, but I ended up writing a paper about it. I found environmental law. I started law school in 1969, and there were no environmental laws in the United States at that time, nothing serious, and most of the laws that we have today started in 1969 with the National Environmental Policy Act, then Clean Air Act in '70, Clean Water Act in '72, '73 Endangered Species Act, '76 the hazardous waste laws. so, just a flurry of environmental law activity in the period I was in law school. UT Law School didn't even have an environmental law class and yet I ended up specializing in environmental law coming through UT Law School by hook and crook. I made the lowest grade in my class on an international law paper. I wrote a paper about pollution in the oceans, and I proposed making the oceans into a nation, so they could sue for pollution damage, and my professor, and of course being a dummy, I'd never realized that professors might have points of view of their own, he was a former international lawyer for a major oil company, and he thought this was the dumbest idea he ever heard, and I made the lowest grade in my class, and I won the First American Trial Lawyers' National Environmental Law Essay Contest with the same paper, which taught me a lot about grading in law school, but also allowed me to get a fellowship to come to Rice [University], and I got an EPA [Environmental Protection Agency] traineeship in 1972 and came to Rice and got a master's degree in Environmental Science, and that really changed my life. It really set my professional gradient because I started off as a consultant after that, I consulted

on the development of The Woodlands, which at that time was the biggest environmentally planned facility in the United States, may still be to this day. I got to work with Ian McHarg's people out of Philadelphia. They were fabulous. I was kind of like getting paid to go to graduate school in urban design, and then I started teaching in the Rice University School of Architecture because I'd learned to do environmental planning and nobody else in this part of the world knew much about it, and I started working at a place called the Rice Center for Community Design, which was a self-styled think tank about environmental and urban development, and that was great through the 1970s, but in the early eighties all that money dried up that was funding us, and I found myself practicing environmental law out of the kitchen of my house. Uh, still being—I started teaching in civil engineering at Rice at that time, started teaching nationwide for the [U.S. Army] Corps of Engineers because they wanted a lawyer with a master's degree in environmental science, and I started practicing law and never trained as a lawyer, never had a mentor, just started making mistakes and getting better (Brown laughs), and that's how I became an environmental lawyer. I started the firm Blackburn and Carter about 1986, and Mary Carter joined me at that time, and we did a lot of hazardous waste work. We did a lot of NEPA environmental impact litigation, um, almost all for on the environmental side, usually opposing major industries, usually opposing major law firms. I came to really enjoy going against first-class legal opposition, and the advantage that I had was I knew science, and so by, I guess, my stock and trade, it's always been cross-examining expert witnesses, really knowing the science side, and so I've always had my kind of foot in three camps, part environmental law practice, part environmental planning practice, and part teaching environmental law, and now I'm sustainable design as well, and that has really kind of kept me going through all of these many years, and it's been over fifty years of practicing environmental law since I graduated in '72 from law school, so it's been a wonderful, wonderful journey, I guess is the term we're using these days, but it's been fun, and I've really enjoyed it.

**[Brown]:** What originally drew you to environmental law?

**[Blackburn]:** Oh, growing up hunting and fishing in Central Louisiana and along the Texas Coast. To have a chance to get outdoors with the practice of law, to get out of kind of these stuffy rooms with, you know, what I figured out very quickly—I mean, I interviewed with a couple of law firms, and you know what they took pride in was not who I was. And I think that was really good that I had the ability to see that early on, and I mean I wasn't a perfect match for them. I was actually much better at science than perhaps I was at law, and they didn't appreciate me. That wasn't their stock and trade. Their stock and trade is legal, legal, legal, and I think they frankly make an error in that respect. I think with environmental law, it helps to have science, and some of the best that I've been up against have a science background.

**[Brown]:** How would you describe, um, what it's like to practice environmental law in Texas?

**[Blackburn]:** Well, there's two sides of practicing environmental law in Texas. If you're on the industry side, you're expected to win. Uh, basically our system is set up to issue permits, and so in a way, a lot of pressure. I was always on the environmental side of environmental law, and I was always expected to lose, and it became surprising to people that when I began to win

cases, and I won cases because I'd never been trained as a lawyer. I made my own path as to how to be an environmental lawyer, and I did things I wasn't supposed to do. If I played by the rules exactly like they tell you to do, I would have lost every case, I mean so in a way, the fact that I wasn't well trained as a lawyer was actually to my benefit, and I used my science, and the science definitely helped.

**[Brown]:** Can you talk about some of those wins and some of your memorable cases?

**[Blackburn]:** Well, you know, we defeated Texas Copper. Texas Copper was proposed to be built right where the causeway goes across to Galveston, and Virginia Point is on the, oh, I guess that's the north of the east side of the freeway as you're about to cross into Galveston Bay. It was going to be a six-story copper plant that was going to discharge directly into Galveston Bay, and ultimately we kept them at bay long enough that the economic window for a copper plant disappeared, and today, that site is an environmental reserve that is owned by the city of Galveston, and so that's the type of thing I take great pleasure in is going past a piece of property that is now a nature preserve, and it's a nature preserve because we fought something and stopped it and kept something from happening. Wallisville Reservoir, same thing. We stopped it. It's now a 25,000-acre nature reserve at the mouth of the Trinity River. Um, the Fort Bend County Landfill was leaking methane gas, and it got into an adjacent building, and a gentleman went into the bathroom and lit a cigarette and blew himself up because of escaping gas, and we were able to shut that down, after the state issued the permit we won in court, that's a memorable occasion. There's a bayou down in Matagorda County called Linnville Bayou that was dead whenever I was approached by the citizens. There was not a thing living, and there was a foam coming down from the discharge from a major petroleum refinery, and we got it cleaned up, and one of my happiest moments was driving down FM 521, which is my favorite road on the Texas coast, and driving over Linnville Bayou and seeing a little blue heron fishing in Linnville Bayou, and it wouldn't be fishing if there weren't fish there. So, you know, being able to be a part of those types of things, and there have been many examples. I've been fortunate. We've won a few cases. We defeated a nuclear power plant down in Victoria, and (laughs) I laugh because I had filed every motion you can think of that is based on kind of the horror of a nuclear power plant, and every one of them had been denied because they told me the things that you're talking about could not happen, and then we were scheduled to like, to have a hearing on like Tuesday or Wednesday after a weekend, and over that weekend the Fukushima event occurred in Japan and blew up, you know, the nuclear plant blew up. It was an incident that was never supposed to happen, and quickly they reevaluated all of my motions and granted every one of them, and I looked like a great lawyer (Brown laughs), but it's helpful to have an event like (laughs), you know, as bad as the Fukushima event was, it was very, very important in stopping a nuclear power plant on the Texas coast, and I'll take it as a victory, but it probably had much less to do with my legal abilities and a whole lot to do with the circumstance. You know, sometimes you get lucky. You know, that's lucky. Sometimes you're lucky enough to be against bad lawyers, that helps. On the other hand, I really prefer to be against good lawyers because usually I can work with them, and over the years I got to where I could settle cases, and settlements actually are probably something I am most proud of, although they can be very controversial.

**[Brown]:** Um, how did you get involved in the whooping crane case?

**[Blackburn]:** Well, the whooping crane case came out of a water dispute on the Guadalupe River. I was hired by a large ranching family because they woke up one day and the front page of the *Victoria Advocate* had identified several dam sites and three major groundwater withdrawal areas that were part of a project to pump water back up to San Antonio, and the projects, many of those projects were on their ranch, and nobody had even told them that they were getting ready to happen. So, I was brought in by Mark Rose, used to be head of the Lower Colorado River Authority and was working for one of the major energy kind of delivery systems in Texas at the time, and he had permission to do this type of consulting on the side, and he hired me to come in and basically protect the ranch. And in the process of fighting the water problems, the nuclear plant was proposed that was going to be nearby, and it was also going to take a lot of water, and so ultimately, we got into the whooping crane issue initially because all of these projects, the water projects, the nuclear plant, would all take water out of the Guadalupe River. And so, we got to looking at what the implications of that were and quickly realized that that would affect the salinity of San Antonio Bay, and San Antonio Bay is one of the homes, winter homes to the whooping crane, and so started seeing, you know, they're endangered species, and so started looking at whether there was a connection between a lowering of freshwater inflow into the bay and whooping cranes' lifecycle and turns out they rely on blue crab, and so then we got to the 2008 winter and twenty-three whooping cranes died, and it was linked to the absence of freshwater inflow. So, we found a correlation between lack of inflow and whooping crane mortality, and whooping crane mortality violates the Endangered Species Act. So, we started to combine that issue with our opposition to the nuclear power plant, our opposition to the dam projects near the Guadalupe River, which would be taking Guadalupe River water, and ultimately coming out of that, was the filing of the whooping crane endangered species litigation against the state of Texas officials in 2011.

**[Brown]:** So, you filed the thing, you have this big team of lawyers, and can you talk about your strategy for the case and developing it?

**[Blackburn]:** Well, I mean, on the one hand, you use the term big team of lawyers. Um, we had six lawyers. When we got into the court room the first day, I think there were twenty-four lawyers on the other side, so it was more lawyers than I'm used to having with me. I think, on the other hand, we had stirred up a hornet's nest. We sued the Commissioners of the Texas Commission on Environmental Quality for their water management policies on the Guadalupe River and, by implication, we were challenging or they understood it to be a challenge to their water management policies for the state of Texas. Now, Texas is not very kind toward the coast. We have no water rights for the coast, and everyone, every scientist that studies the coast knows that we have to have freshwater inflows for coastal productivity, but we make no provision for that under Texas law. So, our lawsuit went to the federal court system, and basically said the way Texas is managing its water violates the Endangered Species Act because it led to essentially overwithdrawal of water from the river to the point that it killed twenty-three whooping cranes. So, our strategy was to attack the state of Texas for withdrawals by

others under permits from the state and was probably a—I don't think there was anything the Texas Commission on Environmental Quality, and I couldn't sue TCEQ itself. We had to sue to officials in their official capacity, and we sued the executive director in his official capacity, and a person called the water master who had control over water withdrawals on the Guadalupe. We sued them in their official capacity, and I don't think a lawsuit like that had ever been filed before and part of this strategy I developed over the years as an environmental lawyer was to try to find pathways that no one else had gone down because the other side doesn't have a blueprint of how to respond, and so that actually served us quite well in this case, and I know some very good scientists from my work at Rice University. I worked with Dr. Ron Sass who was the head of the Ecology Department at Rice for many years, worked with Dr. Kathy Ensor who was head of the Statistics Department. We put analyses together of the flows over the years, and we showed that when the flows were low, whooping crane mortality went up. That alone isn't enough. I also over the years have worked with a lot of computer modelers, so we put together computer models of freshwater inflow and had a wonderful witness from Harte Research Institute and A&M-Corpus Christi, Dr. Paul Montagna, and Paul was able to link the computer models reduction of flows, which we proved, and we proved salinity changes, and Paul was able to come in and talk about the need of blue crabs for a certain range of salinity and that when we fell below this certain range, the number of blue crabs just drop off precipitously, and that became pretty good evidence and certainly, Judge Janis Jack who's really the best federal judge I have ever been before. Judge Janis Jack read every document that we filed. She was everything you can ask for from a judge, and this was not a jury trial, this was a judge trial, and she was as well prepared for that trial as any of the lawyers that were presenting in front of her. She'd read everything, and she actively participated in the case. She got very interested and, I mean, she was really impressed with these experts we brought in and then Tom Stehn who worked for U.S. Fish and Wildlife Service. Fish and Wildlife Service didn't want to get involved in this fight. I mean, we sued the state of Texas. That's a big step, and so they didn't want to be involved, and they denied us access to Tom Stehn, and our experts relied on Tom's documents. Tom was the refuge manager for whooping cranes. And so, every year he would do flyovers of the whooping cranes, and it turns out whooping cranes are really fascinating. They have defined territories, and the same pair come back to the same territories year after year, and they have bands that marked the birds over the years, and they can keep track of it. The various families have names, and Tom had mapped out every pair, if they had a juvenile or even a pair of twins with them, he had all that information mapped out at the beginning of 2008. And then as we began losing birds, he identified every bird that was missing, but we didn't have Tom to testify because Fish and Wildlife Service denied us access to him. So, Judge Jack asked us early in the trial why don't we have Mr. Stehn, and I was, you know, both the defense and I responded that, "Well, we tried to, but Fish and Wildlife Services denied us permission," and Judge Jack said, "Well, I can issue a subpoena," and turned out Tom had recently retired from Fish and Wildlife Service and each of us, both the defense and the plaintiff side, our side, we divided up a fee for Tom to come and testify in court, and I got to put Tom on as one of our expert witnesses, and it's really frightening for a lawyer to put on an expert that you've never deposed, you've never talked to, but again, we were just trying to get the information in front of the court, and we served Tom with a subpoena when he was in a hot tub at his home (Brown laughs). It was one of the more humorous moments, and he was fabulous,

and Judge Jack was riveted. And then there was George Archibald, and George Archibald was the head of the International Crane Foundation. He's a MacArthur Fellow, and George was a fabulous witness, and he's the one that started whooping crane breeding in captivity. And as a lawyer, one of the hard choices I had, he actually taught Tex who was at the San Antonio Zoo, a whooping crane male, he taught him how to dance and mate, and I started to ask George to do that for Judge Jack, but that was (Brown laughs)—no, that'd probably be a step too far, but he was great. It was probably the greatest assemblage of experts I've ever put on in a trial, and I think Judge Jack was really impressed. Andy Sansom who used to be head of Texas Parks and Wildlife was an expert on Texas aspects. Larry Soward, a past Texas Water Commissioner, testified there was a lot the state could do that they weren't doing. Dave Fredrick, former U.S. Fish and Wildlife Service official who was in charge of the Fish and Wildlife, I think, state office in Washington state when the spotted owl endangered species dispute broke out, he testified about what Fish and Wildlife—what we could do under the Endangered Species Act to protect the whooping cranes, and ultimately Judge Jack really, I think, appreciated the quality of the experts, and so once again I would tell you strategy wise, get the best experts you could get that have integrity and scientific knowledge and let them talk to the judge, and that's what we did. She was not impressed with the defense put on by the state. In her a hundred-fifty-page written opinion, she ripped it apart. Um, bottom line, she wrote a fabulous decision on our part, which was then overturned by the Fifth Circuit Court of Appeals, and we knew the Fifth Circuit was going to be tough. They felt the chain of causation was just too removed to get from the state of Texas issuing permits all the way to the whooping cranes dying, and so I think we felt the Fifth Circuit intervened in fact finding when that was Judge Jack's province, and we went to the U.S. Supreme Court. They decided that they didn't want to hear the case, and of course, we were despondent. Then I got a call from the other side, from the Guadalupe-Blanco River Authority, which was an intervener, and they said, "Why don't we talk about doing something different," and it turned out we reached what I would call a settlement agreement, that we would work together to try to solve this problem. That head of GBRA retired, and the current head of GBRA came in, and we did a second agreement and today, Nathan Pence is leading for GBRA an attempt to put together a habitat conservation plan under the Endangered Species Act that not only covers whooping cranes, but that covers a number of the shellfish species, the mussels in the Guadalupe River that are now endangered. They may include the golden-cheeked warbler, some of the salamanders, and it's probably the most progressive thing that any river authority in Texas has ever done environmentally, and that comes out of the settlement that we ended up making out of the whooping crane case, and so a great victory, which turned into just a, you know, a horrible defeat, ended up leading to something very positive. And to me, that's one of my most rewarding cases, not because I won, but because we ended up with an outcome that everyone could work with. I was told later that if we—if Judge Jack's decision had stayed, we would be in fights for the next twenty, thirty years over these issues, and it was kind of a—it's interesting. To some extent, it was much easier to make peace after a horrible war, but where the other side wasn't forced to come in under a flag of defeat, but where they could come in from an efface standpoint and make it their choice to change as opposed to being ordered to change, and there's some interesting insight that comes out of that experience, but that's the whooping crane case.

**[Brown]:** It seems like quite the roller coaster.

**[Blackburn]:** Oh, yeah.

**[Brown]:** I mean, how did you do it? What was going on in your head in these various parts?

**[Blackburn]:** Do the best I can do, take care of the things that I can control. There's—I couldn't control the Fifth Circuit. Judge Edith Jones is a powerful force up there. I think our whole appeal to the Fifth Circuit was Edith Jones and me going back and forth. The other, the two other justices kind of just watching. You know, I quit drinking back in the mid-eighties, and it's a good thing, but I learned when I quit drinking that you had to take care of what you could take care of, and there are other things you just can't let pull you down, and so that's kind of how you handle the roller coaster. Don't get too carried on with thinking you're really good, and don't get too down for thinking you're really bad. You're dealing—we were suing the state of Texas. We were trying to change water laws in the state of Texas. We took a big swing, we made a big swing, and we have changed things. Did it happen exactly like we wanted it to? No. Did it lead to a, I think, a good result? Absolutely. And so, in a way, I think we're too quick to judge. We so much want the immediate result to be perfect or we have failed. I only fail in my own mind when I have not done my best. If I've done the best I can do, and I lose, I mean, I wish I hadn't, but that's just the way it is. Um, I don't lose a lot, but I do lose, and any lawyer that tells you they don't lose cases is not taking hard cases. On the other hand, I think you just have to be realistic about who you are, kind of live within your means so to speak, don't get too far out over your skis, just kind of take it slow and easy, a step at a time. You know, I said, I use the quitting drinking analogy, they talk about living life a day at a time. There's a lot to that, and I've learned along the way to really enjoy each day and then I had heart surgery back in 2005. I think probably related to pressure of a case. I lost the fight against the Port of Houston Authority and the Corps of Engineers over what's called the Bayport Container Port and, oh man, I mean, I tried as hard as I could and just couldn't stop it, and it's built. It exists today. I've made my peace with that because I did everything I could, the best I could do it. And yet at the time it was tough on me, and so I've had heart surgery, changed a lot of my habits. I exercise much better. I eat much better than I used to. Like I said, I quit drinking in the eighties, so that wasn't an issue at that point in time, but I began to take better care of myself, and I think that's part of it too. I think—I mean, I've been asked to talk about these types of things in legal conferences recently under ethics and talking about almost how to live your life as a lawyer and stay alive, succeed, kind of personal care as an ethical kind of concept, an important ethical concept for lawyers because a lot of lawyers hurt themselves. They treat themselves badly. I've been fortunate I've gotten on the other side of that.

**[Brown]:** Yeah. Well, thank you. Um, going back to the case as it's unfolding. It kind of strikes me that Senate Bill 3 passed in 2007 is starting to be implemented and at the same time as the case is going through court. So, you're pretty critical of that process in your book, and can you talk about why specifically you're critical and then, um, the solutions you see for freshwater inflow?

**[Blackburn]:** Well, I mean, Senate Bill 3 was a breakthrough on one level. A lot of very good environmentalists worked very hard to get the Texas legislature to pass something that was an improvement over the past, and Senate Bill 3 ended up being an issue in the whooping crane litigation as to whether it was enough by itself, and I think where I'm critical of Senate Bill 3 was that it was still very much of a process that was controlled at the state level. Um, it was kind of overseen by those that were kind of preselected by the river authorities, by the powers that be, if you will, on the water side, and it was going to take them a long time to get the results, and there were like existing permitted flows were off limits. It was all about the water that was unallocated and what could be done with that. My view was it was the existing water rights that were the problem, and we'd already over allocated most of our, you know, certainly the Guadalupe we felt was over allocated, and we couldn't get to that through Senate Bill 3. So, this was a different approach under a different concept, specific to a—in fact, I wasn't trying to overturn what was being done on the Sabine River under Senate Bill 3, but I was trying to change what was being done on the Guadalupe under Senate Bill 3. Now, interestingly one of the better pieces of evidence that Paul Montagna was able to introduce was the study of Nueces Bay under Senate Bill 3, where the state of Texas documentation basically said that Nueces Bay was ecologically dead, and it was ecologically dead because of the building of Lake Corpus Christi and Choke Canyon Dams, and Judge Jack was really impressed with that information, so I was very happy that Senate Bill 3 had produced that document. So, I'm not telling you that Senate Bill 3 doesn't do good things, it's just I don't think it would have solved the problem on the Guadalupe River.

**[Brown]:** Okay. Um, let me see, I have some questions here. Let's see what you covered. Can you talk more about going to the Fifth Circuit Court and that trial and preparation?

**[Blackburn]:** (laughs) Sure, I'm happy to do that. Um, the Fifth Circuit Court of Appeals is a very formidable place. When you walk into the Fifth Circuit, you realize that you're walking into a place of power. Uh, the long hallways where your footsteps kind of echo as you walk down with piles and, you know, it's a massive building, and you go into this small, little kind of—it actually seems to be a small courtroom for the immensity of the rest of the building, and they have red light, green lights. It's hot and very tense, and we spent a lot of time preparing. Now, one thing I will say is the ranching family that supported us on the whooping crane litigation did give us a generous budget to work with, so I did have some excellent legal minds, and we were able to go and spend a few days in New Orleans before the Fifth Circuit, and we spent that whole time going through the argument and talking through these issues, and I can remember, I mean, I write poetry, and I wrote several poems about going to the Fifth Circuit and about the tension I was feeling. I can remember, I was running around Rice, and I was hot, and there was a grackle, by the side of the track with his tongue hanging out, with his—kind of with his beak spread and his tongue hanging out, kind of huffing and puffing, and I felt great sympathy with that grackle at that moment because that was exactly the way I felt about this Fifth Circuit appeal, and I wrote a poem about the hummingbirds migrating around the Gulf of Mexico and about how if they've got enough ability to withstand fear to come across the Gulf of Mexico as a hummingbird with no navigation systems, I can get to the Fifth Circuit, and I can make this argument, and I probably made the best argument I've ever made in my life, and the other side



was first rate, and the Guadalupe-Blanco River Authority changed law firms and brought Baker Botts from Houston in, and they put, Molly Cagle is one of the best lawyers I've ever been up against, and Molly put an excellent team together, and, I mean, it was a heavyweight fight, and Judge Edith Jones was in there just, I mean, she wasn't certainly a referee. I think she had an opinion, but she was acid tongued, she is smart, and was pushing me with everything she had, and it was the highest quality legal proceeding I'd ever been involved in.

**[Brown]:** Um, sorry, what were some of the issues that she was pushing you about?

**[Blackburn]:** I think really that she was most concerned about the linkages, the causation linkages, going from the state of Texas issuing permits to water being pulled out of the river to that diminishing freshwater inflow, which caused the salinity increase, which then led to a decline in blue crab, which then led to twenty-three deaths of whooping cranes, but we only had two bodies to work with, and there were analysis made of those bodies and starvation was one of the elements that was identified as the cause of death, but there were others, and so there was probably six specific steps. Now, Judge Jack had found that was sufficient for her to find proximate causation. Judge Jones was not nearly as convinced, and so she really wrote a decision that was fact-finding, and the court of appeals is not supposed to be engaged in fact-finding, but hers was more of a fact-finding opinion than a legal. Now, a lot of my environmental colleagues were very relieved that she did that because there was fear that she was going to overturn key aspects of the Endangered Species Act, and her ruling was incredibly narrow to the point that the Supreme Court didn't review it. Although, we had a motion for rehearing at the Fifth Circuit, and we got four votes that the Fifth Circuit had over-exceeded its authority, but there were eleven on the other side, so we didn't prevail in that motion for rehearing, but again it was a hard fight all the way. Um, the Fifth Circuit is the hardest circuit court of appeals at the federal level in the United States for environmental cases. They are not inclined to be receptive, and potentially the result from this case could have had incredible implications for water rights throughout Texas and among other things the policy argument that was being made was the State of Texas could not withstand this type of challenge to its authority over water. That was not a legal winner, but it might have been a political winner. Do not doubt for a second that politics are involved in some decisions that don't mention politics. I think we're seeing that with our current Supreme Court, serious politics at work.

**[Brown]:** You know what's interesting is the settlement afterwards and when the GBRA comes to the table and settles, like, what were some of the issues going back and forth between the two groups?

**[Blackburn]:** Well, I think the issues were where can we find common ground to work together on, and I mean, if I had I insisted I wouldn't talk to you unless I get, I think at one point the number a million-acre feet per year was identified in terms of water to the bay. That number was probably never realistic, but what number was realistic and is realistic is still being determined. Um, if I had been insistent that there be a number before I'd go forward rather than a process to get to a number, probably wouldn't have gone very far. If they had insisted that I drop all issues about water, probably wouldn't have gone anywhere. So, to some extent

we both had to recognize the limitations of our cases. You don't always get that willingness on the part of clients and lawyers. What I'll tell you is that Molly Cagle as a lawyer was realistic in realizing we could correct the problems that Judge Jones identified. There were other cases that could have been brought and were not. So, she was smart enough, and I think sometimes women can do things that men can't do, and I think she was able to tell the client that, "Okay, you've won. Don't go about and screaming how great you are. You've got some vulnerabilities here. You need to recognize those vulnerabilities, and we can maybe set up a process to address this over time." She had a willingness to point that out to her client. That's not always the case, and I'm not saying all women lawyers are that way, but I think that some of the best environmental lawyers I have run across in terms, I think, representing their clients and their position are women, and I think that's because they can accept certain concepts as being a win that some men would have trouble with, and I think that's a real deficiency in a lot of males, too much macho and not enough common sense.

**[Brown]:** Um-hm. Um, what else do you think is important to know about this case and freshwater inflow in general?

**[Blackburn]:** Well, it was financed by a very conservative ranching family, and I think that one of the things I've learned from this case and from others is that there are people who are fabulous stewards of the earth who otherwise we may not agree politically, and I think that's helped me a lot with a lot of the work I'm doing now with carbon and carbon dioxide removal strategies using nature and working with farmers and ranchers. There is a—there are places we can come together as a society that we are not discovering, we are not exploiting. It seems like everything is about blues and reds and divisions and how much we don't like each other, and there's so much common ground, and I think we found common ground coming out of that whooping crane case that people would have never thought we would. I had another case down the coast where I was suing Formosa Plastics and have found some common ground with Formosa. I found it back in the 1990s. Recently, they were sued and lost a big case and have come asking for help in how to move forward in the twenty-first century, and they are a company looking for solutions, and I've learned to work with people that want solutions without, if you will, looking too hard at the baggage. If somebody wants to try to find common ground, we need to work together to get there. A lot of the climate people want to shut down all of the oil refineries in the world. Uh, you know, that's just not realistic right now, but we can do some things to solve the climate problems even as we transition over decades to more regenerative forms of electricity, renewables, different forms of grazing will come up, different concepts of agriculture, and it's going to take a while, and we can do a lot in between if we find the common ground. I love a concept of the radical center. The idea that the societal changes that we need are not going to come from the far left or the far right, but will explode out of the center, and that's a lot of where I've been working all of these years, and a lot of what I've learned as a lawyer is that, that center's important, and I've tried to keep an eye on it. I'm often times called a radical, and I am radical, but I may be radical at the center as opposed to at the edges.

**[Brown]:** Well, that's a good place to stop. I have one more request. Could you read a poem or

two about it (laughs), if you wouldn't mind?

**[Blackburn]:** Let me see if I can find, let me see what time—

**[Brown]:** —Okay—

**[Blackburn]:** —it is. I've got a minute or two.

**[Brown]:** I've read the pages about Corpus Christi in the case, but you can—

**[Blackburn]:** Yeah, there are some poems in there, but the ones I was mentioning about the Fifth Circuit, I'm not sure they're in there. Is "The Ruby-Throated Hummingbird" in there?

**[Brown]:** I think so.

**[Blackburn]:** That may say which one, I've written about twenty "Ruby Throated Hummingbirds."

**[Brown]:** Yes.

**[Blackburn]:** Let's see what you've got there, if that's the right one. Yes, this is, this is one of them.

**[Brown]:** Okay.

**[Blackburn]:** Would you like me to read this?

**[Brown]:** Yes, please.

**[Blackburn]:** "The Ruby-Throated Hummingbird."

At my law office  
 Planning defense of the whooper  
 Before the Fifth Circuit Court of Appeals  
 In New Orleans.

I can feel the fear  
 Working the edges of my consciousness,  
 Looking for my weakness,  
 Looking for points of vulnerability,  
 Looking for the points of entry  
 Into the essence of me.

To fight the fear

I accept that it exists,  
 That it is real,  
 Much like the fear  
 That the tiny hummingbird must feel  
 As it strikes off to fly  
 Across the Gulf of Mexico  
 To complete its migration,  
 To complete its life.

I smile to myself.  
 Why do I let fear bother me  
 When it doesn't stop my little friend?  
 It is simply another obstacle  
 That I must accept and defeat

And so I start on my migration  
 To the banks of the Mississippi  
 To the Fifth Circuit Court of Appeals  
 To continue my quest  
 to protect the Whooping Crane.

That is "The Ruby-Throated Hummingbird," and I have another one if you'd like.

**[Brown]:** Sure.

**[Blackburn]:** It will take me a second to find it. And let's see, that's going to be—oh, it's going to take a second. Maybe, nope. Okay, this is "The Great-tailed Grackle."

Jogging around Rice on a hot July day  
 Preparing to defend the whooping cranes.

Our panel of 5th Circuit appellate judges  
 Has just been announced –  
 Three hard jurists for an environmental case  
 Seeking findings of liability against a state  
 For harming endangered species.

I feel the heat and the oppression  
 Of the Houston July, magnified by concern  
 About our chance to protect that excellent  
 District Court decision – one offering hope  
 Of water inflows to San Antonio Bay to avoid  
 A repeat of the killing of 23 cranes  
 By Texas officials.

Looking to the side of the trail,  
I see a bedraggled male grackle,  
Standing with his beak open,  
Tongue seemingly dangling,  
Feathers askew,  
Looking like a man having a bad day  
And I smile as I pass and say  
“Hello my brother,  
I feel your pain.”

That’s “The Great-tailed Grackle.”

**[Brown]:** All right. Thank you. Well, I’m going to turn this recorder off now.

**[Blackburn]:** Okay.

(end of recording)