

NOBEL LAUREATE SPEAKING IN BOZEMAN

2005 Nobel Laureate Tom Schelling will lecture at FREE's August program for federal judges and law professors, *Strategic Thinking with Tom Schelling*. Independent of the conference, Tom will give a public lecture on



Tuesday, August 15, at Bozeman's Museum of the Rockies. The title is "An Astonishing 60 Years: The Legacy of Hiroshima," and in his talk, Tom will examine the history of the taboo against nuclear weapons. Tom always has interesting insights and this promises to be a stimulating and enlightening evening with one of America's great minds.



FREE's Program Advisory Board

By John Baden

FREE has offered four- to five-day seminars for federal judges for 15 years. Eight years ago we began including law professors in these programs. Our motivation for providing this education to judges and law professors is to expand expertise and to foster innovative thinking, especially about economics and risk analysis.

Both judges and professors tell us the continuing education provided by FREE serves a valuable public purpose. As then-Chief Justice William H. Rehnquist said at the American Law Institute's 2001 Annual Meeting: "Seminars organized by law schools, bar associations, and other private organizations are a valuable and necessary source of education...." We concur; surely a broadly educated federal judiciary serves the public interest.

No one in FREE's office, however, has formal training in the law. Therefore, in our ongoing efforts to improve the quality and relevance of our seminars, FREE recently established a Program Advisory Board (PAB). Membership is open and consists of well-respected academics, judges, and others with an interest in judicial education. I welcome recommendations of both faculty and participants.

The PAB will nominate, identify, or review preliminary topics we generate with program participants. We are particularly interested in their advice as to the relevance and importance of seminar topics to judges' daily responsibilities. This is a special concern for federal district court judges.

Current membership includes: Chairman, the Hon. Douglas Ginsburg, Chief Judge of the DC Circuit Court of Appeals; Prof. Peter Appel, University of Georgia School of Law; Alan Bersin, a U.S. District Attorney under President Clinton and presently Secretary of Education for the State of California; Prof. Daniel Chirot, University of Washington Jackson School of International Studies; Prof. Daniel Cole, Indiana University School of Law; Dean James Huffman, Lewis & Clark Law School; Prof. Mark Kleiman, UCLA School of Public Policy and Social Research; the Hon. Joe Billy McDade, U.S. District Court for the Central District of Illinois; and Prof. Todd Zywicki, George Mason University School of Law.

I will welcome your response to our Advisory Board. If you would like to contribute to the improvement of FREE's programs, or know someone who might, please contact me at jbaden@free-eco.org or (406) 585-1776.

Free to Learn

By John A. Baden and Pete Geddes

This is an edited version. For the complete article, visit our web site, www.free-eco.org/evaluations.php

Congress has an opportunity this year to defuse a controversy that has threatened to taint the federal judiciary. The dispute is contrived and unnecessary, and it should be resolved rapidly and in a bipartisan manner. . . .

Our educational programs in the past have attracted criticism from political activists. Fortunately, a pending bill in Congress offers hope for resolving this dispute in a way agreeable to judges, to educational groups offering judicial seminars, and perhaps even to the political critics of such seminars.

THE PUBLIC GOOD

Educational seminars for the federal judiciary have long been organized by law schools, bar associations, and other nongovernmental organizations. . . . The programs span the realm of academic thought and expertise, and they supplement programs provided by the Federal Judicial Center.

The continuing education provided by FREE and other organizations serves a valuable public purpose, advancing social and jurisprudential goals.

As then-Chief Justice William Rehnquist said at the American Law Institute's 2001 annual meeting, "Seminars organized by law schools, bar associations, and other private organizations are a valuable and necessary source of education."

To protect the independence of the federal judiciary, the Federal Advisory Committee on Codes of Conduct of the Judicial Conference issued an opinion in 1980 that speaks directly to the question of whether judges "may with propriety" attend such educational seminars and have their expenses paid by the sponsoring organizations. . . .

The relevant language states: "The education of judges in various academic disciplines serves the public interest. That a lecture or seminar may emphasize a particular viewpoint or school of thought does not itself preclude a judge from attending. Judges are continually exposed to competing views and arguments and are trained to weigh them." . . .

ACTIVIST FANTASIES

Since 1998 a "progressive" activist organization, the Washington, D.C.-based Community Rights Counsel (CRC), has generated financial support by orchestrating a campaign to ban federal judges from attending independently funded educational seminars. FREE has been the primary target.

The main criticism of our seminars has recently shifted from content, which is clearly unassailable. . . . Instead, critics now focus on our reimbursement of judges' expenses.

The CRC fantasizes that our programs are lavish corporate-sponsored getaways at posh resorts intended to brainwash intellectually pliant federal judges. They are none of that. . . .

In fact, three independent peer reviews last year gave our program high praise. Alan Bersin and Sherry Matteucci, U.S. attorneys under President Bill Clinton, reviewed our programs and concluded, "The FREE seminar program has presented a varied, balanced, intellectually challenging and rigorous series of educational opportunities for participants."

Similarly, a survey of 40 law professors who have attended our seminars found that the attendees considered our programs "remarkably balanced in terms of topics covered and the perspectives of presentations." Most recently, four prominent economists concluded that our programs attract "top quality people" with "international reputations." . . .

continued

JUDGES APPROVE

Our foundation receives some general support from corporations, about one-fifth of our total income. For the sake of transparency, all the corporate donors are listed on our Web site.

Because we receive corporate funding, the CRC argues that it is wrong for judges to attend our programs. The critics ignore the fact that other organizations sponsoring judicial seminars — including all universities, the Aspen Institute, and the women's advocacy group Legal Momentum — also receive corporate funding.

Our motivation for providing judicial education is to expand judges' expertise and to foster innovative thinking. . . .

This important goal must be accomplished while respecting the integrity of the federal judiciary. The corrosive effects of compromised courts are obvious. Thus, efforts to eliminate the appearance of judicial impropriety should be applauded and supported. On this we agree with the CRC.

So let's take the divisive funding issue off the table. Many states provide funds for state judges to attend educational-enrichment programs. Why not the federal government?

ON THE RIGHT LIST?

Sen. Patrick Leahy of Vermont, the ranking Democrat on the Senate Judiciary Committee, has introduced legislation (S. 2202) that could end this controversy.

Popularly known as the Fair and Independent Judiciary Act of 2006 . . . the legislation would establish a Judicial Education Fund, which would provide modest funds for federal judges to attend educational seminars. . . .

Unfortunately, other provisions in Leahy's bill are at odds with our constitutional protections of freedom of speech. Leahy would allow judges to attend only programs approved by the Federal Judicial Center, jeopardizing the very idea of an "independent" judiciary. It is harmful to our judges to insist they be constrained to ideas pre-approved for consumption.

Rehnquist addressed this matter in his 2001 remarks to the American Law Institute, when the late chief justice put it like this: "The notion that judges should not attend private seminars unless they have been vetted and approved by a government board is a bad idea. It is contrary to the public interest in encouraging an informed and educated Judiciary, and contrary to the American belief in unfettered access to ideas."

Rehnquist then quoted Justice Oliver Wendell Holmes Jr.'s famous dissent in *Abrams v. United States* (1919) that "the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . . [W]e should be eternally vigilant against attempts to check the expression of opinions that we loathe." . . .

Judges have told us they fear that the provision requiring Federal Judicial Center approval might deny judges access to the full range of academic thought. Besides, it's demeaning to imply that judges can be easily swayed simply by attending one of our — or anybody else's — seminars. These are smart, mature, sophisticated men and women at the top of their profession, disposed by training to be discerning, critical, and alert to shoddy arguments.

We believe that a broadly educated federal judiciary serves jurisprudential as well as societal goals. Constructive policy innovations are advanced by civil discourse and exposure to a rich marketplace of ideas.

FREE is making an important difference by promoting sound thinking on environmental and economic issues. If Leahy's funding provision is enacted (and we hope it is), FREE would be happy to compete with other programs for judges' most scarce resource — discretionary time.

John A. Baden is chairman and Pete Geddes is executive vice president of FREE.

FREE's 2006 Seminars



June 4–7

Entrepreneurship and Social Change

July 16–20

Environmental Federalism: States, NGOs, and Environmental Quality
A Program for State Officials

August 13–18

Strategic Thinking with Tom Schelling
A Program for Federal Judges & Law Professors

September 10–15

The Environmental Consequences of Energy Use: Policies for Progress
A Program for Federal Judges & Law Professors

October 8–13

From Terrorism to Tornadoes: Mitigating Disruptions to Civil Liberties and the Economy
A Program for Federal Judges & Law Professors

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

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.

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

Summer Visitors at FREE

This summer FREE will be joined by a resident scholar and three interns. Dr. Daniel Chirot, of the Jackson School of International Studies at the University of Washington, will be FREE's Summer 2006 Bill & Reta Haynes Distinguished Scholar in Residence. Dan is one of that rare breed of sociologists with an understanding of economics. He earned his Bachelor's in social studies from Harvard and his Ph.D. in sociology from Columbia. Over his 30-plus-year career he has studied the processes of social change, modern tyranny, and the causes and consequences of ethnic conflict in the Balkans and sub-Saharan Africa. Dan has been a consultant for Radio Free Europe, the United States Information Agency, the National Endowment for Democracy, CARE, and the United Nations High Commission for Refugees. During the 2004-05 academic year he was a senior fellow at the United States Institute of Peace.



Dr. Daniel Chirot

Dan has lectured at five FREE seminars, and spoke at the 2004 Mont Pèlerin Society general meeting organized by FREE. We look forward to Dan being with us this summer.

Our 2006 summer interns are Kevin Kimura, a sophomore at the University of Pennsylvania majoring in economic history and English; Emily Sands, a freshman at Princeton studying economics and public policy; and Jessica Van Parys, a sophomore at the University of Georgia majoring in political science and economics. Walker



Kevin Kimura

Asserson, our DeCrane Summer Fellow in 2004 and an AP Social Studies teacher at Bozeman High School, will join us again this summer.

Interns will read works on economic principles, classical liberalism, environmental economics, globalization, and other topics. They'll meet weekly with Prof. Chirot and FREE staff for discussion sessions, as well as attend FREE conferences and interact with participants and lecturers, including Nobel Laureate



Emily Sands

Thomas Schelling, former Attorney General Ed Meese, the Hon. Douglas Ginsburg of the DC Circuit Court of Appeals, and Prof. Philip Heymann of Harvard Law School.

FREE's summer internships provide a unique opportunity for undergraduates to spend one-on-one time with some of America's top scholars.



Jessica Van Parys

