There are Supreme Court cases going back a century or more dealing with what we would now consider environmental issues such as preserving nature or air pollution. But when did the Court start seeing filthy rivers and smokey cities as embodiments of the same problem, despite their striking physical differences? And when it did start thinking of "wilderness" as a good thing rather than a failure to use available resources?

It was only once that shift was made that we could begin to think of contaminated rivers, smog, and clearcutting as part of the same body of law. In other words, it was only then that we could in terms of "environmental law" rather than distinct bodies of rules governing a scattering of different situations.

I began with a Westlaw search for the term "air pollution." The earliest opinion I found was *Huron Portland Cement Co. v. City of Detroit*. This 1960 case involved the application of Detroit's air pollution ordinance to a ship docked there. The ship owner argued that the ordinance was preempted by federal boiler safety regulations and interfered with interstate commerce. Justice Potter Stewart's majority opinion emphasized that, unlike the federal safety regulations, "the sole aim of the Detroit ordinance is the elimination of air pollution to protect the health and enhance the cleanliness of the local community." Interestingly, Justice Douglas who often championed environmental causes, dissented on the ground that the ordinance infringed the ship's federal license.

The first use of the term "water pollution" came later, in a 1967 dissent from denial of certiorari. In *Snohomish County v. Seattle Disposal Co*. This was basically an Indian law case, dealing with the application of a county landfill regulation to non-Indian owners of land inside an Indian reservation. The state court had held that the ordinance could not apply within the reservation. Justice William O. Douglas, however, saw possible merit in the argument that "the immunity of Indian lands to a state 'encumbrance' cannot frustrate state programs to check air and water pollution." He thought the Court should consider whether a state should be able to prevent sewage dumped on Indians' lands from draining into streams which flow into water supplies outside Indian lands."

Justice Douglas wrote the majority opinion, however, in the Court's first reference to "wilderness" as something worthy of preservation. *Udall v. Federal Power Commission*, a 1967 case, involving the proposed construction of a dam on the Snake River. The Court ruled that the Commission had failed to consider key issues: "including future power demand and supply, alternate sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish [salmon] for commercial and recreational purposes, and the protection of wildlife." This was three years after Congress had passed the Wilderness Act, so the Court was lagging Congress.

The Court had begun to pay more attention to environmental issues in other ways during the 1960s, such as a series of cases creatively expanding federal jurisdiction over water pollution under an 1899 statute that primarily dealt with obstacles to navigation. The 1960s were also Congress's first forays into issues like air and water pollution, wilderness protection, and the endangered species. These developments set the stage for the blossoming of federal environmental law with the passages of NEPA, the Clean Air Act, the Clean Water Act, and other major legislation in the decade that followed.