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Attitudes, Ideals, and the Practice of Environmental Law

In 1990, Americans celebrated the twentieth anniversary of Earth Day, and, led by a self-proclaimed "Environmental President," the country pledged renewed allegiance to the environment. Environmental law flourished, gaining new respect as a practice specialty. The number of law students choosing to become "environmental lawyers" also dramatically increased.¹ Despite all the environmental euphoria, it remains unclear whether a renewed commitment to the environment or less altruistic reasons explain this sudden interest in environmental law.

Recession hit hard in 1990. Many lawyers lost their jobs, and an increasing number of students now graduate from law school without firm offers of employment.² Increasingly, students feel pressured to put aside lofty ideals and flock to the few specialties in which jobs are rumored to still abound.³ The legal job market may have collapsed, but according to legal prognosticators, jobs are still plentiful in environmental law. As early as 1989, the National Law Journal heralded environmental law as the new "in" specialty,⁴ and later that same journal discovered a "boom" in environmental law.⁵ The Los Angeles Daily Journal went further, proclaiming environmental law to be "hyper-hot" and "erupting in importance."⁶

Recently, the National Law Journal conducted a study to examine the truth of this widespread speculation.⁷ It surveyed the nation's 250 largest law firms, seeking empirical data on growth and retrenchment of particular departments between 1985 and 1990.

1. Nancy Rutter, *The Greening of Corporate America*, 11 CAL. LAWYER 33, 35 (1991).

2. See Margaret Cronin Fisk, *Hot, Cold Tickets in Hard Times*, 12 NAT'L L. J., Sept 10, 1990, at 1.

3. Legal recruiters and placement personnel encourage this process by speculating about which practice areas are "hot."

4. Rorie Sherman, *The 'In' Specialty This Year; Big Business Seeks Environmental Lawyers*, 11 NAT'L L. J., May 22, 1989, at 1.

5. Andrew Blum, *Environmental Boom*, 12 NAT'L L. J., Apr. 6, 1990, at 2.

6. Katrina M. Dewey, *Environmental Law Erupting in Importance: 'Hyper-hot' in California*, 103 L.A. DAILY J., Apr. 20, 1990, at 1.

7. *Data Show Which Specialties Thrive, Are Down; Data Show the Hottest Practice Areas*, 12 NAT'L L. J., Oct 22, 1990, at S4 (finding that the other fast growing specialty was bankruptcy).

The survey confirmed that environmental law was, indeed, one of the fastest growing specialties.⁸ Such rosy reports amidst the general gloom in the employment market may be a catalyst to this sudden surge of student interest in environmental law. Whether many of these students have any commitment to environmental issues, let alone know what environmental lawyers do, is questionable. Moreover, if environmental law sustains its "boom," students must inquire whether environmental lawyers find the practice fulfilling, and more important, whether environmental law is likely to meet the students' own needs and expectations.

I.

AN ACADEMIC PERSPECTIVE

Amidst the boom in environmental law, some experts have begun questioning the benefit of environmental laws and the usefulness of environmental lawyers. Professor David Getches of the University of Colorado observed that "[l]awyers in great numbers are finding jobs 'doing environmental law.'"⁹ But, Getches lamented, "law, lawyers, law school and law students seem to have so little to do with the environment."¹⁰ Commenting on the statutory scheme, he said, "We have more and more 'environmental artillery': more lawyers working on problems that seem increasingly sophisticated, with ever greater economic stakes, and at the same time ever greater attenuation from the ultimate causes and concerns that gave rise to the field."¹¹ James Krier, professor of environmental law at the University of Michigan, opines that environmental law courses do little to prepare students for practice:

Environmental law has come to be a bore . . . if the idea is to "teach" the "law" that we find in the "books." There is too much junk there, too many details. . . . Project this picture a bit and what you have for the future . . . is a bunch of lawyers who don't really know anything worth knowing.¹²

Several professors have expressed deeper misgivings. Professor Joseph Sax of the University of California, Berkeley contends that the shortcomings in environmental law are caused not by teachers or practitioners, but by Congress' failure to enact adequate stat-

8. *Id.*

9. Joseph L. Sax, *Environmental Law in the Law Schools: What We Teach and How We Feel About It*, 19 *Envtl. L. Rep. (Envtl. L. Inst.)* 10,251, 10,252 (1989).

10. *Id.* at 10,251.

11. *Id.*

12. *Id.*

utes.¹³ "I sense that my colleagues would be more tolerant of the current laws if they were convinced that . . . those statutes represented a best effort to cope with terribly difficult dilemmas—if they were persuaded that we were at least inching along in the right direction."¹⁴ Because environmental law is predominantly statutory, and, in Sax's view, these statutes are structurally flawed, students should expect to find the practice of environmental law unsatisfying.

Professor Arnold Reitze of George Washington University is even more pessimistic. He contends that although the United States spends huge amounts on pollution control programs, such expenditures are not only unsustainable but pointless because the present approach to environmental law ignores the fundamental problems underlying pollution:

From the beginning, the impacts of population and consumption have been ignored. . . . [T]here is no consensus that they are problems, let alone problems in need of solution. So Congress focused on the obvious . . . pollution, which is the least important of the three causes of ecosystem degradation.¹⁵

In Reitze's view, environmental lawyering is not merely ineffective, but completely irrelevant.

II.

A PRACTICAL PERSPECTIVE

If the professors who teach environmental law are so pessimistic about the subject, why do so many students want to practice environmental law? Are students oblivious to the views of their profes-

13. *Id.*

14. *Id.* Sax's position is hotly disputed by Senator Quentin Burdick, Chairman of the Committee on Environmental and Public Works, United States Senate. Burdick contends that the problem lies not with inadequate laws with but inadequate enforcement of those laws:

[I]t troubles me that presidents and their appointed administrators have failed to fully use the tools Congress has provided to implement environmental protection programs.

If I were the administrator of the Environmental Protection Agency, . . . I would simply use the authority Congress has vested in the Environmental Protection Agency to fully implement the programs for which it is responsible.

Lois Marie Gibbs, *What Would You Do If You Were Running EPA*, 18 *Envtl. L. Rep.* (Envtl. L. Inst.) 10,243 (1988).

Also placing the blame on the executive branch, former U.S. Representative and current New Jersey Governor James Florio maintains that "Congress can pass laws, but substantial progress will come only when those laws and policies are faithfully and aggressively implemented." *Id.*

15. *Id.* (citing Arnold W. Reitze, Jr., *Environmental Policy—It is Time for a New Beginning*, 14 *COLUM. J. ENVTL. L.* 111, 119-20 (1989)).

sors, or do other factors affect them? Fundamentally, are students' career interests in environmental law shaped more by their personal interests or by the present economic climate? If the latter, does the same hold true for lawyers presently practicing environmental law? Unfortunately, little reliable data is available to cogently analyze these issues, let alone resolve them. Most available evidence is anecdotal and of limited value.¹⁶

To obtain enough information to examine these issues comprehensively, I surveyed 120 environmental lawyers and 100 UCLA law students with a demonstrated career interest in environmental law.¹⁷ The student survey was designed to measure the strength of the students' interest in the environment, to discover what motivated their interest in environmental law, and to see whether their expectations were realistic based on the experiences of environmental practitioners. The survey of environmental lawyers¹⁸ measured the extent to which views of environmental lawyers resemble those of environmental law professors. It addressed what factors motivated different types of environmental attorneys to enter the field, and asked whether they were happy with their practice. Additionally, the survey examined environmental lawyers' views of themselves, their roles, and their overall effectiveness. The survey results provide a very different perspective than that painted by law school environmental academics.

16. See, e.g., Susan Seager, *Saving the Earth*, 11 CAL. LAWYER 39 (Apr. 1991); Nancy Rutter, *The Greening of Corporate America*, 11 CAL. LAWYER 33 (Apr. 1991).

17. The law students surveyed were members of the UCLA Environmental Law Society. The Society is open to all UCLA law students with an interest in the environment or environmental law as a career. At the time of the survey, membership in the society was 101, which represented slightly more than 11% of the law school population. The Society is a student-run organization within the School of Law which sponsors environmental programs and promotes career opportunities in environmental law. Members of the Society also assist in publication of the UCLA Journal of Environmental Law & Policy. Because of its many functions, the society attracts students with both environmental ideals and vocational goals. Among its activities are the law school recycling program, and forums on environmental issues. The society also sponsors an annual environmental career day and panel discussions between students and lawyers from different environmental practice sectors. See *infra* Appendix A for a reprint of the student survey, and Appendix B for a reprint of the attorney survey.

18. The survey was broken down within the following practice segments: large firms, small firms, solo practice, government, and public interest. In addition, the sample cross-referenced attorneys according to their sub-specialties including: toxics, air, water, and natural resources. The sample was also intended to represent a broad spectrum of experience, with the subject's number of years in practice used as an additional selection criterion.

A. *Student Survey Methodology*

The student survey addressed the entire membership of the UCLA Environmental Law Society, with anonymous questionnaires sent to the ninety-eight available society members.¹⁹ Sixty percent of the survey population returned the questionnaire. When divided by law school class, thirty percent of the survey population was composed of first year students, forty percent second year students, and thirty percent third year students. The students who responded included thirty-one percent first year, forty-two percent second year, and twenty-seven percent third year students. The survey population was gender balanced; fifty-one percent were male and forty-nine percent were female. Among respondents, forty were male and nineteen female. This reflects a sixty-eight to thirty-two male to female ratio.²⁰ The survey also categorized student respondents according to political viewpoint. Thirty-four respondents, representing fifty-eight percent of the student sample, identified themselves as "liberal." Thirty-four percent identified themselves as "moderate," and eight percent as "conservative."²¹ See Table Six, *infra*.

B. *The Student Questionnaire*

The student questionnaire was designed to probe students' political views, past experiences, environmental career interests, job expectations, and opinions on legal ethics.²² Survey questions on politics investigated the role ideology plays in students' interest in environmental law. The survey asked students about their educational backgrounds and life experiences to determine which played a greater role in shaping students' environmental interests. Questions regarding career interests were intended to identify whether particular characteristics varied between students who wanted to practice in different sectors.²³ The survey asked about job expecta-

19. In November, 1990, at the time of the survey, membership in the society was 101. Of that number, three were out-of-state on externships, leaving a survey population of 98 students.

20. There is a significant difference between the gender composition of the sample population and of the respondents. 60 percent of males surveyed responded, while only 39 percent of females surveyed responded. This disparity should be noted when interpreting survey results on a gender basis.

21. Information about whether the responding sample varies in political viewpoint from the population surveyed or the overall law school population is not available.

22. The questionnaires were composed mostly of multiple choice questions. The survey asked the students to circle a letter that best describes their response to the question.

23. For example, are students who identify their political views as "conservative"

TABLE ONE
Gender and Law School Class Composition of the
Population and Sample by Percentage

	Population (%) (N = 98)	Sample (%) (N = 59)
<i>Class Composition</i>		
First Year	29.6	30.5
Second Year	39.8	42.4
Third Year	30.6	27.1
<i>Gender</i>		
Female	49.0	32.2
Male	51.0	67.8

tions to measure students' motivations and to determine whether idealistic or practical considerations predominated in their decision-making process. In addition, the survey posed several ethical dilemmas to determine how many students were aware of ethics problems often faced by environmental practitioners, and whether the students could solve these problems without offending their own values.

C. *Practitioner Survey Methodology*

The practitioner survey sample consisted of 120 environmental lawyers from five practice sectors: large firms, small firms, solo practice, government, and public interest.²⁴ The major criterion for inclusion was that no less than fifty percent of a lawyer's practice had to be dedicated to environmental law. No more than three lawyers employed by any one firm, agency or organization were surveyed. The survey population included twenty-five lawyers practicing in each of the large firm, small firm, solo, and public interest sectors, and twenty lawyers practicing in the government sector.²⁵ The total number of attorneys surveyed was 120. Of these, seventy-three responded—a sixty-one percent return. The survey

more likely to practice environmental law in the private sector than those who identify themselves as "liberal"?

24. The survey sought to include a degree of geographic and gender diversity. However, due to difficulty in identifying a sufficient number of suitable environmental lawyers, these additional criteria were used on an informal basis. Large firms were arbitrarily defined as 35 or more lawyers, and small firms as less than 35.

25. Governmental environmental lawyers were hard to find. This notwithstanding, the sample is diverse; the government lawyers surveyed practiced with federal, state and local enforcement and regulatory agencies. Approximately twenty-five percent were female.

was sent to ninety males and thirty females. The gender ratio among respondents was seventy-three to twenty-seven.²⁶ Table Two presents the response according to sector, gender, and practice orientation.

TABLE TWO
Practice Sector, Practice Orientation, and Gender of
the Population and Sample by Percentage

	Population (%) (N = 120)	Sample (%) (N = 73)	Sector (%) Response
<i>Practice Sector</i>			
Large Firm	20.8	19.2	56.0
Small Firm	20.8	21.9	64.0
Solo Practice	20.8	19.2	56.0
Public Interest	20.8	21.9	64.0
Government	16.8	17.8	65.0
<i>Gender</i>			
Male	75.0	72.6	
Female	25.0	27.4	
<i>Practice Orientation</i>			
Litigation*		68.5	
Regulatory^		31.5	

* includes lobbying

^ includes administrative law and compliance

D. *The Practitioner Questionnaire*

The practitioner questionnaire investigated lawyers' political views, reasons for practicing environmental law, job satisfaction and ethical dilemmas. The survey inquired about political views to determine the role ideology plays in lawyers' interest in and satisfaction with environmental law. It asked about practice areas and practice sectors to determine whether lawyers' positions within the field influenced their outlooks. Finally, the questionnaire posed ethical dilemmas to determine the prevalence of ethical problems in environmental practice, what types of lawyers are most likely to face them, how they react to such problems, and how this process affects their personal values.²⁷

26. Responding were 53 males, 58.9% of the male population, and 20 females, 66.7% of the female population.

27. A number of the questions required the attorneys to make difficult moral choices or choose between two less-than-ideal answers.

III.

WHY STUDENTS WANT TO BECOME ENVIRONMENTAL
LAWYERS

The student survey asked students how likely they were to specialize in environmental law, requesting them to choose the factor that most influenced this decision.²⁸ Most student respondents were noncommittal about their future plans. In fact, seventy-five percent of student respondents were "uncertain" or only "somewhat likely" to choose environmental law. Only seven percent stated that they felt certain about specializing in environmental law. However, only five percent had definitely chosen not to specialize in environmental law.²⁹

When the results are analyzed ideologically, the picture becomes clearer. All students who definitely intended to practice environmental law identified themselves as "liberal." Most student respondents who definitely did not intend to practice environmental law labeled themselves as conservative. However, a majority of respondents of all political persuasions lacked a firm commitment either for or against a career in environmental law. These results are consistent with the uncertain economic conditions. More so than in the past, students suggested that they were remaining flexible about their career plans. This change is illustrated by an extraordinarily high percentage of third year students, sixty percent, who remained noncommittal about a career in environmental law.

A majority of students listed "personal interests" as their primary reason for wanting to practice environmental law. The other factor that received a significant response, "political views," was chosen by one-third of the respondents.³⁰ Surprisingly, "career opportunities"

28. Table Three, *infra*, graphically represents the students' responses to this question. I expected two factors to influence the students' interest in environmental law. First, because environmental law has traditionally been identified, at least by the public, with the environmental movement, I expected that many students, particularly those describing themselves as "liberal," became interested in environmental law because of their political views. Second, I anticipated that the weak legal job market and the recent promotion of environmental law would attract the interest of students looking for a career opportunity, with this influence prevailing among those who identified themselves as moderates and conservatives. See Mary L. Walker, *The Lawyer's Role in Decisionmaking—One Environmental Lawyer's Perspective*, 17 *Envtl. L. Rep. (Envtl. L. Inst.)* 10,040 (1987) (Walker suggests that the term "environmental lawyer" originated in the environmental movement of the 1970s, as the momentum of new environmental requirements was simultaneously propelled by an active environmental constituency and challenged by competing interests of industry.).

29. See *infra* Table Three for the responses.

30. All but one of the respondents who indicated that "political views" were the primary factor in their decision to specialize in environmental law identified themselves

TABLE THREE
Likelihood of Student Respondents to Specialize in
Environmental Law

	Certain (%)	Likely (%)	Possibly (%)	Uncertain (%)	Will Not (%)
Overall	7	13	36	39	5
Liberal	13	15	44	23	0
Moderate	0	5	20	65	10
Conservative	0	0	40	40	20
First Year	0	6	53	41	0
Second Year	8	17	25	46	4
Third Year	14	13	33	27	13

came in a poor third, listed by only fourteen percent of the respondents. This response indicates that students either ignored placement bulletins, read them with a degree of skepticism, or were unwilling to admit their non-idealistic reasons for wanting to practice environmental law.³¹

IV.

WHY PRACTITIONERS BECAME ENVIRONMENTAL LAWYERS

The practitioner survey asked lawyers which of the same factors weighed strongest in their decisions to practice environmental law. It then asked the practitioners how well environmental law met their original expectations, also giving them a choice of factors as the primary reason for their answer.³² Although practitioners have

as "liberal." One "conservative" respondent who had decided not to specialize in environmental law indicated that he did so because of his political views.

31. See *infra* Table Four for the responses.

32. I anticipated that their political views motivated most environmental practitioners' career decisions. Because environmental law only recently became a "hot" practice area, career opportunity probably could not have factored into the decision of any lawyer who has been practicing environmental law for more than the last several years. Walker explains, "The environmental bar was only beginning as I entered the legal profession, yet I felt a deep affinity with those striving to provide advocacy for environmental protection. . . . It has always seemed to me that man, in the pursuit of his very nature and intellect, creates conflict—or the potential for conflict with his natural environment. . . . It was the resolution of such conflict, the 'balancing of the scales,' that attracted me." Walker, *supra* note 28, at 10,040. Environmental law is rapidly growing, and few lawyers are leaving the field. Dick Goldberg, *Environmental Law Field Growing Fast*, 102 L.A. DAILY J., June 12, 1989, at 7 (Every sector in environmental law is growing rapidly and is expected to continue to do so.); James Evans, *Environmental Law: Attorneys in Field Driven By Commitment*, 103 L.A. DAILY J., Apr. 20, 1990,

the advantage of hindsight, the practitioners' answers were virtually identical to those of the students.³³ Both students and attorneys chose "personal satisfaction" as their primary reason for entering the field. Political views were also important, but working conditions were of minimal significance in most attorneys' career decisions.³⁴

TABLE FOUR
Reasons for Specializing in Environmental Law

<i>Reason</i>	Students (%)* (N = 59)	Practitioners (%)* (N = 73)
Personal Interests	52	50
Political Views	30	30
Career Opportunity	14	15
Working Conditions	4	3
Default	0	2
Income	0	0
Prestige	0	0

* Several students and many practitioners gave more than one response; therefore, the columns did not add up to 100 percent. To obtain a percentage, each group's responses were discounted by dividing the raw denominator into the raw numerator.

Most attorneys were happy practicing environmental law.³⁵ In every sector, respondents indicated that environmental law met or exceeded their expectations.³⁶ Satisfaction was lowest among gov-

at 4 (Most environmental attorneys have a strong commitment to improving the environment. Moreover, many are optimistic about the progress being made in environmental law.). Thus, I anticipated that it must have met most lawyers' expectations. Certain writings adopt a contrary position, suggesting that environmental lawyers, particularly those in the private sector, may become disenchanted with their practice because environmental law is "slimy" and requires moral compromises. *See, e.g., Loren Feldman, Defending Polluters: It's a Dirty Business, but . . .*, 12 AM. LAW. 31(1) (1990) (Idealists enter the profession and then find that they must compromise their ideals for large corporate clients.). However, the survey results suggest that it is difficult to generalize about attitudes using such abstract or anecdotal information.

33. *See infra* Table Four.

34. Working conditions may, perhaps, influence attorneys' choice of sector (public interest or government versus large firm practice), rather than the practice of environmental law itself.

35. *See infra* Table Five for full results.

36. Female respondents showed greater satisfaction than males. While the survey did not address the reason for this result, one explanation is that females may enter the legal profession with different expectations than men, or males may be more likely to assess their job satisfaction based on the amount of their salary. *See Janet Taber, Gen-*

ernment lawyers and sole practitioners.³⁷ Results did not significantly vary according to political ideology. Interestingly, moderates, as a group, were most likely to have had their expectations proven wrong; environmental law both exceeded and failed to meet their expectations more so than it did for lawyers in general. However, moderates were more inclined to give noncommittal responses to survey questions regarding personal views or ideology than were either liberals or conservatives. This result suggests that moderates may have had few preconceived expectations about environmental law.

Respondents for whom environmental law exceeded expectations were most likely to cite interest in the subject matter, personal satisfaction with the practice area, and interest in their cases. Males emphasized interest in the subject matter, while females placed greater emphasis on personal satisfaction and interest in their cases.³⁸ Conservatives emphasized interest in the subject matter, while liberals emphasized personal satisfaction.³⁹

Every respondent for whom environmental law failed to meet expectations cited a specific reason. Five lawyers, seventy-one percent of those disappointed in environmental law, indicated economic reasons. Three of these lawyers worked as sole practitioners, and two worked in government. One government lawyer also complained of his frustration with government bureaucracy.⁴⁰ The

der, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates, 40 STAN. L. REV. 1,209 (1988).

37. Most dissatisfied government and sole practitioners surveyed cited economic factors as the reason for their dissatisfaction.

38. Professor Carrie Menkel-Meadow suggests that women lawyers emphasize relationships and context, contrary to the more ego-driven male individualism that has shaped our legal system. Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39, 39 (1985). Her position is rejected by Judge Ruth Bader Ginsburg of the United States Court of Appeal for the District of Columbia. She contends that discussions about the difference between women and men place too much emphasis on generalizations and not enough emphasis on the differences among individuals independent of gender. Ruth B. Ginsburg, *Some Thoughts on the 1980's Debate over Special Versus Equal Treatment for Women*, 4 LAW & INEQ. J. 143, 148 (1986).

39. A greater percentage of females identified themselves as "liberal" than did males. Interestingly, only male respondents identified themselves as "conservative."

40. Lois Marie Gibbs, Executive Director of the Citizens Clearinghouse for Hazardous Wastes, Inc., addressing the frustrations she felt about the prospect of employment as an environmental lawyer with the federal government, said:

If I were named to head the Environmental Protection Agency (EPA) . . . [m]y first action as head of EPA would be to resign, because I simply don't believe it is possible to achieve lasting change or environmental justice from that post. Regardless of whom we elect as president in 1988, the post of EPA administrator will still be a post for a toothless tiger. The infamous list of political and economic "realities" will con-

TABLE FIVE
How the Practice of Environmental Law Relates to
the Expectation Level of Lawyers When
They Entered the Practice

<i>Lawyers</i>	Exceeds (%)	Meets (%)	Fails to Meet (%)
Overall	48	42	10
Public Interest	50	50	0
Government	38	38	24
Solo Practice	36	50	14
Small Firm	56	38	6
Large Firm	57	36	7
Male	45	43	12
Female	55	40	5
Liberal	47	43	10
Moderate	53	35	12
Conservative	40	60	0

other two disappointed lawyers worked in private practice, one with a small firm, the other with a large firm. Both gave the same reason for their dissatisfaction: they intended to be environmental specialists, but much of their work assigned by their firms did not relate to environmental law. Notably, every disappointed environmental lawyer cited reasons collateral to the subject area itself.

In general, the practice of environmental law met or exceeded the expectations of almost all attorneys surveyed. Students' expectations are remarkably similar to those held by the environmental lawyers when they entered the field. If job conditions remain the same, students seeking entry into the field should expect to have a positive experience.

V. POLITICAL VIEWS

Many students cited political views as the most important influence in their decision to specialize in environmental law.⁴¹ Accu-

tinue to handcuff the next administrator, just as it has all of his or her predecessors since the founding of the Agency.

Gibbs, *supra* note 14, at 10,243.

41. One problem with attempting to measure the influence of students' political views on their career decisions is that, with many students, the question may be asked before the students have made their career decision. Students' political views may evolve. Career decisions can also change due to influence from peer pressure, summer clerkships,

rately measuring how political views affected lawyers' career decisions is difficult. Because attorneys must be questioned after the fact, their responses might be tainted by hindsight. To isolate this factor the survey separately asked about practitioners' current political views and about the evolution of their views. This information was then cross-referenced with their responses about how their political views influenced their decisions to practice environmental law and the sectors they chose. Results indicated that both the environmental law students and lawyers sampled had views considerably to the left of the general population.⁴² This outcome is consistent with the public's perception that environmental law is a subject that attracts lawyers with views perceived as "liberal" within the common usage of the term.⁴³

TABLE SIX
Political Views of Students and Attorneys

	Students (%) (N = 59)	Attorneys (%) (N = 73)
Liberal	57.6	69.9
Moderate	33.9	23.3
Conservative	8.5	6.8

A. *Political Activity Among Environmental Law Students*

An important influence on the ideology of environmental law students is the depth of their environmental convictions. Of particular interest are two issues. First, is there a correlation between strong environmental convictions and any particular political ideology? Second, do strong convictions translate into political activity on behalf of those convictions?

Overall, eighty-four percent of the student sample rated their environmental views as "strong" or "very strong." Sixteen percent rated their views as "moderate." No student chose the response

and economic factors. Therefore, the survey intended to measure not only the depth of students' convictions, but also whether the students acted on those convictions when making their career decisions.

42. Some respondents in both surveys refused to be categorized, instead giving detailed descriptions of their personal political views. Others described their views using unique terms, such as "earth radical," refusing to place their own views into a traditional category. To facilitate statistical analysis, these answers were translated into one of the three options the survey provided whenever possible.

43. See Walker, *supra* note 28, at 10,040.

“not strong.” There was a significant correlation between students who identified themselves as “liberal” and those with the strongest environmental views: fifty-two percent of liberals rated their environmental convictions as “very strong,” and eighty-seven percent as “strong” or greater.

Only twenty percent of the moderates or conservatives assessed their environmental convictions as “very strong.” Not surprisingly, more conservatives (eighty percent) than moderates (fifty percent) labeled their political views as “strong.” Most students who identified themselves as politically “moderate” had only “moderate” environmental convictions. Those on either side of the political spectrum had stronger environmental views.

Female students were more likely than male students to hold strong environmental convictions. All female respondents rated their convictions as “strong” or “very strong,” while twenty-three percent of the male sample rated their environmental views as “moderate.” In fact, only male students had moderate environmental convictions.⁴⁴

To measure whether students acted on their convictions, the survey asked students whether they were politically active, and, if so, whether their political activities primarily concerned environmental issues.⁴⁵ The survey also queried students about their political activity on non-environmental issues. These questions measured the priority students placed on environmental issues within the context of their overall political activity.⁴⁶

The results were unexpected. Most law students were not politically active. Only forty-one percent admitted to political activity on any issue. Of the politically active students, only thirty-nine percent focused on environmental issues. Putting these numbers to-

44. These results are consistent with Menkel-Meadow's premise that women lawyers emphasize relationships and context in their job satisfaction. See Menkel-Meadow, *supra* note 38, at 48. The components of Menkel-Meadow's feminist legal ethic are amazingly consistent with Aldo Leopold's Land Ethic. Leopold wrote that “[w]e abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect.” ALDO LEOPOLD, *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* viii-ix (1949). If one subscribes to both theories, female lawyers should have stronger ecological views than male lawyers.

45. The assumption was that students with the strongest environmental convictions should be the most politically active on environmental issues.

46. I expected a significant correlation between strong environmental views and political activity on environmental issues. In contrast, I expected a correlation between students involved primarily in non-environmental politics, and an ideological polarization in either direction, but not necessarily a correlation with strong environmental convictions.

TABLE SEVEN-A
Strength of Law Students' Environmental
Convictions

	Very Strong (N = 23)	Strong (N = 24)	Moderate (N = 9)	Not Strong (N = 0)
Overall (%)	41.0	42.1	16.9	0
<i>Political View</i>				
Liberal*	51.6	35.5	9.7	0
Moderate	20.0	50.0	30.0	0
Conservative	20.0	80.0	0	0
<i>Gender</i>				
Male	38.5	38.5	23.0	0
Female	47.0	53.0	0	0

* 3.2 percent of liberals did not respond to the question.

gether, only sixteen percent of the student sample participated in environmental politics. This low level of political participation cannot be explained by the time demands placed on students by law school, since twenty-one percent of the students were politically active on other issues.⁴⁷ More telling, only five percent of the political moderates and none of the conservatives participated in environmental politics.

Because the students chose to participate in political issues other than environmental issues, the depth of their environmental convictions may be questioned. Although many students have a superficial interest in environmental issues, their lack of political participation in furtherance of these issues suggests that their environmental convictions do not primarily motivate students to consider environmental law as a possible career.⁴⁸

B. *Political Activity Among Environmental Lawyers*

Most practitioners indicated that they held strong interests in the environment before entering the field and that this interest was an important factor in their decision to enter the profession. Overall, ninety-five percent of the practitioners stated that they held strong environmental interests before entering the field. Of these, eighty-

47. It must be remembered that the student sample consisted not of typical law students, but members of an environmental law organization with a professed interest in environmental law.

48. This result is not altogether surprising, when one considers how recruiting information emphasizes the career aspects of environmental law.

four percent said that their environmental interests played a significant role in their decision to specialize in environmental law.

TABLE SEVEN-B
Interest in the Environment as a Factor in Lawyers'
Decisions to Specialize in Environmental
Law

<i>Lawyers</i>	Env't'l Interest Before Entering Practice (%)	Env't'l Interest Significant Factor in Decision to Specialize in Env't'l Law (%)
Overall	95	79
Public Interest	100	100
Solo Practice	100	100
Government	100	77
Small Firm	94	75
Large Firm	79	43
Male	96	81
Female	90	75
Liberal	98	90
Moderate	88	65
Conservative	80	20

Environmental factors most strongly influenced public interest and sole practitioners. In these sectors, 100 percent of the respondents cited environmental interests as an important influence on their career decisions. Liberals were also strongly motivated by environmental interests. On the other hand, most conservatives and large firm attorneys indicated that environmental interests did not factor into their decision to specialize in environmental law.

The survey asked practitioners the same questions as those asked the students regarding their political activity in order to compare their political views to the students' views and to measure how the strength of environmental conviction and the level of political activity vary among practice sectors.⁴⁹ Environmental lawyers tended to

49. I expected that political activity would be greatest in the public interest sector because "public interest," by definition, is a political term. I anticipated large firm lawyers would be less political because representing large powerful clients might require a practitioner to divorce personal politics from professional positions. I expected small firm lawyers and sole practitioners to fall somewhere in the middle, since these attorneys are free from the constraints associated with powerful clients, but constrained by the demands of business development. I had no preconceived notion about government

be more politically active than students. Over sixty-four percent of the environmental lawyers were politically active.⁵⁰ Of these, seventy percent focused their political activity primarily on environmental issues. Over forty-five percent of the total attorneys sampled participated politically in environmental issues, compared to sixteen percent of the students sampled.

Among attorneys, a strong correlation existed between political orientation and political activity.⁵¹ Almost seventy percent of the liberals categorized themselves as politically active, compared to slightly over fifty percent of the moderates. Conservatives were also very active in politics, but none were active on environmental issues. The survey showed only a small difference between males and females in their overall level of political activity; males were somewhat more likely to be politically active. However, this difference appeared only in non-environmental issues. Concerning environmental issues, the difference in political activity between the genders remained statistically insignificant.

The data yielded a dramatic and unexpected result when analyzed according to practice sectors. Sole practitioners were by far the most politically active, 100 percent, with eighty-six percent active in environmental issues. Small firm attorneys were a close second.⁵² Surprisingly, public interest attorneys were less politically active.⁵³ Only fifty-six percent were active, although eighty-nine percent of those active focused their political activities on environ-

lawyers. The answer depended on whether most government attorneys view government service as an end or merely as a stepping stone to another sector. In addition, federal government attorneys might feel the constraints of laws limiting federal employees' political activity.

50. Several attorney respondents were unsure how to categorize themselves. They indicated that they had given money to preferred candidates and voted. These respondents were characterized as "inactive." In comparison, only 41 percent of the students sampled were politically active on any issue.

51. See *infra* Table Eight for the results.

52. Most solo and small firm lawyers chose "personal environmental convictions" as the factor that most influenced their decisions to practice environmental law. This choice is reasonable, since factors such as money or power do not logically motivate lawyers to enter these sectors. Because the survey shows that most of these lawyers specialized in narrow niches of environmental law, they need strong commitment to succeed.

53. For example, one public interest lawyer wrote that he specialized in environmental law "to serve the public interest—particularly to protect environmental values for present and future generations." Another wrote that he entered the field because he "deeply believes in the need to preserve the environment." In response to other questions, these lawyers displayed strong and consistent environmental convictions, yet, neither was active in politics, environmental or otherwise.

TABLE EIGHT
Political Activity of Law Students and Lawyers

	Politically Active (% of overall)	Primarily Environmental* Politics (% of pol. active/% of overall)*	Not primarily Environmental*
<i>Students</i>	41	39/16	61/25
Liberal	48	53/26	47/23
Moderate	30	17/5	83/25
Conservative	40	0/0	100/40
Female	47	38/18	62/29
Male	38	40/15	60/23
<i>Practitioners</i>	64	70/45	30/19
Liberal	69	80/55	20/14
Moderate	53	56/29	44/24
Conservative	60	0/0	100/60
Female	55	82/45	18/10
Male	68	63/43	33/23
Solo Practice	100	86/86	14/14
Small Firm	75	83/63	17/13
Public interest	56	89/50	11/6
Large Firm	50	0/0	100/50
Government	38	60/23	40/15

* In the last two columns, the first figure represents the number of respondents in that category divided by the politically active respondents. The second figure represents the number of respondents in that category divided by the aggregate response.

mental issues.⁵⁴ Almost the same percentage of large firm attorneys were politically active, but no large firm attorney's political activities related primarily to environmental issues.⁵⁵ Government attorneys were, for the most part, apathetic. Only twenty-three percent were politically involved in environmental issues, and most were po-

54. Public interest attorneys shared traits of government and solo practitioners. Many avoided politics completely, but those who were politically active focused almost exclusively on environmental issues. Comments made by several politically inactive public interest lawyers may explain this outcome. They described the consuming nature of their practice, how they were understaffed and overworked, often facing impossible odds. To avoid emotional burn-out, these attorneys avoided politics during their freetime.

55. Not surprisingly, environmental convictions were not a factor in the career decisions of most large firm attorneys surveyed.

litically inactive on all issues.⁵⁶

The responses showed a pronounced difference in the level of political activity among practice areas. However, the overall disparity between practitioners and students is more significant. Although both students and practitioners professed to have strong environmental views, only practitioners acted on their views.

Most practitioners made their career choices before environmental law was "hot." Therefore, interest in environmental issues must have influenced their decisions more than promising career opportunities. Because environmental law now attracts students for economic, as well as personal reasons, it is hardly surprising that the students showed lower commitment to environmental issues than did the practitioners.

VI.

PRACTICE SECTORS WITHIN ENVIRONMENTAL LAW

Environmental law is not monolithic. Its practice varies to a considerable degree between the public and private sectors. The factors influencing lawyers' decisions to practice environmental law also vary by sector. Many students considering environmental law as a career may be unaware of how environmental law practice varies by sector, and hence may not have completely informed reasons for pursuing the career. This section will separate the general influences that shape students' decisions to practice environmental law from the specific factors that influence the sector in which they decide to practice.

Although students choose environmental law mostly for personal or political reasons, these factors are of limited importance in their choice of sector. Rather, law school socialization exerts a controlling influence, pushing students toward private practice with large firms.⁵⁷ Almost forty percent of student respondents expressed a

56. Some may have been restricted by laws prohibiting political activity by government employees. However, those attorneys made their career choices cognizant of these political restrictions.

57. See Section VII, *infra*. This type of socialization, caused by interaction with peers, instructors, and the law school environment, anticipatorily influences students' views about how a lawyer ought to think. This phenomenon contrasts with legal socialization, which begins when a lawyer enters the profession and is influenced by interaction with clients, the workplace, and the legal community. Because the two have different causes, they do not always have the same results.

Robert Stover conducted a survey which measured changes over a three year period in public interest career goals of a controlled law school population. He found that "[i]n general, the student's expectations about their ability to fulfill their values in public interest practice declined, while their corresponding expectations for conventional prac-

desire to practice with a large firm.⁵⁸ This percentage grew substantially between first year and third year responses.⁵⁹ Students chose government practice as their second employment practice. Because this percentage also increased between first years and third years, it too, may have been a product of law school socialization.⁶⁰ Strangely, public interest also grew in popularity between first year and third year.⁶¹

The answers showed significant differences in responses based on

...
 tice increased." ROBERT STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 34 (1989). Stover found four types of variables particularly important in predicting the changes in student job preferences:

First, the decline in the value put on professional altruism, demonstrated by the waning desire to work for social and political goals or help people with whom the respondents sympathized; second, the decline in expectations concerning the extent of experience, knowledge and contacts available from public interest practice; third, changes in expectations that various jobs would actually allow a lawyer to help persons or groups with whom he or she sympathized or to work for desired social and political change; and finally, changes in expectations concerning the amount of craft satisfaction to be found in certain jobs, especially as manifested in increased expectations that practice with a large corporate law firm would involve innovative and creative work, provide the satisfaction of producing results, and challenge one's ability.

Id. at 35.

Although many of these same variables could reasonably have contributed to the socialization process detected among the environmental law students surveyed, this survey was not intended to measure the particular causes of law school socialization, but only to observe its effects when it does occur.

The law school interview schedule also influences students' choices. Because law firms are better able to predict their budgets and personnel needs, they are able to interview on campuses during the fall semester, whereas the public interest and government employers may lack the funds to personally interview promising students, and their budgetary schedules prevent making early offers. Financial concerns also influence many students' choice to pursue private sector rather than public sector employment. The disparity in first year incomes can be startling. A first year associate in a large Los Angeles firm can expect to earn \$65,000 to \$75,000; a first year attorney with the EPA can expect to earn at most \$32,000. *See* NATIONAL ASSOCIATION FOR LAW PLACEMENT, DIRECTORY OF LEGAL EMPLOYERS (1991).

58. Much has been written about the effect of socialization on law students' career plans. The survey results are consistent with these previous studies. *See* Stover, *supra* note 57. For a critique of the legal education process, *see* Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW* 40-61 (David Kairys ed., 1982).

59. This evolution of students' career objectives suggests that the law school environment exerts considerable influence over their self-images. *See* Table Nine, *infra*.

60. In fact, many law students see positions with the Department of Justice and the Environmental Protection Agency as stepping stones to a prestigious private sector or academic career.

61. This conclusion runs counter to other studies on this subject. *See* Stover, *supra* note 57. This statistic should, therefore, be interpreted with caution. Because many of these respondents marked more than one sector choice, this result may reflect a desire more than an expectation to practice in the public interest sector.

TABLE NINE
Sector in Which Students Desire to Practice

<i>Students* (%)</i>	Lg Firm	Sm Firm	Gov't	Pub. Int.	Solo	Uncertain
Overall	35	18	18	14	0	15
First Year	35	18	12	6	0	29
Second Year	38	20	21	8	0	13
Third Year	39	17	22	17	0	5
Male	43	10	22	10	0	15
Female	26	37	11	11	0	15
Liberal	26	24	26	15	0	9
Moderate	45	20	5	5	0	25
Conservative	80	0	0	0	0	20

* Several students gave more than one response; therefore, the columns did not add up to 100 percent. (In particular third year students gave more than one response). In sum, the student response equaled 105 percent. To obtain a percentage, each group's responses were discounted by dividing the raw denominator into the raw numerator.

gender and ideology. Most males wanted to practice with large firms or in the government sector. Females were more likely than males to opt for small firms.⁶² Conservatives almost universally favored practice with large firms. Although twenty-six percent of the liberals preferred large firm practice, the remaining liberals comprised most of the respondents interested in government, small firm and public interest practice. A majority of the moderates wanted to practice in the private sector; however, twenty-five percent did not know where they wanted to practice.

The sectors students picked were consistent with their reasons for doing so. Liberals, who were spread throughout all sectors of environmental law, emphasized political views and personal interests. Conservatives, who gravitated almost exclusively to large firm practice, looked to career opportunities, working conditions, money and prestige. Moderates, split between large and small firm practice, were equally divided between working conditions and career opportunities.

62. This preference may be influenced by the desire of some females to have enough job flexibility to raise a family. See David Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 *LAW & SOC. INQUIRY* 251 (1989). However, this surmise is not substantiated by the data—there is no correlation between those females who desired to practice with a small firm and those who cited working conditions as the reason for their choice of sector. See Table Ten, *infra*.

TABLE TEN
Reasons Students Want to Specialize in Their
Desired Sector

	Working Conditions	Career Opp.	Personal Interest	Political Views	Money	Prestige
<i>Students*</i>						
Overall (%)	27	26	23	17	4	3
Liberal	21	19	28	28	0	4
Moderate	33	33	25	0	9	0
Conservative	33	33	0	0	17	17
Male	23	24	19	17	14	3
Female	27	22	32	14	0	5
<i>Practitioners**</i>						
Overall (%)	10	20	46	13	9	2

* Several students gave more than one response; therefore, the columns did not add up to 100 percent. In sum, the student response equaled 125 percent. To obtain a percentage, each group's responses were discounted by dividing the raw denominator into the raw numerator.

** The practitioner sample consists only of respondents who changed sectors. Therefore, it may not reflect the views of the overall practitioner sample. These figures are given solely for purposes of comparison.

To determine whether students could differentiate between factors that affected their decisions to specialize in environmental law and their choices of practice sector, the survey asked two questions. The first question asked the students, "[w]hich of the following factors weighed strongest in your decision to specialize in environmental law?" Choices were offered in the following order: "income," "prestige," "working conditions," "personal interests," "career opportunity," "personal political views" and "default." The second issue was half of a two-part question. The survey first asked students to "[i]dentify the sector in which you desire to practice." It then asked, "[w]hich of the following factors most influenced your choice in (the above) question . . . ?" Responses were offered in the following order: "career opportunity," "personal interests," "money," "prestige," "working conditions" and "political views." The survey used different wording and order of responses so that respondents would not confuse this with the question about their reasons for wanting to specialize in environmental law.

Students gave different reasons for specializing in environmental law than they did for choosing the sectors in which they desired to practice. While idealistic reasons piqued many students' interests in

TABLE ELEVEN
 A Comparison of Factors Influencing Students'
 Desire to Specialize in Environmental Law
 and a Particular Practice Sector

<i>Factor</i>	Environmental Law Decision (%)	Practice Sector Decision (%)
Personal Interests	52	23
Political Views	30	17
Career Opportunity	14	26
Working Conditions	4	27
Income	0	4
Prestige	0	3

environmental law, practical reasons controlled their choices of practice sector.

VII.

OUTSIDE INFLUENCES ON STUDENTS' DECISIONS WHETHER TO PRACTICE ENVIRONMENTAL LAW

Students' career plans develop between their first and third years of law school. Two influences weigh heavily on students during that time: law school instruction and summer clerkships.⁶³ The survey asked students several questions to measure which of these exerted greater influence on their attitudes toward environmental law.

Several leading environmental law professors have identified a serious problem: academic instruction of environmental law has not been effective.⁶⁴ Rather than examining their own teaching methods, some professors place the blame on ineffective environmental laws.⁶⁵ However, at least in the context of student perceptions, the

63. Although other factors, such as peer pressure and family ties influence some students' decisions, those are difficult to quantify and vary in application. Because this question intended to measure the relative importance of the two enumerated factors in comparison to the other, additional factors are not discussed.

64. *See supra* note 9 and accompanying text.

65. *Id.* Commenting on environmental casebooks, Professor William Funk of Northwestern College of Law states that "the universe of environmental law teachers has not found a book or books with which it is comfortable." In his opinion, "[t]his is at least in part due to an uncertainty about what an environmental law course should be about as much as to differences about how best to achieve an agreed upon pedagogical end. This

survey results contradict this position. The results suggest that if law students leave school unprepared to practice environmental law, it is partly due to an antiquated and ineffective method of instruction.⁶⁶ Environmental law cannot be taught using the case method, and students know it.⁶⁷ This premise is based on the overwhelming number of UCLA law students who professed an interest in an environmental law career yet saw no need to take a course in environmental law. In the 1990-91 school year, the UCLA Environmental Law Society had over 100 members, yet no more than twenty-five UCLA law students took the environmental law seminar in each of the previous several years. It is unknown how many of these students were interested in environmental law as a career. Of the sample population, only five students had taken the environmental law course—less than ten percent. Almost two-thirds had worked for a law firm; this percentage rose to almost ninety percent of the second and third year students. Of these, almost three-quarters had worked on cases pertaining to environmental law. In sum, five times as many students were exposed to environmental law through summer employment as through academics. Since few of the students sampled had taken an environmental law course, practical experience undoubtedly had the greater influence on their interests in practicing environmental law.

Most law students did not share the pessimistic views of the environmental law professors. Simply stated, because students were never exposed to the academic perspective on environmental law, they were not influenced by it. Moreover, practitioners were much

uncertainty is aggravated by the relative newness of the field, its complexity, and potential scope of coverage." William Funk, *Recent Environmental Law Casebooks: Searching for a Pedagogical Principle*, 15 ENVTL. L. 201, 203 (1984). See also Reitze, *supra* note 15.

66. In particular, use of the case method to teach a body of highly technical, largely statutory law is doomed to fail. Because so many of the statutes are technical, they lack relevance in an abstract academic context. For an interesting historical narrative tracing the method of instructing environmental law back to Langdell and the original pedagogy of environmental law to John Chipman Grey, see Charles Biblowit, *The Teaching of Natural Resources Law in Eastern Law Schools*, 6 COLUM. J. ENVTL. L. 139 (1980). For a discussion of more recent methods of instructing environmental law, including some novel clinical approaches, see Joel A. Mintz, *Teaching Environmental Law: Some Observations on Curriculum and Materials*, 33 J. LEGAL EDUC. 94 (1983). Of the articles, the Mintz article is more useful because it focuses on practical alternative approaches to the instruction of environmental law.

67. Although many law students at UCLA profess some interest in environmental law as a career, few are taking environmental law classes. Instead, most are basing their decisions on practical experience. This may be partially due to decisions to avoid taking classes taught by visiting professors, since during the period of the survey UCLA lacked a permanent environmental law professor. See Table Twelve *infra*.

TABLE TWELVE
Academic Versus Practical Influences on Law
Students' Interest in Environmental Law

<i>Students</i>	Academic Experience/ Env't'l Law Course (%)	Practical Experience Related to Env't'l Law* (%)
Overall	9	46
First Year	0	
Second Year	4	63
Third Year	27	73

* In addition to the students with practical experience in environmental law, another twenty percent indicated they had practical experience in other areas of the law.

more positive in their assessments of environmental law than the academics. Most environmental lawyers entered the practice because they had an interest in the environment.⁶⁸ Most found that practicing environmental law met or exceeded their original expectations.⁶⁹ Perhaps the students' optimism regarding the practice of environmental law can be explained by their greater exposure to the attitudes of the practitioners than the academics.

VIII.

LEGAL PRIORITIES WITHIN ENVIRONMENTAL LAW

To whom is an environmental lawyer responsible? Traditionally, the American legal profession has followed an amoral path, justified by what Professor Murray Schwartz labels the "Principle of Nonaccountability":

When acting as an advocate for a client . . . a lawyer is neither legally, professionally, nor morally accountable for the means used or the ends achieved,⁷⁰

and a "Principle of Professionalism":

When acting as an advocate, a lawyer must, within the established constraints upon professional behavior, maximize the likelihood that the client will prevail.⁷¹

David Luban suggests that this view may be outmoded because it

68. See Table Five *supra*.

69. *Id.*

70. Murray L. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 CAL. L. REV. 669, 673 (1978).

71. *Id.*

primarily relies on justifications specific to criminal defense, a narrow and limited context in which the zealous advocate serves atypical social goals.⁷² Luban suggests maintaining the Principle of Professionalism, while rejecting the Principle of Nonaccountability. Under Luban's scheme, an attorney's moral obligation to society would be uncompromised by other conflicting professional duties.

The adversary system and the system of professional obligation it mandates are justified only in that, lacking a clearly superior alternative, they should not be replaced. This implies, I have argued, that when professional and moral obligations conflict, moral obligation takes precedent. When they don't conflict, professional obligations rule the day. The principle of Professionalism follows from the fact that we have an adversarial system; the Principle of Nonaccountability does not. . . . When moral obligation conflicts with professional obligation, the lawyer must become a civil disobedient.⁷³

Ethical problems faced by environmental lawyers are not unique. However, certain problems occur more frequently or have greater importance in environmental law than in other practice specialties.⁷⁴ Luban's suggestion is particularly relevant to environmental lawyering for a number of reasons. First, virtually all environmental litigation is civil. Second, much environmental litigation concerns interpretation of statutes and technical regulations.⁷⁵ Third, arcane interpretations of equally unintelligible regulations often significantly effect state or national policy.⁷⁶ Fourth, the practice of many environmental lawyers does not involve litigation.⁷⁷ Finally, identifying the real client behind an environmental action can often

72. David Luban, *The Adversary System Excuse*, in *THE GOOD LAWYER* 84, 91-92 (David Luban ed., 1983).

73. *Id.* at 118.

74. David Sive, *Ethical Problems in Environmental Litigation*, 2 *THE PRACTICAL REAL ESTATE LAWYER*, July 1986, at 27.

75. This hardly equates to the Dickensian scenario most often used to justify the Principle of Nonaccountability; a down-trodden client accused of a heinous crime by a vengeful state needs equally ruthless and zealous advocacy as a means of self-defense.

76. One commentator explains her role as an environmental lawyer as follows: "In many instances, under relatively new statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), we were arguing cases of first impression, asking the court to establish a rule of law that would add flesh to the bones of the federal government's enforcement effort under these hazardous waste laws. Congress may have stated its general policy in those statutes, but specific provisions were left to be construed, with a resulting broad or narrow range of enforcement powers." Walker, *supra* note 28, at 10,040.

77. Compliance lawyering often involves informal negotiations to bring parties into compliance with environmental regulations.

be difficult.⁷⁸ Justice Douglas maintained that nature itself qualifies as a client. In a famous dissent he argued that “[t]he land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively, the land.”⁷⁹

How has the debate over these issues shaped the perceptions and personal convictions of practicing environmental lawyers and students about to enter the field? This section measures the degree to which the Principle of Nonaccountability controls the legal ethics of the environmental practitioners. It investigates whether Justice Douglas’ “land ethic” or other alternative approaches have gained any credibility among respondents as an alternative approach to legal morality.

A. *Balancing Obligations to the Client and Society*

The debate over the proper allegiance of lawyers has raged for almost a century, pitting those advocating loyalty to the client against those demanding an overriding allegiance to the welfare of society.⁸⁰ To determine which of these views prevails in the practice of environmental law, the survey asked both groups whether an environmental lawyer’s primary obligation should be to the client or

78. See *Sierra Club v. Morton*, 405 U.S. 727 (1972) (The Supreme Court held that it would grant standing to an environmental organization to challenge an agency action if that action affected an individual member of the club in a particularized manner). This decision has been used by trade associations and environmental groups to gain standing that previously would have been unattainable.

79. *Id.* at 752, (Douglas, J., dissenting) (citing ALDO LEOPOLD, A SAND COUNTY ALMANAC 204 (1949)). See *supra* note 44. For a critique of this decision, see Christopher D. Stone, *Should Trees Have Standing?—Towards Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

It is sometimes difficult to determine what factors should be considered in an ethical calculation, let alone how much weight they should be given. Because Western philosophy uses human interests as its exclusive measure of value, concerns such as the rights of animals or the purity of wilderness are not even considered in traditional environmental ethical equations. This can skew the decisionmaking process. See Arne Naess, *A Defence of the Deep Ecology Movement*, 6 ENVTL. ETHICS 265 (1984). See also David Hoch, *Stone and Douglas Revisited: Deep Ecology and the Case for Constructive Standing*, 3 J. ENVTL. L. & LITIG. 131 (1988). To prevent factors such as these from being ignored, one commentator suggests that environmental decisions must be viewed primarily as ethical choices rather than as technically dictated conclusions. Donald Brown, *Superfund Cleanups, Ethics, and Environmental Risk Assessment*, 16 B. C. ENVTL. AFF. L. REV. 181 (1988).

80. In 1914, Louis Brandeis addressed this issue in his famous speech “The Opportunity in the Law”:

It is true that at the present time the lawyer does not hold as high a position with the people as he held seventy-five or indeed fifty years ago; but the reason is not lack of opportunity. It is this: Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, lawyers have, to a

to society.⁸¹

First year student respondents felt that environmental lawyers owe a primary obligation to society. Each subsequent class showed an increasing view that attorneys owe a primary obligation to their client.⁸² This clearly shows the legal socialization process at work in law school, pushing students towards the "lawyerly" Principle of Nonaccountability.

This margin continued to grow with legal employment; lawyers by a three-to-one margin maintained that their primary obligation was to the client.⁸³ Among those surveyed, compliance lawyers felt the strongest obligations to their clients—considerably stronger than did litigators.⁸⁴ This outcome cannot be explained solely by the Principle of Nonaccountability. Because the Principle had its origins in litigation, it should have been held more strongly by litigators.⁸⁵ Evidently, compliance lawyers merged the Principle with their fiduciary duties as representatives of and negotiators for their clients.⁸⁶

large extent, allowed themselves to become adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people. . . .

. . . .
. . . .

They have often advocated, as lawyers, legislative measures which as citizens they could not approve, and have endeavored to justify themselves by a false analogy. They have erroneously assumed that the rule of ethics to be applied to a lawyer's advocacy is the same where he acts for private interests against the public, as it is in litigation between private individuals.

Louis Brandeis, *quoted in* Robert Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 2-3 (1988).

81. Because the question sought to discover one of the respondents' basic values, it was intentionally vague, not defining "obligation" or "society," in the hope that respondents might better relate if they could interpret the issue according to their particular contexts.

82. Third year students, by a two-to-one margin, concluded that an environmental lawyer's primary obligation is to the client.

83. *See supra* Table Thirteen-A.

84. One-third of the lawyers surveyed did not litigate. *See supra* Table Two. These lawyers either did administrative law, counseling, or negotiated compliance with environmental laws and regulations on behalf of clients.

85. *See* Luban, *supra* note 72, at 38-39.

86. For the most part, the purposes behind the Principle of Nonaccountability are not relevant to compliance work. The survey results suggest that compliance lawyers created new justifications to maintain the Principle of Nonaccountability's "hired gun" concept when the old justification did not apply to their function.

Robert Gordon thinks that this is particularly dangerous. "Take any simple case of compliance counseling: suppose the legal rule is clear, yet the chance of detecting violations low, the penalties small in relation to the gains from non-compliance, or the terrorizing of regulators into settlement by a deluge of paper predictably easy. The mass of lawyers who advise and then assist with noncompliance in such a situation could, in the

TABLE THIRTEEN-A
An Environmental Lawyer's Obligation Is
Primarily to:

	Client	Society
<i>Students (%)</i> *		
Overall	58	42
First Year	41	59
Second Year	65	35
Third Year	67	33
<i>Practitioners (%)</i> *		
Overall	76	24
Public Interest	56	44
Solo Practice	71	29
Government	73	27
Large Firm	92	8
Small Firm	100	0
Litigation	65	35
Compliance	96	4

* Some students and practitioners refused to answer this question. To obtain a percentage, the response by segment was divided into a numerator of those who answered the question.

In all ideological and gender-based categories, practitioner respondents favored their client's interests over those of society by a substantially greater proportion than did student respondents in the same category. Student responses showed strong disagreement between the various categories, while attorney responses showed little diversity in opinion. A substantial majority of the attorneys in every category felt that they owed their primary obligation to the client, not to society. This view predominated even among public interest attorneys.⁸⁷

vigorous pursuit of their clients' interests, effectively nullify the laws." Gordon, *supra* note 80, at 72. Gordon suggests that lawyers are licensed fiduciaries for the public interest, charged with encouraging compliance with legal norms. Between the client and the state, the lawyer is not only supposed to predict the empirical consequence of certain behavior, but also to represent the viewpoint of the legal system to the client. *Id.* at 73.

87. Many public interest attorneys had a difficult time answering this question. Some refused to answer the question, others said both. One attorney wrote that as an attorney his primary obligation was to his client. He went on to say that one reason he worked for a public interest organization was that the interests of his clients were usually in the best interests of society. Therefore, he did not face the moral dilemma of working as a "hired gun."

Male students answered this question differently from female students. Two-thirds of the women felt a greater obligation to society than to their client. Two-thirds of the men held the opposite view. However, among attorneys, the gender gap almost completely closed. Female attorneys favored the client by an overwhelming majority.⁸⁸ Interestingly, female students were the aberrant group; after becoming attorneys, they evidently changed their positions.⁸⁹ This result suggests the effect of legal socialization.⁹⁰

B. *Balancing Economic and Environmental Concerns*

In environmental law, as in other regulatory fields, some interpret legislation as an expression of public values and ethical principles, while others view legislation as a means to promote economic efficiency by regulating markets.⁹¹ Environmental cases are often decided by balancing competing environmental and economic concerns.⁹² How each factor should be weighed in a particular case often remains unclear.⁹³ Because one important function of environmental lawyering is to influence this balancing process,⁹⁴ the

88. This shift actually began in law school. 84% of female first year students felt that as environmental lawyers, they had a greater obligation to society than to clients. By third year the ratio had shifted to 50/50.

89. The female position is aberrant in the sense that it does not conform to traditional lawyers' norms.

90. Table Thirteen-B, *infra*, graphically shows how legal socialization cuts across ideological and gender lines. For a thorough study of legal socialization in a particular application, see Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503 (1985).

91. Mark Sagoff, *The Principles of Federal Pollution Control Law*, 71 MINN. L. REV. 19, 95 (1986).

92. Industrial Union Department, *AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980) (The economic effects of a proposed standard are implicitly required to bear a reasonable relationship to the expected benefits.); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971) (required an agency to consider environmental concerns as well as economic concerns before rendering a decision with possible adverse environmental consequences).

93. See *Chevron, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 838 (1984) (allowed many different kinds of pollution emitting units to be considered a single "stationary source" because it would allow plants to achieve the most cost-effective means of control).

94. The profession has yet to agree on a proper balance, or even on the factors to balance. See *supra* note 79. Two well respected environmental lawyers have diametrically opposed views about balancing environmental against economic factors. F. Henry Habicht, Deputy Administrator of the Environmental Protection Agency and former Assistant Attorney General for the Land and Natural Resources Division, U.S. Department of Justice, advocates that:

Environmental protection policy is not a world apart from the mainstream of other national policies. Environmental policy as an issue of major public concern must be integrated with national economic . . . policy to ensure that it is an effective, rational,

survey asked how environmental lawyers weigh the respective factors. The results were surprising. Students and lawyers alike overwhelmingly favored environmental concerns over economic concerns. The second most frequent response was not to balance at all, favored by twenty-five percent of respondents. Only five percent of student respondents and seven percent of lawyer respondents favored economic concerns over environmental concerns.⁹⁵

The data suggests that respondents perceived this question as a political issue, to which they responded with their personal political views. This outcome starkly contrasts with the previous question, balancing societal and client interests, which respondents must have perceived as a professionalism issue.⁹⁶ Because respondents gave their personal political views, not their professional views, legal socialization had little effect on their responses to this question.⁹⁷ This outcome suggests that legal socialization significantly influences lawyers' attitudes regarding what they perceive as professional issues, but the same lawyers resist "selling out" their personal values.⁹⁸

and constructive part of our national scene. I am convinced that effective environmental protection is not inconsistent with sound economic progress. But this integration is critical.

Gibbs, *supra* note 14, at 10,247.

Lois Marie Gibbs responds:

After eight years of the Reagan Administration, the new [EPA] administrator will have to deal with the legacy of . . . "cost-benefit analysis." This . . . legacy means the need to undo attitudes that argue that . . . the marketplace, above all, should be the determining force for social policy. The new administrator will also have to deal with an even more difficult legacy, that being the cozy relationship that has developed between the Agency and the polluters over the past eight years. I felt EPA's Bill Sanjour summed it up perfectly when he told the *New York Times* that "EPA is a wholly-owned subsidiary of Waste Management, Inc."

Id. at 10,243.

95. There was almost no support for this position from respondents who did not identify themselves as conservative. In both student and lawyer samples most conservatives favored economic concerns over environmental concerns. One wrote, "no difference exists between sound economics and the rule of law and morality."

96. This difference is particularly poignant because the subject matter in the two questions was closely related.

97. Ideology was the dispositive influence. Any differences among attorneys by practice sector corresponded with the ideological make up of the respective sectors. Gender in both samples also yielded inconclusive results. Law school socialization did not effect this issue either. Student views did not shift from first year to third year.

98. This is confirmed by lawyers' responses to another question. The survey asked whether their views had changed since they had started practicing law and, if so, whether the change was related to the practice of environmental law. Only six lawyers, eight percent of the sample, admitted that their political views had been shaped by the practice of environmental law.

TABLE THIRTEEN-B
An Environmental Lawyer's Obligation Is
Primarily to:

	Client	Society
<i>Liberals (%)</i>		
Students	42	58
Lawyers	67	33
<i>Moderates (%)</i>		
Students	75	25
Lawyers	94	6
<i>Conservatives (%)</i>		
Students	80	20
Lawyers	100	0
<i>Females (%)</i>		
Students	37	63
Lawyers	70	30
<i>Males (%)</i>		
Students	68	33
Lawyers	79	21

If a lawyer truly adheres to the Principle of Nonaccountability,⁹⁹ she must advocate solely the client's position. Yet, this view is contradicted by the justification most commonly voiced by those lawyers who represent polluters: that brokering a "just" solution for their client benefits society as well as the client.¹⁰⁰ This secondary role as a facilitator conflicts with the legal advocacy required by the Principle of Nonaccountability.¹⁰¹

To resolve this inconsistency, lawyers were asked to choose which of two roles, "advocate" or "facilitator," best fits the role of an environmental lawyer. The results show that lawyers take a pragmatic approach to defining their role.¹⁰² Those attorneys

99. Although the Principle of Nonaccountability, as originally formulated, should not apply to the function of compliance lawyers, most superimpose it on the fiduciary duties they owe their clients as agents. *See infra* note 112.

100. Over ten percent of respondents qualified their sense of obligation to their client by maintaining that the process is good for society. This was particularly true among liberal private sector respondents. Furthermore, several public interest lawyers indicated that while their obligation was to their client, their client's obligation was to society, so that their obligation was ultimately, albeit indirectly, to society.

101. It is difficult to determine how many of these attorneys felt torn between two masters, how many were rationalizing their actions, and how many were responding rhetorically. In the latter case, they may actually be redefining a "just" solution as a victory on their terms without compromise.

102. *See infra* Table Fifteen.

TABLE FOURTEEN
Balancing Environmental and Economic Concerns

	Environmental	Economic	Cannot Balance
<i>Students (%)</i>			
Overall	69	5	26
Liberal	77	0	23
Moderate	65	10	25
Conservative	20	40	40
<i>Lawyers (%)</i>			
Overall	67	7	26
Liberal	72	5	23
Moderate	60	0	40
Conservative	33	67	0

whose clients benefitted from compromise usually opted for the role of facilitator. Those attorneys whose clients had little to gain by compromise opted for advocacy.¹⁰³ Surprisingly, a greater percentage of compliance lawyers saw themselves as advocates than did litigators.¹⁰⁴ In following this role, the compliance lawyers main-

TABLE FIFTEEN
Role of an Environmental Lawyer

	Advocate	Facilitator
<i>Lawyers (%)</i>		
Overall	66	34
Compliance	73	27
Litigators	63	37
Public Interest	100	0
Solo Practice	86	14
Small Firm	62	38
Government	50	50
Large Firm	25	75

103. The results vary dramatically among sectors; this variation is explained by the role of attorneys within each sector. For instance, public interest attorneys may see facilitation as an unfortunate compromise with special interests, while large firms who mostly represent large clients might find it advantageous to negotiate compliance deals.

104. The survey anticipated that since compliance lawyers primarily negotiate agreements between clients and environmental regulators, they would choose the role of facilitator.

tain a curious and inconsistent position—adversarial compliance.¹⁰⁵

Because environmental attorneys act as representatives of their clients, whether an attorney acts as an advocate or facilitator is determined to a considerable extent by the client's relationship with the outside world. The attorneys' views of their own roles may be little more than strategic judgments shaped by whatever means best meet the client's interests. Therefore, when stripped of their overriding client relationships, attorney perceptions of their own roles have limited significance.

C. *Who's the Boss—the Attorney-Client Relationship*

Although an overwhelming majority of the attorney respondents perceived themselves as their client's agent in transactions with the outside world, this perception does not mean that environmental attorneys ceded control of the attorney-client relationship to their clients. This section explores how environmental attorneys define the relationship, and who they believe controls it.

There are two alternative approaches to the attorney-client relationship. Under one approach, the attorney carries out the client's wishes to the best of her ability. Alternatively, the attorney decides what course of action is best for her client and then convinces the client to act upon it.¹⁰⁶ To determine which approach prevails in environmental law, the survey asked environmental attorneys whether they mostly instructed their clients or followed their client's instructions. Students were asked whether an environmental lawyer should instruct clients or follow the client's instructions.

The results indicate that students and lawyers alike strongly favored instructing their clients. Politics, gender and type of practice did not affect the responses. Answers did vary, however, among practice sectors.¹⁰⁷ The result may be explained by two related factors: power and prestige. The high prestige sectors included the highest percentage of lawyers who felt they controlled the lawyer-client relationship.¹⁰⁸ All large firm lawyers maintained that they

105. Although inconsistent with their function, this attitude is consistent with compliance lawyers' strong client loyalty. See *supra* Table Thirteen-A.

106. See Austin Sarat & William Felstiner, *Law and Social Relationships: Vocabularies of Motive in Lawyer/Client Interaction*, 22 *LAW & SOC. REV.* 737 (1988).

107. The results showed little difference between compliance lawyers and litigators; both instructed their clients.

108. Robert Nelson suggests that the basis for the market power of the large law firm is its ability to control the production of expertise. The control of technical expertise enhances the power of the law firm both with respect to clients and the legal system. Nelson, *supra* note 90, at 548.

TABLE SIXTEEN
The Perceived Relationship Between Environmental
Lawyers and Their Clients (Who's the Boss?)

	Instruct Clients	Instructed by Clients
<i>Students (%)</i>		
Overall	86	14
<i>Lawyers (%)</i>		
Overall	83	17
Large Firm	100	0
Small Firm	93	7
Government	83	17
Public Interest	69	31
Solo Practice	66	34
Litigation	82	18
Compliance	85	15

instructed their clients, controlling the relationship.¹⁰⁹ Sole practitioners, traditionally a low prestige sector, showed the highest tendency to take orders from their clients.¹¹⁰ The results from other sectors followed a spectrum between these extremes.

This outcome is consistent with practitioner responses to previous questions. If a lawyer believes that her independent judgment best represents the interests of her client, that lawyer can maintain her primary obligation toward the client without feeling any obligation to follow that client's instructions.¹¹¹ Likewise, a lawyer who maintains a "hired gun" mentality may use her legal judgment to zealously further her view of the client's best interests, in complete disregard of her own political or moral views. This approach explains why the Principle of Nonaccountability thrives in the practice of environmental law. Without such a psychological tool, environmental lawyers might find it difficult to initiate actions that

109. One large firm lawyer respondent described her clients as "reasonably good guys in need of guidance and facing tough economic issues." Her role was to instruct those clients, which she followed with double exclamation marks. She wrote, "I kick a lot of ass in Board meetings and I believe it is in my client's best interest."

110. The results suggest that environmental lawyers with prestigious firms have greater leverage over clients than expected, while sole practitioners are least willing to oppose the requests of a paying client. In this relationship the power and prestige of the lawyer, not the client, is the determining factor. Perhaps this is why so many clients are willing to pay enormously expensive fees to gain the services of top law firms.

111. An overwhelming majority of environmental attorneys insisted that their primary obligation was to their client. See *supra* Table Thirteen-A.

directly oppose their own personal moral and political beliefs.¹¹²

D. *How Environmental Lawyers Perceive Their Clients*

Perhaps one reason that environmental lawyers seem unbothered by their schizophrenic role is that most feel good about their clients. The survey asked attorneys whether they saw most of their clients as "good guys," "bad guys" or "somewhere in the middle."¹¹³ Students were asked which of the three categories of clients they expect to represent when they become environmental lawyers.¹¹⁴

Once again, the student responses showed a strong law school socialization influence. Students' expectations about the moral culpability of their future clients steadily declined from first to third year.¹¹⁵ The lawyers' response pattern ran contrary to the trend observed among law students. Lawyers favorably rated their clients' scruples. Over two-thirds judged their clients as "good guys," with majorities in every practice sector except government finding their clients "good." In fact, the lawyers responded more positively than the yet-to-be socialized first year law students. This supports the premise that law school socialization has a basis independent of the legal socialization process found among attorneys.¹¹⁶

These responses do not necessarily indicate that all environmental lawyers have clean clients. The attorneys' judgments about their

112. The Principle of Nonaccountability was formulated in the context of criminal law as a means by which lawyers could protect their personal images from their legal positions. In effect, it separated the lawyer from the person. Luban, *supra* note 72, at 38. Many environmental lawyers have a greater need for a psychological crutch than do criminal lawyers. See Feldman, *supra* note 32, at 31(1) (Idealists enter the profession and then find that they must compromise their ideals for large corporate clients.). Criminal lawyers can justify their actions by balancing factual correctness against legal rightness. They can justify a successful defense of a factually guilty client as good, because it strengthens the procedural safeguards protecting innocent defendants. In the environmental context, this moral justification is absent. Instead, attorneys must concoct legal arguments to advance positions that if adopted might have a broad legal and social impact, even though they personally oppose any such result. Therefore, the schizophrenic approach set forth in the Principle of Nonaccountability serves them well.

113. The survey also provided an escape answer: "Don't make value judgments about clients." The escape was tailored to attract the responses of those attorneys who made use of a moral dichotomy to rationalize their actions.

114. Students were also offered an escape: "I have never thought about it."

115. Two-thirds of all first year students expected to represent "good" clients. Only half as many third year students still expected to represent "good" clients. Most expected "neutral" clients.

116. In particular, this pattern demonstrates that students' opinions about their expected future clients did not originate from summer clerkships. The socialization effect observed among students seems based more on abstract anticipation of how they might react, rather than first-hand knowledge of how lawyers actually react.

clients do not completely correlate with their responses to previous questions probing personal and professional beliefs.¹¹⁷ In certain cases, the sincerity of the client judgments seem suspect.¹¹⁸ Hostile comments made by a number of attorneys suggest that these attorneys perceived that they were actually being asked to judge themselves.¹¹⁹ These responses may show a combination of rationalization and a lawyerly front—an adversarial response to the survey.

Circumstances indicate that many of the lawyers who responded positively answered this question honestly. Factors influencing lawyers' perceptions of their clients included practice sector, practice specialty, and ability to carefully select clients.¹²⁰ In particular, public interest attorneys and those private sector attorneys who carefully screened their clients minimized the need to rationalize relationships with their clients.¹²¹

117. Of all groups, liberals perceived their clients most favorably. However, liberals also appeared to be most ill-at-ease with their professed favorable opinions of their own clients; many found it necessary to write qualifying statements in the margins. Moderates took a more realistic view of their clients. They also had to qualify their answers less. Almost fifty percent of moderates saw their clients as "neutral."

Conservatives found it easier to judge their clients as "good" than did moderates. However, many conservative environmental lawyers put a lower value on environmental issues than did moderates. See *supra* Tables 7A, 8, and 13B. Interestingly, those conservatives who did place a premium on environmental values most often chose the survey response that avoided their having to judge their clients.

118. Only large firm attorneys (36% of them) used the escape answer. Strangely, none of them seemed to hold a negative judgment of their clients. See *infra* Table Seventeen-B.

119. The resistance to this question exhibited by some respondents, particularly large firm attorneys, indicates a high degree of rationalization. A number of attorneys wrote openly hostile comments about the question in the margin. Several commented that this was a "stupid" question; another attorney claimed that it was too "simplistic" for him to answer. Environmental lawyers might interpret this question as self-judging question is because most attorneys surveyed, including 100% of the large firm sector, previously responded that they controlled their client's environmental decisions. See Table Sixteen, *supra*.

120. Several small firm and sole practitioners wrote that they screened potential clients, accepting only those whom they could "morally stomach." However, once accepting clients, these attorneys stated that they became zealous advocates of those clients' positions. Several large firm attorneys who labelled themselves "liberals" commented that they were able to educate their clients to stop "bad" behavior.

121. For instance, one sole practitioner wrote that he will not represent people who are not morally correct. He stated that his clients allow him to argue "the big picture societal interest." Therefore, he was very happy with his practice. In his words, "I didn't think I could get paid so much to protect the environment. I never doubted I could have an impact."

TABLE SEVENTEEN-A
Environmental Lawyers' Moral Judgments of Their Clients

<i>Lawyers (%)</i>	Good	Bad	Neutral	Don't Judge
Liberals	81	0	15	4
Moderates	29	6	47	18
Conservatives	60	0	0	40

TABLE SEVENTEEN-B
Moral Judgments of Clients

<i>Students (%)</i>	Good	Bad	Neutral	Unsure
Overall	43	16	34	7
First Year	64	12	12	12
Second Year	33	17	42	8
Third Year	33	20	47	0
<i>Lawyers (%)</i>	Don't Judge Clients			
Overall	68	1	21	10
Public Interest	86	7	7	0
Solo Practice	79	14	7	0
Small Firm	69	0	31	0
Large Firm	57	0	7	36
Government	46	0	46	8

IX.

CIRCUMSTANCES THAT OFFEND ENVIRONMENTAL LAWYERS' VALUES

To determine what circumstances would offend their values as environmental lawyers, the survey asked students if they would be willing to defend Exxon in the Exxon Valdez case.¹²² Perhaps it was the repugnance of the example, but only twenty-two percent of students responded that they would represent Exxon.¹²³ Males were twice as likely as females to represent Exxon. Ideologically, the results were even more striking. Conservatives were almost five times more likely to represent Exxon than were liberals. In another unexpected phenomenon, third year law students were twice as

122. Although the Exxon Valdez case is an extreme one, it was chosen because it was one case in which every student should have been aware of the moral issues involved in representation.

123. A sizeable proportion of the students became angry at the thought of representing Exxon. Some marked a negative response with double or triple underlines, or a series of exclamation points. Several wrote angry comments expressing their opinions of any lawyers who do represent Exxon.

likely to represent Exxon than were first or second year students.¹²⁴ Once again, the legal socialization process was at work in the law school.

To determine the prevalence of attorney disapproval of client conduct, the survey asked attorneys whether they had ever been asked to represent a client on a matter that offended their personal values. A higher percentage of private sector attorneys than public sector attorneys were asked to represent clients on matters that offended their personal values.¹²⁵ Also, reflecting economic limits on their abilities to be selective in choosing clients, sole practitioners had most often faced dilemmas when choosing their clients.¹²⁶ Public interest attorneys had faced them least. Results were less clear when broken down by ideology. Surprisingly, more conservatives than liberals had been offended by their clients' behavior.¹²⁷ Unlike the students' answers, the attorney answers did not exhibit any gender gap.

A. *Type of Values Offended*

To discover the type of client behavior environmental lawyers find most offensive, the survey asked them to identify how the clients discussed in the previous question had offended their values. The survey asked students if a client were to violate one of their values, what they would find most offensive. The survey offered four value choices, two personal and two professional in nature, in the following order: (1) political values, (2) business ethics, (3) legal ethics, and (4) moral values. They were not told that the question intended to differentiate between personal values and professional ethics.

In judging their clients, most attorneys discarded the Principle of Professionalism. Of those environmental lawyers who had been of-

124. This result is particularly significant when put together with the fact that most respondents that identified themselves as "conservative" were not third year students.

125. See *supra* Table Eighteen-B.

126. This premise is based on detailed research conducted by Jerome Carlin. Carlin wrote a fascinating study that carefully documented how sole general practitioners struggle to obtain clients, and then face subsequent moral dilemmas in representing them. J. CARLIN, *LAWYERS ON THEIR OWN; A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962). The survey was intended to test whether his observations were relevant to solo environmental specialists. In particular, the issue was whether his findings were primarily a product of the small size of the lawyers' practices or the general nature of their practices.

127. It is unclear whether this is a reflection of the moral sensitivity of conservative attorneys or the activities of their clients. One observer contends that it is the latter. See Feldman, *supra* note 32, at 31(1).

TABLE EIGHTEEN-A
Would Students Defend Exxon in the Exxon Valdez
Case

Students (%)	Yes	No
Overall	22	78
Female	13	87
Male	26	74
Liberal	13	87
Moderate	25	75
Conservative	60	40
First Year	18	82
Second Year	17	83
Third Year	33	67

TABLE EIGHTEEN-B
Have Environmental Lawyers Been Asked to
Represent a Client on Matters That
Offended Their Personal Values

Lawyers (%)	Yes	No
Overall	52	48
Female	52	48
Male	50	50
Liberal	51	49
Moderate	44	56
Conservative	80	20
Public Interest	25	75
Government	31	69
Small Firm	53	47
Large Firm	57	43
Solo Practice	93	7

fended by their clients, three-quarters indicated that their personal values, not their professional ethics, had been offended. Overall, the percentage of lawyers placing professional ethics above personal values only slightly exceeded that of students. However, within those aggregate categories of personal values and professional ethics, considerable differences existed between the types of choices made. Within the category of personal values, lawyers split evenly between moral values and personal political values. Students overwhelmingly were offended by violations of moral values. No students selected the violation of political values as a response. Within

TABLE NINETEEN
Values Offended by Clients*

	Personal Values		Professional Ethics		
	Moral	Political	Legal	Business	Ethics
<i>Students (%)</i>					
Overall	83	0	13	4	
Female	100	0	0	0	
Male	79	0	16	5	
Liberal	91	0	3	6	
Moderate	85	0	15	0	
Conservative	40	0	40	20	
<i>Attorneys (%)</i>					
Overall	38	38	9	13	2**
Female	50	44	6	0	
Male	34	37	11	18	2
Liberal	38	45	8	9	2
Moderate	50	20	20	10	
Conservative	25	25	25	25	
Government	20	60	20	20	
Large Firm	30	30	10	30	
Solo Practice	40	35	10	15	2
Small Firm	45	45	0	10	
Public Interest	50	33	12	0	

* The sample of lawyers was limited to those who had faced a situation with an actual client and concerned the actual dilemma. The student sample is all-inclusive and is based on a hypothetical situation.

** One attorney refused to represent a client on the basis of personal dislike.

the category of professional ethics, more clients offended the lawyers' "business ethics" than their "legal ethics." This answer contrasted with the student response. Both survey populations selected answers according to their ideology and gender.¹²⁸ Violations of their personal values most often offended females and liberals. Clients who violated their lawyer's professional ethics offended a greater percentage of males and moderates. Clients who violated

128. The responses showed no clear pattern between practice sectors. However, attorneys in the government sector were the only ones most offended by violations of their political values. This is odd, when one considers that government attorneys had the lowest level of political participation of any sector. This suggests that either government attorneys are frustrated in their political desires, or else that they (most identified themselves as liberal) had been asked by conservative administrations to represent government positions, or to implement political decisions, with which they personally disagreed.

personal values offended a larger majority of both groups. Only conservatives placed professional ethics above their personal values,¹²⁹ suggesting that conservatives were most likely to separate their personal and professional identities when conducting business.

B. *Reactions to Personally Offensive Client Behavior*

To determine whether the attorneys acted on their personal values, the survey asked how they reacted to the client whose behavior they had found offensive.¹³⁰ Students were asked about their likely reactions to the same hypothetical situation and were given the same choices as the attorneys.

Results were, for the most part, inconclusive. However, several indicia can be noted. Large firm lawyers and litigators felt the most freedom to reject a potential client.¹³¹ These lawyers likely had greater independence to pick and choose clients. In addition, large firm lawyers and compliance lawyers seemed most likely to try to exert their influence over offensive clients in order to change those clients' ways. These lawyers often have more control over their clients' options than do lawyers in other segments.¹³² This result does

129. This result corresponds with their previous responses. Conservatives were the only group that did not make value judgments about their clients. See *supra* Table Seventeen-B.

130. The attorneys chose from the following responses: (1) represent the client without conditions, (2) represent the client with the intent to change the client's ways, (3) represent the client on other matters, (4) find the client a different attorney, and (5) refuse to represent the client. Results are shown in Table Twenty, *infra*.

131. The response may have been different if the survey had asked whether lawyers had ever refused an assignment on behalf of an *existing* firm client because it was contrary to their personal values. In a study of large firm lawyers, Robert Nelson found that only 16% had ever refused an assignment, 84% had never refused an assignment. Of those who had never refused an assignment, 92% had never been confronted with an assignment contrary to their personal values. Nelson, *supra* note 90, at 534-36. Nelson drew three conclusions from this data. First, the vast majority of large-firm lawyers do not deal with questions of good and evil; rather, they perform work on mostly technical matters between parties of roughly equal status and resources. Second, the attitudes of lawyers and their clients do not diverge widely. Third, professional training and experience teach lawyers to transform potentially troubling questions of values into matters of technique and strategy. *Id.* at 537. The disparity between the two surveys may be explained by differences between environmental law and other types of law. First, in environmental law, issues of good and evil are more difficult to avoid than in general corporate law, the practice area of Nelson's attorneys. Second, unless the clients also hold strong environmental convictions, the views of clients and environmental lawyers diverge. This leaves as relevant only Nelson's third conclusion, the influence of which appeared in responses to the previous ethics questions.

132. Of all sectors, large firm lawyers were most likely to instruct their clients, rather than let their clients instruct them. See *supra* Table Sixteen. This result may also be influenced by organizational factors. In situations where an associate attorney's firm places a higher priority on attracting powerful clients than retaining associate attorneys,

TABLE TWENTY
 Reactions by Lawyers and Students to a Request for
 Representation by a Personally Offensive
 Client

	Refuse to Represent Client	Find Client a Different Attorney	Represent Client on Other Matters	Represent to Change Client's Ways	Represent the Client Without Conditions
<i>Students (%)</i>					
Overall	26	31	11	19	13
Liberal	34	20	6	20	20
Moderate	25	45	20	10	0
Conservative	0	40	0	40	20
First Year	29	35	6	12	12
Second Year	13	37	17	25	8
Third Year	44	14	0	21	21
<i>Lawyers (%)</i>					
Overall	39	13	4	20	24
Conservative	100	0	0	0	0
Liberal	34	17	3	17	29*
Moderate	29	0	14	43	14
Large Firm	50	0	0	50	0
Solo	47	18	0	11	24
Small Firm	39	15	8	15	23
Public Interest	25	25	0	0	50*
Government	0	0	25	25	50
Litigation	40	17	6	11	26
Compliance	36	0	0	46	18

* One public interest attorney previously practiced with a large firm. In that capacity she was required to represent an objectionable client without conditions. She did, but as a result of this experience resigned from the firm and went into public interest work.

not contradict the previous observation; it is entirely consistent for large firm lawyers to reject some potential clients and to control the options of those clients that they accept.

Sole practitioners and small firm lawyers displayed the most freedom, often refusing to represent objectionable clients. However, lawyers in these two categories were also most likely to represent

an associate attorney might not have the option of refusing an offensive client. The best that the attorney can hope to do is represent the client while intending to alter that client's behavior.

objectionable clients without condition. This situation suggests that sometimes a client's objectionable behavior is outweighed by the income to be gained through representation.

Responses showed no correlation between reactions to offensive clients and gender or ideology. These inconclusive findings suggest that personal traits did not greatly influence lawyers' reactions to ethical dilemmas, even when those dilemmas were caused by client behavior that the lawyers found personally offensive.

Most attorneys (sixty-one percent) kept their relationships with clients simple—either accepting or rejecting clients without conditions.¹³³ On the other hand, most students (sixty-three percent) felt an obligation to continue some sort of limited relationship with objectionable clients.¹³⁴ Other than this distinction, the student responses proved even more inconclusive than those of the attorneys.¹³⁵ Personal factors did not influence students' reactions to dilemmas concerning their clients any more than they did attorneys', even when the clients' behavior offended the students' personal values.

X.

CONCLUSION

Environmental lawyers are a diverse lot. Their attitudes and ideals vary by practice sector, specialty, politics, and gender. Because the field is so complex, it is both unfair and unrealistic to stereotype or dismiss environmental lawyers as a group, as did Professor Getches.¹³⁶ Even more unreasonable is Professor Krier's opinion that today's environmental law students are doomed to be "a bunch of lawyers who don't really know anything worth knowing."¹³⁷

133. One attorney wrote about how she learned to avoid objectionable clients. She had represented an objectionable client with the hope of altering the client's behavior. Instead, the client misrepresented essential information to her. As a result, not only did she lose the case, but she was also almost subjected to sanctions. She emphatically stated that she subsequently screened her clients, accepting only those whom she trusted.

134. The responses were: find the client another attorney (31%), represent the client intending to change the client's ways (19%), and represent the client on other matters (11%).

135. There was no correlation to gender or ideology. There was also no discernable pattern in responses by school year. However, third year students were more likely to refuse to represent an objectionable client than were other students. Perhaps, professional responsibility classes do influence students!

136. See *supra* note 9 and accompanying text.

137. See *supra* note 12 and accompanying text.

Students are not rejecting environmental law, only its academic study.

The student sample suggests that two groups of students, for different reasons, are considering environmental law as a career. The first group, larger in number, is typical of what the National Law Journal describes as the "new" interest in environmental law.¹³⁸ While professing an interest in the environment, most of these students do not act on their convictions. They are pragmatists. Many are not really certain that they want to be environmental lawyers. Environmental law is popular among legal recruiters, and, therefore, it is popular with students.¹³⁹

The other group of students is smaller in number, but stronger in commitment. They are idealists, describing their politics anywhere from "liberal" to "radical eco-freak." Responses suggest that these students are strongly motivated and politically active. Most know exactly what they want to do upon graduation. Some desire to enter private practice, but a sizable number want to dedicate themselves to public interest or to government work.

The attorneys' responses, more so than the students' responses, suggest that these lawyers entered environmental law with an idealistic perspective. Considering that environmental law has only been "hot" in the past few years, something other than pure pragmatism guided their career choices. In fact, almost all practitioners surveyed stated that their interest in the environment was their primary reason for specializing in environmental law. Most are dedicated, politically active, and derive personal satisfaction from their work as environmental lawyers.

The few environmental lawyers who entered the field for expedient reasons were easy to spot. Interest in the environment did not motivate them; it was a career opportunity. Most labelled themselves as "moderate" or "conservative." Many are politically active but none on environmental issues. This group is found predominately in large firm practice. However, in all sectors, including large firms, idealists greatly outnumbered pragmatists.

Most students surveyed thought that environmental lawyers owe their primary allegiance to society. Lawyers agreed on the importance of environmental issues, most placing a higher value on environmental concerns than economic concerns. Yet most lawyers felt

138. See *supra* note 4 and accompanying text.

139. These students are focused on their careers. Many have been socialized by law school to covet a position with a large, prestigious private firm. They care about practice sector more than the type of law that they will practice.

obligated to advance their clients' positions. Money talks. For the majority of environmental lawyers who retain their strong environmental convictions, this decision creates a moral dilemma. Clients seldom share their ideals. Whenever these lawyers act on behalf of clients, they face the prospect of compromising their personal convictions. To keep their sanity, many of these lawyers separate their personal values from their professional actions. When these lawyers advance positions that violate their own morals, they abrogate personal responsibility, rationalizing that their own actions are really the client's. They see themselves as mere appendages.¹⁴⁰ Unfortunately, this rationalization is particularly awkward for the majority of lawyers, who insisted that they control the lawyer/client relationship.¹⁴¹ For them, only a legal lobotomy can shield their professional actions from scrutiny by their personal consciences.

Not all environmental lawyers are forced to confront these dilemmas. Fortunately, environmental law is a large and diverse field with room for all. Lawyers sharing Justice Douglas' "land ethic" can retain their ideological purity and effectively function as environmental attorneys.¹⁴² Others must cope with the inconsistencies. Despite these common problems, environmental lawyers as a group are very satisfied with their practice. When asked if they would still practice environmental law were they to start all over again, an overwhelming ninety-seven percent of all practitioners responded that they would. Thus, despite the foreboding comments by some of environmental law's most prominent academics, students should feel secure that a career in environmental law should be fulfilling.

*James M. Wakefield**

140. The survey strongly suggests that environmental lawyers apply the Principle of Nonaccountability to their agency relationship with their clients. *See supra* Sec. VIII.

141. Indeed, many lawyers do reject objectionable clients, but others represent whomever comes through the door without conditions. To avoid moral dilemmas, many lawyers view all their clients as "good guys."

142. Some of these lawyers went into public interest work. Others went into solo practice, or small firms, giving themselves flexibility to pick clients who do not compromise their ideals. These lawyers are happy, but often are hungry. Other environmental lawyers are fatter, but less pure.

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APPENDIX-A

SURVEY OF ENVIRONMENTAL LAW STUDENTS

1. What year are you in law school? 1L 2L 3L
2. How strong are your environmental views?
(a.) very strong (b.) strong (c.) moderate (d.) not strong
3. Are you politically active? yes no
- 3a. If so, are your activities mostly
(a.) related to environmental issues (b.) not related to environmental issues
4. Do you consider yourself to be:
(a.) conservative (b.) liberal (c.) moderate
(d.) other(specify)_____
5. Have your political views changed since you started law school? yes no
- 5a. If so, in what direction? left right
- 5b. Was your change in views related to law school or the effect it had on you? yes no
6. How likely are you to choose environmental law as your future career?
(a.) certain (b.) likely (c.) somewhat likely (d.) uncertain
(e.) definitely not
7. Which of the following factors weighed strongest in your decision to specialize in environmental law?
(a.) income (b.) prestige (c.) working conditions
(d.) personal interests (e.) career opportunity (f.) personal political views (g.) default (h.) other _____
8. Have you taken the environmental law course?
yes no
9. Have you worked for a law firm? yes no
- 9a. If so, did you work on any cases that related to environmental issues? yes no
10. Identify the sector in which you desire to practice:
(a.) large private firm (more than 35 attorneys) (b.) small private firm (less than 35 attorneys) (c.) solo practice
(d.) government agency (e.) public interest organization
(f.) uncertain
- 10a. Which of the following factors most influenced your choice in question 10? (a.) career opportunity (b.) personal interests (c.) money (d.) prestige (e.) working conditions
(f.) political views

11. Do you want to practice in:
(a.) a large metropolitan area? (b.) a small town or rural area?
12. Do you think that an environmental lawyer's obligation is primarily to:
(a.) the client? (b.) society?
13. Should an environmental lawyer:
(a.) instruct clients as to what is right? (b.) follow the client's instructions?
14. In your opinion, when all other concerns are equally balanced which of the following should be given greater weight:
(a.) environmental concerns (b.) economic concerns
(c.) these factors cannot be balanced
15. Assuming you become an environmental lawyer, do you see yourself representing clients who are most often:
(a.) "good guys"? (b.) "bad guys"? (c.) somewhere in the middle? (d.) I've never thought about it
16. Would you defend Exxon in the Exxon Valdez case?
yes no
- 16a. What would you think of an environmental lawyer who did?
(a.) a top gun (b.) a hired gun (c.) just doing his job
(d.) a sell-out
17. Assuming you are an attorney, if one of your clients violated one of the following values, which would you find most offensive?
(a.) political value (b.) business ethic (c.) legal ethic
(d.) moral value (e.) other (specify)_____
- 17a. If you were asked to represent the client that offended your value in question 17, what would you likely do?
(a.) refuse to represent the client (b.) represent the client
(c.) represent the client only on other matters (d.) find another attorney to represent the client (e.) represent the client with the intent of changing the client's ways
18. What is your gender? male female
19. If you could be anything other than a lawyer what would it be? _____

APPENDIX-B

SURVEY OF ENVIRONMENTAL LAWYERS

1. How many years have you been practicing law?
(a.) 2 or less (b.) 3-7 (c.) more than 7
2. What proportion of your personal practice is devoted to environmental law?
(a.) 90-100% (b.) 50-89% (c.) 25-49% (d.) 0-24%
3. Why did you decide to specialize in environmental law?
(a.) income (b.) prestige (c.) working conditions
(d.) personal interests (e.) career opportunity
(f.) political views (g.) other_____
4. Did you have any interest in the environment before going into environmental law? yes no
- 4a. If so, was it a significant factor in your decision to specialize in environmental law? yes no
5. How does the practice of environmental law relate to your expectations when you went into the specialty?
(a.) exceeds expectations (b.) meets expectations (c.) fails to meet expectations
- 5a. Identify the primary reason for this:
(a.) subject matter (b.) type of clients (c.) interest in your cases (d.) personal satisfaction (e.) economic factors
(f.) other (specify)_____
6. Have you always specialized in environmental law?
yes no
- 6a. If not, what was your previous area of practice? _____
7. Do you have a particular subspecialty (i.e.— CERCLA, NEPA, Clean Air, etc.)? yes no
- 7a. If so, please list_____
8. Identify the sector of your current practice.
(a.) large private firm (more than 35 attorneys) (b.) small private firm (less than 35 attorneys) (c.) solo practice
(d.) government agency (e.) public interest organization
(f.) in house counsel (g.) other (please identify) _____
9. Have you always practiced in this sector? yes no
- 9a. If not, please list your previous sector(s). _____
- 9b. What was the major factor that contributed to your switch to your current sector?
(a.) career opportunity (b.) personal interests (c.) money
(d.) prestige (e.) working conditions (f.) political views
(g.) other_____

10. What proportion of your firm's (agency or organization) overall practice is devoted to environmental law?
(a.) 90-100% (b.) 50-89% (c.) 25-49% (d.) 0-24%
11. Does your personal practice consist mostly of:
(a.) litigation (b.) compliance (c.) other (specify) _____
12. As an environmental lawyer do you feel your obligation is primarily to:
(a.) your client (b.) society
13. In your opinion, which should be given more weight in a typical balancing test:
(a.) environmental concerns (b.) economic concerns
(c.) these factors cannot be balanced
14. Which role better fits an environmental lawyer?
(a.) advocate (b.) facilitator (c.) other (specify) _____
15. Do you see your clients most often as:
(a.) "good guys" (b.) "bad guys" (c.) somewhere in the middle (d.) don't make value judgments about clients
16. In your role do you feel that you mostly:
(a.) instruct your clients (b.) follow your client's instructions
17. Have you ever been asked to represent a client on a matter that offended your personal values? yes no
- 17a. If so, what type of values did the client offend?
(a.) political values (b.) business ethics (c.) legal ethics
(d.) moral values (e.) other (specify) _____
- 17b. What did you do?
(a.) represent the client (b.) refuse to represent the client
(c.) represent the client only on other matters (d.) find another attorney to represent the client (e.) represent the client with the intent of changing the clients ways
18. Do you consider yourself to be:
(a.) conservative (b.) liberal (c.) moderate (d.) other (specify) _____
19. Are you politically active? yes no
- 19a. If so, are your activities mostly
(a.) related to environmental issues (b.) not related to environmental issues
20. Have your political views changed since you started practicing law? yes no
- 20a. If so, is your change in views related to:
(a.) practicing environmental law (b.) practicing law in general (c.) unrelated to either

21. What is your gender? male female
22. Do you practice in:
(a.) a large metropolitan area (b.) a small town or rural area
23. If you were going to start over again would you still practice environmental law?
- 23a. If not, what you would prefer to be doing?_____

