Summary: Wolf describes the Forest Service bidding practices for timber sales from the 1940s to the present, problems with the system, collusion in oral bidding, and differences in Forest Service and Justice Department views on bidding practices. He explains the process of the passage of the Oral-Sealed Bid Amendment of 1978 and its effectiveness.

Shannon: Bob, back in 1976, when they passed what we today know as the National Forest Management Act one of the provisions that was stuck into that act displeased, especially the intermountain west, but the whole tradition of not leaving any money on the table in buying federal timber, and in the 1976 law, they had put in a requirement for sealed bids without auction to provide the device for maximizing revenue to the treasury. The timber industry out here in the West was very unhappy about that, and I know you must have been right in the middle of the legislative squabbling that took place, and again this is one of these issues that in effect divides the east from the west, which is always a subject that's of interest to us out West, and I wonder if you could tell us something about what transpired and how that whole thing developed both in terms of how that provision got in the national forest management act as well as the two-year battle to provide relief for the people in the West who have historically never paid any more than they had to for federal timber.

Wolf: Well, Dick, I hate to differ with you because you've got so many wonderful misstatements in your statement.
Wolf: But we'll go from that. When the national forests were created in 1897, the law provided for selling timber at bid and the Department of Interior used sealed bids.

Shannon: That's right.

Wolf: And the Forest Service, when it was created in 1905, it used sealed bids and continued to use sealed bids up until and into the 1950s. The Bureau of Land Management with the little bit of timber it sold on the public lands used sealed bids. And on the O and C lands, which had operated in 1937 with a timber program that by 1950 was over a half a billion feet a year, used sealed bids. Sealed bidding was the rule on the sale of timber, east and west, north and south. In the early [19]50s the Bureau of Land Management began to use oral bids as a device to encourage companies to provide access over roads that they had built that intermingled with O and C lands, they latter adopted a regulation that required the giving of access in return for building the road. But, initially they start giving oral bidding privileges under the theory that the fellow who had built the road needed to be protected against the wayward type of operator who would ride on his road and wreck it, it really was a bidding control device. No two ways about it. The Forest Service, also then began to use oral bids in Region 6, not in Region 1, not in Region 5, just in Region 6. And again the theory was partly roads in the Forest Service and partly what was developing was a euphemism. Ira J. Mason, who was head of Timber Management for the Forest Service in Washington and had been in Region 6 in the northwest
timber management, used to describe it as providing protection to the upstream operator from the downstream operator. In effect there were companies that had a theoretical lock on the timber because of access, but didn't really. And they were worried about bidder from farther away who, according to economic theory, should be less able to pay as much for the timber as the guy near it. But this is a kind of perverse sort of community stability argument, because if you are going to sell competitively, you are going to have to pay the market price, and a fellow from farther away from the timber can pay more than you, you are not going to have that lock on the timber and that quote stability in theory that results from keeping the timber in the local area. But this is all part of this double-talk that we go through, under a system of free enterprise where on the one hand we want to have community stability, on the other hand we want to have free enterprise.

Shannon: That's correct.

Wolf: So anyway, when the [19]76 act came along, there was no Eastern concern whatsoever for the issue of bidding. Congressman John Krebs from California on the House Agriculture Committee became concerned about it. There had been an indictment in the west, in Oregon, against Champion International for rigged bidding and a conviction, on the Siuslaw and Willamette National Forests. There had been concerns voiced to Krebs in California about rigged bidding, under oral bidding in which you would set up a dummy bidder, and I would get you to bid, if a third party bid, you would enter a token bid against me, it would go up a nickel, if no one else showed up, that was that. If somebody else showed up, we go through the charade of bidding it up until I got it, but you would be the stalking horse on it, and this third party wasn’t
going to get a sale. There might be three or four of us in this little cabal ...

Shannon: Oh yes.

Wolf: But, you know, typically there would be just a couple of us. Finding out about it and breaking it were difficult. If you talk to Department of Justice lawyers, these were difficult kinds of things to prove. In any event, Congressman Krebs was concerned enough about it that he proposed an amendment to the National Forest Management Act which was adopted in the House, which was a very, very modest amendment on the use of sealed bids in some circumstances on smaller sales. In fact it was virtually not very effective. There was quite a bit of debate back and forth among westerners in the House committee when they marked the bill up over the merits of it. A lot of the smaller operators favored sealed bidding, because oral bidding made it hard for them to bid against the larger operators. Set asides didn't solve the problem because firms with up to 500 employees were considered small businesses. I'm talking about guys with 10, 15, 20 employees. Really small operators.

In any event, Krebs pursued this and got it adopted finally, after quite a battle. When we got to conference I had been selected by Tom Foley to explain the bill, the National Forest Management Act to the conference. I worked on it in the Senate, and I had done all the staff work there explaining it. There was no comparable provision in the Senate bill. The House staff was responsible for making up the format of the issues that would be discussed, and seal bidding was one of them and they put it near the end. It was my custom to discuss these issues with Senator Talmidge, to see what his sentiments were on every issue. And for some reason it just
slipped my mind to even talk to him about the bidding provision. So we had had no discussion about it. But when we got near the end of the conference and we came to this item, I realized that I had not said anything to Talmadge, but it was too late. And I said there is the sealed bidding amendment, of the House bill of Congressman Krebs. And there was a little bit of discussion from the House conference about it, and I think one of them, it may of been Congressman Symms from Idaho I don't remember exactly. One of them raised of the soundness of having sealed bidding . . . Senator Herman Talmadge said in his typical way, I don't see what's wrong with sealed bidding. He was looking like at it as a lawyer, and as somewhat experienced in this question of bidding. To him sealed bidding was a perfectly responsible thing. And so the Senate proceeded in adopting the House amendment, but with Talmadge saying that we ought to make it more general. Have it apply more generally. And so there was a small change in the language and it was adopted, which in effect gave the Forest Service the option of using either method.

The Forest Service didn't like the Krebs provision to begin with. They had objected to it in the House. It's like section 6K which they also objected to. Anyway, after the bill was enacted, there were a couple of things where the Forest Service was directed to do something. One of them was Lee Metcalf's amendment for creating advisory boards. The world shall was used there. To this day the Forest Service hasn't created those advisory boards. The only thing they acted on after the passage of the National Forest Management Act in December of that year was to institute sealed bidding in the Northwest. Half the sales in Region 1 were already sealed bidding, and about 30 percent of the sales in Region 5 were sealed bidding. About sixty to seventy percent in Regions 2 and 4 -- zero percent in Region 6. But the Forest Service put this rule in and said that the Congress had instructed them to do it, which was simply untrue. Well, it
created a firestorm because it suddenly upended relationships which might or might not be healthy but existed. It was like an earthquake, it sort of shook the playing field. It didn't level it, it shook it.

So all the sales began to be sealed bid sales. And this, of course, caused an undoing of relationships that no one could ever prove existed, but did. Because once you had sealed bids, there was no profitable way you and I or you and I and two or three others could collude because we didn't know about someone who wasn't in the agreement. And so there also happened then to be some people who came in from theoretically from outside, who knew that the reason they were outsiders was they knew, in the past under oral bids, they could never get a sale because of these arrangements. And so they started bidding. Well, the industry people started screaming bloody murder that the whole world had been turned upside down. And things rocked along, and my recollection is that Frank Church in Idaho worried about it. Why Church more than anybody else I don't know, but he did. He introduced an amendment to provide for both methods of bidding theory. And rather lengthy Senate hearings and debates were held and the House passed a bill providing for both methods of bidding. Secretary could do one or the other. There was some provisions in there for bid monitoring, which the Forest Service ... I have looked at their bid monitoring reports; they're useless. Also there has been litigation since then, particularly on the Olympic national forest on bid rigging. The Department of Justice has told the Forest Service that their practices are not effective -- that there bid monitoring doesn't work. It's an area with minor Savings and Loan Association scandal-type implications. The way in which the Forest Service fails to effectively monitor and assure that there's a level playing field. At any rate the bill had gone through the House and came over to the Senate, I am trying to remember, it must of been the summer, because I remember I was going to take the day off and go fishing,
and Senator Talmadge called me to come over to his office. They were going to have a hearing on sealed bids and he wanted me there.

Of course I didn't mind going to the hearing, but I had planned a day of fishing and a fellow hates to have his fishing disrupted. And I didn't take too many days off to go fishing, and it was legal that I take a day off. Anyway, I went over to the hearing and there was a break in the hearing, and I walked out in the hallway, and Joe McGrath who was a lobbyist of the National Forest Products Association, came up to me and in a very abrasive way asked what I was doing there, inserting myself into this issue. Well, I don't lose my temper very often and I didn't lose it then. But I did, in his eyes, because I just gave him hell, cussed about everything, and he was absolutely shaken by it. And I did it for effect more than anything else. I mean in the first place I was an employee at that time of the Congressional Research Service. When you are told by the chairman of a committee to work on a piece of legislation, you don't go to a lobbyist and ask if it's all right. And I didn't want him to even have the impression that he could have any influence on what I did. And, anyway, Talmadge told me later that the westerners wanted their bill and he might as well let them have it, it was their problem, and so the bill came out of the committee and went to the floor, and then rather surprisingly, I got a call from Ted Kennedy. To this day I don't know what got Kennedy interested in this subject. He was on the Judiciary Committee. It may have been that someone in the Justice Department talked to him about it. But he viewed it as a antitrust type of situation, that sealed bidding would help prevent actions that had antitrust implications. His staff guy, as I recall, had the name Jim Cubie, who now works for Senator Leahy on the Senate Agriculture Committee. I was called over to Kennedy's office in the Capitol, we met and we talked about it and then he told me to come back that evening. I came back around 7:30 p.m. and we talked some more about it. He's sitting there
with his tie off and shirt sleeves smoking a cigar, and put me through the paces, really quite vigorously, on the issues, what their intent was, what their meaning was, why should he go into this, why shouldn't he go into it. It was really a, he was, I'd known Ted Kennedy for a number of years casually, but it was a very impressive show of intellectual interest in the issue. And I still don't know what pushed him to do it. It certainly wasn't me. And it certainly wasn't someone in the timber industry. But he was concerned about it. Finally though we reached one point and he was expressing great doubt that he should do anything. Can you give me one more reason why I should do something on this. And I said, AWell Senator, I can't, but I said, AWhy don't you call Richard McArdle, former Chief of the Forest Service, and ask him what he would do. What he thinks ought to be done. What I hadn't realized, was that as a young man Ted Kennedy had spent part of one summer working on a national forest, and he knew who Dick McArdle was. I thought I was telling him about someone he didn't know, but he did know who he was. And he turned to Cubie and told him to call McArdle, we looked up his number and he called, and Kennedy had the phone and he said, Doctor McArdle, this is Ted Kennedy. And I talked to McArdle about it later and McArdle told me that at first he thought somebody was kidding, but then he recognized the voice and then Kennedy asked him about the sealed bidding issue, what and whether it was sounder public policy to have oral bidding than sealed bidding. McArdle told Kennedy its sounder public policy to have sealed bidding and I would oppose the bill if I were you. And this was an answer to a direct question from the Senator. The Senator thanked him very much and said it was good to talk to him, hung up the phone and turned to me, and said AMcArdle convinced me. And with that he went to the floor the next day and opposed the bill, much to the surprise of people like Frank Church. I was on the floor when the debate occurred, and as an aside, sort of, Fred Hutchinson who was working for Frank Church, said to
me that I ought to be careful what bills I was supporting. And I just sort of laughed at Fred, Are you trying to tell me something Fred? He said Yes. He said, You support the wrong bills -- you could get fired. I said, Go ahead and try it anytime you want. I always attributed the defeat of Frank Church to Fred Hutchinson -- to the bad advice he got [from Fred]. And that from my view was that, you didn't lead the member that you worked for -- worked with -- you tried to make sure he had all the relevant facts and let him go from there. And this bidding issue was a phony issue. At any rate, the bill was passed. President Carter signed it -- Forest Service uses sealed bids and oral bids, it doesn't use sealed bids in a lot of places where it ought to use them. They have had a series of problems they haven't dealt with, but again, the issue really was one of, not of leaving money on the table, it was one of undercutting the effectiveness of the competitive system by doing things that are not good public policy in a capitalistic system. If you are supposed to sell things by bid, the bidding table should be level. And this oral bidding system made it possible for some to tilt the table and others not to know it was being tilted.

Shannon: Well, did the [19]78 bill answer these issues and solve the problem, or did it ... ?

Wolf: It gave the Forest Service the authority to use both sealed and oral bidding, which it had all along. It did direct that there would be bid monitoring, which the Forest Service has done very ineffectually. If you look at a bid monitoring report, you cannot figure out head or tails about the likelihood of there being tilted bidding in it -- you know illegal bidding on the part of ... And the Department of Justice have an investigative office of the Forest Service. They have investigators. If you talk to their investigator what you discover is they have great internal difficulty in the Forest Service with a number of the timber management people believing that
their customers could engage in any anti-social conduct of that nature. They just simply don't understand the way things happen. I have talked to several of the investigators, and some of the bid rigging on the Deschutes National Forest, the Olympic, a couple of others. The Department of Justice met in 1988 with the regional forester in Region Six and in effect told them that their timber management people were like folks that left the keys in their car in a big city and wonder why it was being stolen. And from the Justice Department standpoint they find it very, very disturbing, when they do get information on a case, to discover they're really dealing with the fact that a government agency is letting the atmosphere develop to where this could occur. And that's what makes this whole issue, in my mind, such a peculiarly difficult one. There's people who talk about changes in the current Forest Service. One of the things the Forest Service established, over a long period of time, what this reputation of impeccable honesty. A great deal of that occurred because it used sealed bidding. While they weren't selling all that many sales, it was a hell of a lot harder for people to rig bids under a sealed system. I might refrain from bidding against you, but that didn't mean that somebody else wasn't going to bid against you. The fact that I refrained from doing it, without talking to you, wouldn't be illegal, if I talked to you about it, it would be. But the Forest Service never had the kinds of problems they've had in the last several years with bid rigging, under sealed bids. I think it isn't a question of getting the most money for the timber, I did a study in the [19]50s when they were using both systems. What that showed was that the Forest Service and the Bureau of Land Management got no more money on the average, with sealed bidding or oral bidding. What they did get was oral bids rose on average, all of the sales, hovered around the average increase. Oral bids sales were either at the appraised price or a little above it, or bid way above it so they came out at the average, whereas sealed bid sales all hovered around the average. So what you were getting was less
single bid sales, and less sales at the advertised price, anyone who has examined the bid rates on Forest Service timber and BLM timber knows that on the average they bid 50 percent above the advertised price, because the appraisals are so conservative. That's another problem -¬ conservative appraisals. But if you are underpricing your product, you are going to have this problem. Just to wind up this subject of bidding, the Forest Service timber and BLM timber are sold based upon the government's estimate of its value to a buyer to convert -- its residual value as stumpage. No other product that I am aware of, manufactured or otherwise, is sold that way. Toyota doesn't sell their cars that way and neither does Chrysler.

Shannon: Nor do we sell wheat and cotton that way.

Wolf: Yeah, so it's not a residual pricing system. The Forest Service does not price its timber based upon what it costs to grow it.

Shannon: No, but it does price its timber on the basis of how can you maximize the cost to the government of providing professional staff to develop sales this way.

Wolf: No, they don't.

Shannon: The most expensive way they can do it.

Wolf: No, the way the Forest Service does it, they take the estimated selling value of lumber, deduct the logging and milling costs, and a loss for profit and risk and what's left is the price of
the stumpage.

Shannon: That's what I said.

Wolf: No, but they're not maximizing the government's price.

Shannon: No, they're maximizing their cost of selling timber, not their price.

Wolf: I'm sorry, I misinterpreted.

Shannon: I figured you did.

Wolf: It doesn't make any sense for me to try to figure out what an average manufacturer is going to pay for something because the average manufacturer doesn't buy it. The more efficient one buys it.

Shannon: And what's it going to be converted into depends on the market if he's intelligent.

Wolf: But that goes back into some of the root things in forestry, which really also stem from way back, when timber was a drug on the market, and the forester idea that he had to measure the log, had to prevent waste by scaling, etc. Whereas you can break up an awful lot of timber in felling and scaling is not the most efficient means, and it doesn't measure anything anyway.
Shannon: Nope.

Wolf: We have a lot of archaic systems. But the oral bidding simply compounds the felony.

Shannon: And when you are talking about the oral bidding you are talking about a system where you have sealed bids and then oral bidding on top of it.

Wolf: Yes, well, it really doesn't matter whether you have sealed bids ...

Shannon: I am talking for the record.

Wolf: Yeah, they've done that, they require that all the bidders submit a sealed bid to begin with, but that is meaningless because all the sealed bids come in at the advertised price. Because nobody is going to bid more than it, because it just might be that he's the only bidder. So the sealed bid becomes meaningless. On the other hand, when the Forest Service does sell a sealed bid sale, and there's no oral bidding permitted, then that's your one shot at it. You write down your bid, you submit it, that's it. They open the bids and the winners declared. But sales are announced in advance as either oral or sealed. If it's an oral sale, you're told you have to submit a sealed bid to begin.

That's the oral/sealed bidding thing. And the fascinating thing about it is that the Forest Service pays no attention to what the Justice Department tells it, and the other fascinating thing about it is one of the few sections that was so precise in the National Forest Management Act such as the advisory board, the Forest Service didn't act, but on something like this ...
[End Tape]