

Recent Developments

By John Baden



The Honorable Tom Eisele, Eastern District of Arkansas, at our April conference, Exploring the Ecology, Economics, and Public Policy of Water Resources and Fisheries



FREE's new Research Assistant, Jennifer Mygatt

This spring has seen several staff changes at FREE. Pete Geddes was promoted to Executive Vice President. Long-time finance and administration director Lola Dunmire left us for a position with one of Bozeman's high-tech companies, Zoot Enterprises. Lorraine Conn is our new office manager. Research associate John Downen is now our publications and program coordinator. We have a new research assistant in Jennifer Mygatt, a Dartmouth alumna and competitive Nordic skier, and a new summer intern in Colin Dailey, a sophomore at Willamette University. David Sands has returned as a summer intern for the month of June.

Since 1998, a "progressive," George Soros-funded activist organization, the Community Rights Counsel, has generated financial support by discrediting FREE's 14-year-old seminar series for federal judges. Their claims are a mix of speculation, distortions, and outright lies.

In response to the latest round of attacks from the CRC, Dr. Thomas Schelling, formerly of Harvard's Kennedy School of Government and recently retired from the University of Maryland's School of Public Affairs, wrote an op-ed defending the quality of FREE's programs (see page 2). Four law professors who have attended our programs — Peter Appel, Colin Crawford, Marc Poirier, and J.B. Ruhl — wrote a supportive letter to the editor of the *Washington Post*, which was not published. Two former U.S. Attorneys under Clinton, Alan Bersin and Sherry Matteucci, conducted an independent review of our programs. Their finding: "The FREE seminar program has presented a varied, balanced, intellectually challenging and rigorous series of educational opportunities." I expect an academic review by an independent panel of leading environmental and natural resource economists to be completed soon. The *Wall Street Journal* (see back page) and the National Review Online (Jeffrey Lord, "Rigging the Borking Game," May 19, 2005) both recently ran pieces defending our programs and exposing the CRC's funding and activities.

In 2000, the late Judge Richard Arnold wrote me: FREE's seminar "was of the highest intellectual quality of any seminar I have attended since going on the bench almost 22 years ago." I am confident in FREE's ability to continue to bring the highest-quality educational seminars to our federal judiciary.

Testimony on FREE

By Dr. Thomas C. Schelling



While planning last week for my next seminar for federal judges, to be held in July by the Foundation for Research on Economics and the Environment, I was disheartened to read that several distinguished judges had felt obliged to distance themselves from the Foundation by resigning from its Board of Trustees. This will be my ninth seminar, over a period of five years and covering seven major topics, so I am confident that I know what happens at these seminars.

The allegations that apparently led to these judges feeling obligated to remove themselves have come from the Community Rights Counsel, whose executive director, Douglas T. Kendall, wrote to the chairman of the Committee on Codes of Conduct a letter that includes the following statement:

“FREE receives its funding from both corporations that litigate in federal court and foundations that bankroll other groups to litigate. *FREE then uses that money to host five or six day trips to Montana resorts where judges are wined, dined, and instructed on how and why to strike down federal environmental laws.*” (My emphasis.)

I have participated in 168 hours of lectures and discussion at FREE and have never witnessed anything that an observer could interpret as remotely corresponding to that characterization. (John Baden, the Chairman of FREE, runs a tight ship; all sessions begin promptly on time, and end on time, so my 168 hours is a pretty exact estimate.)

Whether judges should accept travel, room, and board to attend twenty-one hours of serious discussion over four days is for the Committee on Codes of Conduct to decide. But I can offer a judgment on the two issues that the Community Rights Counsel publicizes with headlines like “Golf Anyone? The Movable Feast Called ‘Judicial Education.’”

First, and least, is this a junket, a holiday of horseback, golf, and fly fishing? There are twelve ninety-minute sessions, with half-hour breaks, in four days; no absences are allowed; nobody may be late. Thursday afternoon is free time, as is Saturday until five, when the judges must meet again in private session with the Chairman. Considering what for most judges is two full days of travel, that is two afternoons free out of six days. Additionally there is more than enough advance required reading to consume the travel to Bozeman.

As an academic who has attended dozens of seminars sponsored by the Gas Research Institute, the Electric Power Research Institute, the Aspen Institute, the American Academy of Arts and Sciences, and the National Academy of Sciences, I find the FREE regime pretty Spartan.

The serious issue is whether the selection of speakers is systematically biased against “federal environmental laws,” as charged, or, for that matter, intentionally biased in any direction. *continued*

FREE's 2005 Seminars



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The first seminar I was invited to was on global warming and climate change. I had no idea what FREE was or who John Baden was, but the invitation mentioned some of those who had already agreed to attend, and one of them was a scientist I had got to know well, and to trust, when we both served on the 1981-83 Carbon Dioxide Assessment Committee of the National Academy of Sciences. I took his selection as a good sign, joined the seminar, signed on for more, and have never been disappointed.

I am an environmentalist. My 1991 presidential address to the American Economic Association was on global warming, which I had then taken seriously for more than a decade. I have not perceived an ideological bias in the selection of speakers for these seminars. On climate change I have disagreed with most — not all, but most — of the other speakers. But our disagreements have always been professional, not ideological. It is a very new issue for a global community, and how to cope with it economically, politically, and diplomatically is far from obvious.

I have found the judges at these seminars — I've now got to know over a hundred of them — remarkably articulate, good-humored, hard-working and hard-thinking, and fair minded. At the end of each seminar my wife and I look at the judges' biographies to see whether we can predict who was appointed by a Democratic or a Republican president. We never can!

Thomas C Schelling is Distinguished University Professor, Emeritus, University of Maryland. He is a member of the National Academy of Sciences and a Distinguished Fellow of the American Economic Association, of which he was president in 1991. He was FREE's Bill and Reta Haynes Distinguished Scholar in Residence at the 2005 FREE-MSU Federal Judges Seminar Series.

PLANNED GIVING



A well-informed judiciary is essential to the effective administration of justice. As modern life becomes more complex, judges find themselves facing more scientifically and technically sophisticated cases. But many lack training in analytical or scientific disciplines. FREE provides that training. Our seminars show how economics, risk analysis, and science can promote environmental quality.

To help FREE continue this important service, consider including us in your will or living trust, or naming FREE as a beneficiary to your life insurance or retirement plan proceeds. Contact Pete Geddes at (406) 585-1776 for more details about gifts to FREE.

FREE is a 501(c)(3) nonprofit and all contributions are fully tax deductible.

Seminar Series for Federal Judges, Law Professors and State Officials

June 9–12

Entrepreneurship,
Telecommunications,
and Social Change

July 12–17

Illicit Drugs, Civil Society,
and the Environment

September 13–18

Terrorism, Energy,
and Civil Society

October 12–16

Biotechnology, Risk Analysis,
and the Environment:
Implications for Federal Judges

October 26–30

Environmental Economics
for State Officials

Foundation for Research on
Economics & the Environment

662 Ferguson Road
Bozeman, MT 59718

PHONE 406.585.1776

FAX 406.585.3000

WEB www.free-eco.org

THE WALL STREET JOURNAL

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REVIEW & OUTLOOK

FREE No More

Judicial politics is in the news, so readers may want to know about the latest attack on the federal judiciary: No, not by Tom DeLay, but the assault from the left against judicial seminars.

These are events designed to let judges and law professors build their intellectual capital by taking a few days to learn about a subject at a nice locale. One of the most popular has been hosted for 14 years by the Foundation for Research on Economics and the Environment, or FREE, a Bozeman, Montana, group that promotes free-market environmentalism.

The FREE seminars are now under attack from something called the Community Rights Counsel, one of those highly litigious outfits that shouts “conflict of interest” at the drop of a hat. Chief agitator Douglas Kendall has run a campaign against the seminars because FREE “receives its funding from both corporations that litigate in federal court” and because the seminars include trips to “resorts where judges are wined, dined, and instructed on how and why to strike down federal environmental laws.” His implication is that a week in the Montana air amounts to a re-education camp in which judges will emerge like Cambodians indoctrinated by the Khmer Rouge.

In fact, such seminars are common, and useful. Groups ranging from Ivy League universities to bar associations to the Aspen Institute routinely host them. So do trial lawyers, who then pitch new litigation strategies — not that Mr. Kendall seems concerned about those seminars. Because the sponsors often reimburse judges for their expenses, the U.S. Judicial Conference’s Codes of Conduct Committee long ago established guidelines for attendance.

FREE’s seminars are co-sponsored by Montana State University and observe those guidelines. And they are no lazy junkets. Participants get a reading list and must attend every session. FREE doesn’t hide its philosophical leanings, but its seminars are intellectually balanced.

A group of judges and professors asked two former Clinton appointees to audit the program. The investigators, Sherry Matteucci and Alan Bersin, earlier this year concluded that FREE “has presented a varied, balanced, intellectually challenging and rigorous series of educational opportunities for participants.” Endorsers include Thomas Schelling of the National Academy of Sciences, and Hank Fischer, a director of Defenders of Wildlife for 20 years.

The latest Naderite twist is that CRC has filed ethics complaints against four judges who sit on FREE’s board. And rather than deal with the hassle, three of the four recently resigned. One of those judges, Douglas Ginsburg of the D.C. Circuit, explained that he wasn’t in “a position to constantly be correcting the false impressions and calumnies that appear in the press.”

Sad to say, but too many reporters are also of the Naderite mind. Sad to say, too, that John Kerry fell for this nonsense a few years ago and actually tried to regulate seminar attendance by judges. His bill died after everyone from Chief Justice William Rehnquist to the Federal Bar Association protested. Imagine the uproar if Tom DeLay had pulled that stunt.

All Americans have an interest in an informed judiciary. Judges rule over every aspect of our lives, and the more knowledgeable they are about issues before their courts, the better the chance of justice being done. If judges can’t attend seminars, what else might be a “threat” to their impartiality? Reading the newspaper? The CRC’s actions are nothing more than an attack on the honor and integrity of our judiciary.