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# Are They Swaying Judges? Oh, Please. FREE's Environmental Seminars Offer Intellectual Value, Not Indoctrination

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## Are They Swaying Judges?

*Oh, please. FREE's environmental seminars offer intellectual value, not indoctrination.*

By J.B. Ruhl and Peter Appel

Two weeks ago, Timothy Dowling of the Community Rights Counsel (CRC) wrote here to decry the practice of judges attending all-expense-paid educational seminars. As the CRC has done in the past, Dowling's July 18 criticism focused on seminars sponsored by the nonprofit Foundation for Research on Economics and the Environment (FREE).

These seminars, Dowling emphasized in his commentary ("Stop Judges Tripping on Corporate Dollar," Page 60), are "not open to the public or attorneys generally." FREE picks up the judges' tab. And FREE has a goal—"social change that harmonizes environmental quality with responsible liberty and economic progress" (to quote from its Web site).

All that is certainly true. What Dowling overlooked, however, is that FREE also actively recruits and pays the expenses for another group to attend those same seminars: law professors. And that's a critical oversight.

Having taught environmental law courses for many years, we appreciate that making good decisions about environmental policy requires a broad understanding of ecology, ethics, and economics. Indeed, every major text on environmental law used in American law schools today includes a healthy survey of those three bedrock topics.

This is why we have gained so much by accepting FREE's invitation to attend its seminars. At these gatherings, we've been able to focus deeply and broadly on the intersection of economics and environmental policy and to engage in lively dialogues that have sharpened our ability to train law students about a complex topic.

Nevertheless, according to the CRC in other attacks on FREE, these seminars are anything but educational. In a series of petitions to the Committee on Codes of Conduct for the U.S. Judicial Conference, the CRC has described FREE seminars as "lavish trips to lobby federal judges," at which the judges are "instructed on how and why to strike down federal environmental laws." The CRC has gone so far as to accuse federal judges who attend FREE seminars of violating ethical standards.

While it is beyond our expertise to opine on what is or is not within the bounds of judicial ethics, we can attest to what transpires at FREE seminars. The CRC's description of them is, simply said, devoid of any connection to reality. The fuss the CRC has raised is, we suspect, more about its disagreement with FREE's philosophy than any genuine concern that federal judges are being brainwashed into making anti-environmental decisions.

### A VIGOROUS DEBATE

To be sure, FREE does not hide its libertarian perspective and devotion to so-called "free market environmentalism." Very few environmental law professors share the group's views as strongly as FREE espouses them. Indeed, many, if not most, professors vehemently disagree with FREE on many topics. Yet, year after year, dozens attend FREE conferences, and many return frequently. Why?

We asked that question of a number of law professors around the nation, each of whom has attended at least one FREE conference at which federal judges were also present in significant numbers. We also asked our colleagues to address the CRC's portrayal of these conferences as lavish sessions designed to train judges in how to undermine laws designed to protect the environment.

We did this for a very simple reason: While we have no particular brief to hold for, or axe to grind with, FREE, we find the criticism of its seminars unfounded. Our survey method was quite rudimentary: We sent an e-mail asking for the views of those who had attended at least two seminars in the past, at least one of which involved federal judges (FREE was forthcoming with its attendance lists).

We received about a dozen responses, none of which was negative. What was striking about the responses was how much agreement there was on FREE's work and the CRC's accusations.

First, all of our respondents agreed that FREE's seminars are remarkably balanced in terms of topics covered and the perspectives of presentations. FREE routinely asks many law pro-

fessors to make presentations (including both of us), knowing full well that they are likely to express disagreement with the group's perspectives and lay out reasons to reject its views (as have both of us). Among the federal judges who have attended are appointees of both Republican and Democratic administrations. In short, the mix of presenters and attendees is as diverse as one could hope for.

Second, our fellow law professors expressed tremendous appreciation for the policy dialogue that FREE promotes at its seminars. These are not "talking head" presentations. Rather, at least half of the time spent in meetings is devoted to intense and often heated debate.

One aspect that the law professors find particularly valuable about this interchange is the insight it provides into how judges approach legal issues, which we are then able to convey more confidently to our students. The seminars would not function if they were open to the public or attorneys generally because they would become too unwieldy. They would lose the seminar atmosphere that promotes free and open exchange. Conversation occurs more readily in a small group than in a large lecture setting.

Also, contrary to Dowling's implication that corporate representatives attend the seminars, the only people in the meeting rooms or at meals we have ever seen, in addition to the speakers and participants, are members of FREE's staff, its board, and interested spouses of the speakers and participants.

#### THE MEANING OF 'EDUCATIONAL'

The law professors also agreed that FREE's seminars are anything but lavish retreats. Yes, FREE does provide comfortable lodging and ample board, but it works attendees hard in return. A typical seminar requires attendance at two or three full-day work sessions out of the four full days of the conference. Granted, on at least one day of each seminar the meetings adjourn by lunchtime, and FREE usually arranges for some recreational activity.

For example, a seminar we recently attended was held at the U.S. Fish and Wildlife Service's National Conservation Training Center in Shepherdstown, W.Va.—comfortable, but not luxurious. The optional recreational activity was a tour of a Civil War battlefield or an aquaculture laboratory.

Indeed, the one thing that sets FREE seminars apart from other professional education programs is how much work is expected of attendees and how little play is involved. Attendees—whether judges or law professors—do not receive reimbursement for their expenses unless they sign an agreement requiring them to read all the materials (generally about 150-200 pages) in advance and attend all the sessions, including meals. FREE mandates these conditions to maintain the level of dialogue at the highest levels—and it works.

Finally, the professors responding to our inquiry overwhelmingly dismissed the CRC's charge that FREE attempts to mold judicial opinions against the environment. It insults the intelligence of federal judges, who are exposed to intense advocacy in the courtroom and in briefs, to suggest that a weeklong seminar could suddenly twist their thinking. In any event, the professors agreed emphatically that FREE attempts nothing of the sort. Indeed, the very reason they say they return to these seminars is that there is no attempt to impose a political agenda.

The bottom line is that if FREE really were out to sow the harm suggested by the CRC, it's doing a lousy job. If FREE truly is trying to use the seminars to brainwash federal judges, it wouldn't invite law professors like us to make presentations, and it wouldn't promote lively debate and the exchange of ideas drawn from diverse perspectives. And if, as Dowling also implied in his commentary, the CRC's main concern is the appearance (as opposed to the actuality) of undue influence on judges, the truth of what really goes on in FREE's seminars should wipe out any such concern.

One does not have to agree with FREE's point of view to respect its program of encouraging federal judges to take an interdisciplinary, informed perspective when making decisions that have implications for our environment. Any organization would do well to follow FREE's model for environmental policy education.

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