

David Sive, Pioneer in Environmental Law, Dies at 91



David Sive in 2012

David Sive, an attorney who won landmark environmental rulings in both state and federal courts and built the pioneering environmental law firm Sive, Paget & Riesel, died Tuesday. He was 91.

Sive died at a hospice in New Jersey, according to his former partner Daniel Riesel.

"He was an expert in administrative law before he was an environmental lawyer and he was a great litigator," Riesel said Wednesday. "To watch him in court was a thing of beauty. He was very low-key and he was very gracious, but when he had a point he wouldn't let go."

Sive joined the legal team that prevailed in *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608 (2d Cir. 1965) and 453 F.2d 464 (2d Cir. 1971), in which environmentalists and the towns of Cortlandt and Yorktown defeated a pumped storage project proposed by Consolidated Edison along the Hudson River.

The U.S. Court of Appeals for the Second Circuit, in what has been dubbed the "Storm King Mountain Case," recognized that the plaintiffs had standing as "aggrieved" parties to challenge the project on environmental and aesthetic grounds. Previously, courts had required parties to show economic damages in order to establish standing.

Lloyd Garrison, who was at the firm now known as Paul, Weiss, Rifkind, Wharton & Garrison, led the legal team for the Storm King plaintiffs that included Sive, who joined the case in 1966, and Albert Butzel.

Butzel said in an interview Wednesday that Sive crucially assembled expert environmental witnesses who testified about the negative effects of the project and decisively cross-examined a witness in favor of the project, Gilmore Clark. Sive asked Clark how a project that gigantic couldn't help but mar the scenic landscape near the shore of the Hudson, Butzel said.

"He asked, 'How can you possibly do anything to improve nature?'" Butzel recalled. "Clark said, 'Man can always improve nature.' It sort of destroyed their case."

Butzel, who retired from Paul Weiss, said that Sive had a deeply rooted love of nature and the environment. As an infantryman in World War II, Butzel said, Sive said he carried a copy of Thoreau's "Walden," which he would read for "solace" as the U.S. Army fought its way across western Europe and into Germany,

"He really did care about the environment," Butzel said. "He loved the Catskills in particular and had a place there that he loved."

Sive was instrumental in the formation of the Natural Resources Defense Council in 1968 as well as remaining active in the Sierra Club. He also became a leading figure in Scenic Hudson, which was formed in 1963 to fight the Storm King project and endures today as a Poughkeepsie-based environmental group.

Ned Sullivan, president of Scenic Hudson, said Sive's involvement in the Storm King case "helped launch the modern environmental movement and the field of environmental law."

"He was a true giant—his steadfast dedication to ensuring that citizens have the right to protect their environment means that the river and the natural splendor along its shores will forever be enjoyed," Sullivan said.

In 1971, Sive represented environmental groups in *Committee for Nuclear Responsibility v. Seaborg*, 463 F.2d 796 (D.C. Cir.), who fought unsuccessfully to block an underground nuclear test explosion by the Atomic Energy Commission on Amchitka Island, Alaska. The government abandoned future test blasts, however.

He also argued the case that forestalled construction of the Hudson River Expressway in the 1970s and represented the plaintiffs in *Mohonk Trust v. Board of Assessors of Town of Gardiner*, 47 NY2d 476 (1979), where the state Court of Appeals held that property owned by a trust can be exempt from real property taxes.

Mohonk Trust also established that use of real property for environmental and conservation purposes as a wilderness area open to the public constituted a charitable use under the Real Property Tax Law.

In the 1980s, Sive and his firm represented the New York City Convention Center Authority in its successful quest to negotiate environmental impact laws and to build the Javits Convention Center.

In addition, Sive litigated cases that strengthened the "forever wild" status of lands in the Adirondack Park.

In 1962, Sive helped form a firm with an early specialty in environmental matters, Winer Neuberger & Sive. It became Sive, Paget & Riesel in 1980. Sive retired in 2006.

Documents related to the Storm King Mountain Case, the Amchitka nuclear testing case, *Mohonk Trust* and other environmental matters are in the David Sive Manuscript Collection at the Pace Law Library at Pace University Law School in White Plains.

Sive was an adjunct at Pace Law School and Columbia Law School, from which he graduated in 1948 following his service in the Army in World War II.

A native of Brooklyn, Sive attended the City College of New York prior to his service as a wireman in the Army. Riesel said he was wounded twice, once while laying communications wire on the Remagen Bridge above the Rhine.

He is survived by his wife Mary and five children: daughters Rebecca and Helen and sons Alfred, Walter and Theodore.

Memorial service arrangements will be announced at a later date, Riesel said.

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