

Adventures with Dick and Jane in Environmental Law

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Introduction

While most of the essays in this volume address Dick Stewart’s academic writings, this essay focuses on his work in practice and our work together. When we first met in 1990, I had never heard of this famous law scholar, nor read a single one of his articles. It is hard to explain this incurious failure to follow the literature and the news. Happily, this deficit has since been amply redressed by our many adventures in environmental law practice together over the past nearly three decades.

The first part of this essay deals very briefly with the period of Dick’s work in practice up to 1991; the second covers our environmental work together since that time.

I. Dick’s Work in Practice to 1991

After graduating from Harvard Law School and clerking for Justice Potter Stewart, Dick practiced administrative, regulatory, and environmental law, then a brand new field, at Covington & Burling in Washington, D.C..² Dick then joined the faculty at the Harvard Law School, where he taught these same subjects, with time out to serve as Special Counsel for the Senate Watergate Committee.

From 1989 – 1991, Dick served as Assistant Attorney General in charge of the Environment and Natural Resources Division of the Justice Department (DOJ) in the George H.W. Bush Administration. In that role he supervised the work of 400 lawyers in both criminal and civil environmental litigation and matters regarding environmental and natural resources policy. Among other matters, he negotiated criminal and civil liabilities with Exxon for the Exxon Valdez oil spill in Alaska; brought the first case to protect the Florida Everglades; and formulated the U.S. government’s position on the UN Framework Convention on Climate Change at the Rio Earth Summit in 1992. That position was approved by President Bush’s Cabinet and formed the basis for the U.S. Position in negotiations on the climate treaty that concluded at Rio that year and to which the U.S. remains a Party.³

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² Dick has also been of counsel to Sidley & Austin on environmental matters.

³ This position was prepared with the help of, among others, Dick’s then-Special Assistant Jonathan Wiener and was strongly supported by C. Boyden Gray, then-White House Counsel to President George H.W. Bush.

II. The Founding of our Partnership

When we met in December, 1990, Dick was on leave from the Harvard Law School (where, by then, he had taught for 18 years) and, as Assistant Attorney General, was in the midst of dealing with the major issues mentioned above: settlements of both the Exxon Valdez and Florida Everglades cases, as well as the U.S. position on climate change. I was an NYU-trained environmental lawyer who, after 11 years at the Natural Resources Defense Council (NRDC), a friendly-rival organization to EDF, had just joined the law firm Paul, Weiss, Rifkind, Wharton and Garrison. Dick and I met through a convoluted maze of connections unwittingly facilitated by EPA Administrator William K. Reilly; Daniel C. Esty, then Special Assistant to the EPA Administrator; C. Boyden Gray, then White House Counsel; John P. Schmitz, then Deputy White House Counsel; the Council on Foreign Relations; and the newly-formed Regional Environmental Center for Central and Eastern Europe (REC) in Budapest. (It's a long story, a passionate love story even; but readers of this essay will be spared the details.)

One part of the story is that, with the blessings of my new law firm, I had become the first (pro bono) General Counsel to the REC. The REC, a new international organization launched following the collapse of the Soviet Union, was established to serve as an environmental law and policy resource for the Central and Eastern European (CEE) countries, at the recommendation of EPA Administrator Reilly. Reilly had observed first-hand the environmental devastation that had been taking place behind the Iron Curtain under Soviet rule, and understood clearly that the nascent democracies attempting to address the problem could benefit from environmental law expertise honed in the U.S. and other countries.

Dick's and my first project together--for the opening of the REC--was orchestrated by the White House Counsel's Office; a briefing on the project, held in December 1990 in the West Wing, was in fact the occasion of our first meeting. (I can clearly recall being flabbergasted when fifteen minutes into the meeting, Dick sailed out!) Together with E. Donald Elliott (then EPA General Counsel) and Daniel J. Dudek of EDF, Dick (as Assistant AG) and I (in my Pro Bono Counsel hat) were part of a four-person, 3-day mission to the REC. Our mission to Hungary was tasked to meet with and advise key governmental officials leading environmental law reform efforts in key CEE countries, who were assembling at the REC to celebrate its inauguration; the subject of our advice was development of national and region-wide strategies for improving environmental protection and cleaning up the toxic legacy of the Cold War.

As it happened, that short mission to Budapest, in early 1991, was the start of a long and fruitful collaboration with the REC—to provide assistance on environmental and administrative law and policy reform, help with implementation of new requirements for public access to environmental information and public participation in environmental decision making, as well as to design concrete, citizen-oriented strategies for restoring and protecting the Danube River. Our collaboration with the REC included two sequential projects, funded by the United Nations Global Environment Fund, as described below, and altogether lasted for almost two decades.

Our brief sojourn at REC also launched momentous events in our personal and professional lives: our marriage in 1992, the births of our two children, a blended family totaling seven,⁴ Dick's arrival at NYU, and our long and intensive partnership on environmental law and policy reform-oriented projects and other work in the years ahead.

A. Overview of our work

I have enjoyed learning from our work together the breadth and depth of Dick's commitment to applying his cutting-edge ideas and academic research to help address problems in the real world. It has also been exhilarating to discover how tireless and generous he has been in devoting his intellectual energy to tackling the largest—indeed the most existential—environmental challenges that we face. Huge among these has been development of strategies for addressing the formidable threats posed by climate change, to which Dick's work while serving at DOJ and his academic work over the past 30 years have made important contributions.

The work that we have done together has a different focus: to utilize advanced regulatory law and policy tools, honed in the U.S. and elsewhere, to help international organizations, governments and NGOs solve thorny, practical local, national and regional environmental problems in various parts of the world. This approach embodied in our earliest work for the REC, became the foundation of the joint work that Dick and I have pursued together for almost 30 years.

We conducted multi-year legal assistance projects, in Central and Eastern Europe and China, respectively, that were designed to help these countries achieve key environmental protection goals through environmental law and policy reform. Our projects in CEE, financed by the United Nations, were centered on implementation of public access to environmental information and public participation in environmental decision making to increase citizen-led environmental action in the Region, as well as, specifically, to protect the Danube River. These projects took place from the late 1990's through 2009, in altogether seven CEE countries: Hungary, Slovenia, Romania, Bulgaria, Bosnia & Herzegovina, Serbia & Montenegro, and Croatia. Our projects in China, funded by the Asian Development Bank, provided training and assistance to environmental law drafters of the National People's Congress, who were charged with drafting or substantially revising three important environmental laws during the period 1995-2001.

In addition to our legal assistance projects, together we undertook a multi-year project on foods and crops grown with Genetically Modified Organisms (GMOs), based on case studies we conducted in ten countries. The project examined the impact of international trade and regulatory conflicts on GMO policies in developing countries.

⁴ Dick and Jane are blessed to have five children and two grandchildren: Emily, Ian, Will, Paul and Elizabeth, and granddaughters, Paloma and Winter.

Further, for more than fifteen years, the two of us have been part of an independent, university-based “think tank” generating innovative ideas for cleanup of the nation’s nuclear weapons production legacy sites, 2003-present. Together we wrote “The Book,” *Fuel Cycle to Nowhere*, the major reference work on the subject of nuclear waste law and policy and its tortuous history, published in 2011.

With some early encouragement from me, Dick, together with his colleague Benedict Kingsbury, developed Global Administrative Law (GAL) as a major field of academic study and practice. I also played a modest supporting role in Dick’s activities as Director of the Hauser Global Law School Program, in which capacity he established vital academic links with law schools around the world and supervised the various global law programs at NYU for students and faculty from other countries.

Our joint work has drawn heavily on Dick’s extensive academic research and writing on environmental regulation and economic incentives for environmental protection, his work at private law firms and involvement with EDF, as well as his experience in government. It has also drawn on my experience providing environmental legal assistance to the United Nations on a five-country, five-and-a-half-year project in Northeast Asia⁵ and work in environmental compliance counseling while at Paul, Weiss, as well as on my extensive background in hazardous waste management, Superfund cleanup and drinking water protection advocacy while at NRDC. Putting our diverse but complementary experience and skills together has generated synergies that we think have made us especially effective as a team.

B. Founding the Environmental Law Center

Much of our joint work has been carried out under the auspices of the NYU School of Law Center on Environmental, Energy and Land Use Law (Center), which has been a vehicle for engaging students in our work, as well as many other legal assistance projects. The Center was developed as a result of a request of then-Dean John Sexton, who had recruited Dick to join the law school faculty. Dean Sexton asked the two of us to put our heads together to design an “environmental law center” for the law school. Dick, the Center’s now long-time Faculty Director, recognized from the outset that, in addition to its scholarly work, the Center needed to have a practical, applied law component, one that would directly involve law students in legal assistance and policy work in the U.S. and abroad. The international component of the Center, which we rather prosaically named the International Environmental Legal Assistance Program, engaged NYU law students in environmental law and policy reform efforts in Latin America, Africa, China, India, Israel and CEE. Some students worked on our joint projects, others on individual activities. Students in Dick’s environmental law clinical courses, summer law student interns, and several recent-law-

⁵ I served from 1990-1996 as environmental counsel to UNDP on the Tumen River Area Development Project, which established the first free-trade zone in the former Manchuria. In that capacity I prepared and negotiated the environmental treaty signed by all of the participating countries: The Democratic People’s Republic of Korea, People’s Republic of China, Russian Federation, Republic of Korea, and Mongolia.

graduate Center Fellows participated in our projects over the years, providing legal research and writing that greatly assisted our work.⁶

The International Environmental Legal Assistance Program represents only one dimension of the Center's far broader practice-based, as well as academically-based, law and policy endeavors over the years. Thanks to the support of its namesake, former Congressman Frank J. Guarini, and the leadership contributions of Professor Katrina Wyman, Deputy Faculty Director and Environmental Law LLM Program Director; Adjunct Professor Bryce Rudyk, International Environmental Law Program Director and Executive Director; and Danielle Spiegel-Feld, Executive Director of the Center, the Center and its broad range of programs have expanded and flourished for over 25 years.

III. Environmental Law and Policy Projects:

A. International Environmental Legal Assistance Projects

Our approach to providing international legal assistance—used in our projects in CEE and China-- was somewhat novel at the time. We were determined to avoid the then-prevailing “model law” method—a one-size-fits-all approach in which foreigners (e.g., Americans) typically provide ready-made solutions based solely on U.S. or E.U. law. Our aim was to structure a collaboration that would enable participants to develop tailor-made, country-specific solutions, informed by examination of successful measures implemented elsewhere, and following careful vetting “at home.” We began with an in-depth examination of the environmental law reform objectives of participants, and of the circumstances, existing legal framework, and institutional arrangements found in the target country, through direct discussions with participants and in-country experts. We then worked to identify a range of options that had been used effectively in countries confronting similar environmental challenges, focusing on options with the potential to be successfully adapted to needs and circumstances in the target countr(ies). The projects included a series of workshops in-country, as well as an intensive 10-day-two-week training in the U.S. (and/or other countries). The training abroad comprised teaching and workshops, as well as structured sessions with counterparts and experts in government (federal, state and/or local) NGOs, and academia, to vet and debate the various options and identify the most promising approaches. Finally, with our support, the participants, not we, designed the law or policy approaches that they believed would work best and gain acceptance in their countr(ies).

1. Public Access to Environmental Information and Public Participation: Reforming Soviet-style Governance in Central and Eastern Europe

⁶ We are especially grateful for the contributions of Ernestine Meijer, a Center Fellow who helped conduct our legal assistance work in CEE, and who now practices in the banking sector in the Netherlands.

The basic approach to governance during the Soviet era was that the public had no business in acquiring government information or having any role in decision making. This approach contributed to massive environmental degradation.

Following the fall of the Berlin Wall, the CEE countries had become the focus of intense environmental law and policy reform and allied democracy-building assistance efforts led by legal institutions in the U.S. and E.U. As part of this effort, the Center conducted two multi-year projects in CEE, alluded to above, on public access to environmental information and public participation in environmental decision making. The projects were designed to help put in place key components of the legal infrastructure needed to enable citizens to play an active role in environmental protection throughout the CEE Region.

The projects, conducted by the Center in partnership with REC, Resources for the Future, and NGOs throughout the CEE Region, put government officials and environmental NGOs together for the first time. The objectives were to promote their collaboration on the development of specific law and policy tools that would make public access to environmental information and public participation in environmental decision making a reality, at both the local and national levels in the target countries.

The first project, begun in 1999 and conducted in Hungary and Slovenia, focused on implementation of the Aarhus Convention,⁷ an international treaty concluded in 1998. The Convention establishes three pillars of citizen procedural rights with respect to the environment: access to government-held environmental information; opportunities for public involvement in government decision-making on environmental matters; and access to justice. These provisions were based largely on foundational U.S. federal law sources, including the Administrative Procedure Act and the Freedom of Information Act, as well as the public information provisions of U.S. environmental laws. The project focused mainly on implementing the access to environmental information and public participation provisions of the Convention, something promising and exciting, but also quite challenging in countries just emerging from Soviet rule.

Nonetheless, Hungary and Slovenia were eager to participate, in part because they hoped to become members of the European Union. Demonstrating successful implementation of the Aarhus Convention (and a related E.U. Directive) was one of the many prerequisites for their admission to the EU. However, it was proving difficult for government officials to transition from a system where virtually all information held by the government was regarded as “secret” and held close--and where the public was intentionally excluded from any government decision making--to a system with diametrically opposed goals. It was a serious handicap as well that government officials, NGOs and members of the public in these countries had no prior experience with establishing, operating or accessing a transparent, participatory process and found it hard to envision what one should look like. Through analyses by in-country experts and in-region workshops examining barriers to

⁷ The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, referred to as the Aarhus Convention, was signed on June 25, 1998, in Aarhus, Denmark. The Convention entered into force on October 30, 2001.

(and opportunities for) public involvement; study of successful environmental information access and public participation systems in the U.S, the Netherlands and other countries; in-depth work with counterparts in those countries; and development of a public involvement handbook specifically geared to circumstances and needs of the CEE Region, public officials and NGOs learned to work together, step-by-step, to build a foundation for public involvement in environmental decision making.

The second CEE project, begun in 2004, was designed to assist Hungary, Slovenia, Bosnia & Herzegovina, Croatia, Serbia & Montenegro, Bulgaria and Romania in harnessing Aarhus-based public involvement measures, including those developed in the first CEE project, to engage citizens and NGOs in national and local efforts to restore and protect the Danube River and its tributaries.⁸ The Danube is a highly-valued common resource of CEE countries, a resource with enormous practical and cultural significance. At the time, numerous fledgling NGOs in the region were struggling to promote environmental cleanup and protection activities that would remediate and ensure long-term protection of the river. NGOs recognized that access to environmental information and the opportunity to participate in government decision making were key to successful environmental advocacy and achievement of concrete environmental goals for renewing the river.

An important aspect of our project was providing seed money, guidance and training for local NGOs in all seven of the countries participating in the project, in order to assist them in development and implementation of public involvement strategies that would create durable and effective local constituencies for long-term Danube protection.⁹ The project supported five local demonstration projects, each lasting 10 to 12 months, that were conducted by local NGOs at Danube River “hot spots”—areas identified as having exceptionally high levels of pollution. Supported with very modest funding, and selected through a competitive application process, these projects proved to be significant learning tools for transferring information and testing ideas, and they yielded substantial results in a short time. For example, an NGO-led demonstration project was conducted at Bor, in Eastern Serbia, a Danube River hotspot because large loads of industrial and sewage pollution enter the river there, endangering not only Bor but other river-based communities in Serbia and neighboring Bulgaria, and significantly affecting the quality of water in the West Balkans and the Danube River basin. Local officials could not provide much water-related environmental information to citizens, in part because they lacked the

⁸ Our project was an integral component of a larger Danube restoration program, the Danube Regional Project, conducted under the auspices of the International Commission for the Protection of the Danube River (ICPDR), in countries of the Danube River Basin. ICPDR’s goals are to safeguard the Danube’s water resources for future generations, to promote healthy and sustainable river systems, and to achieve water flows that are free from excess nutrients, toxic chemicals, and flood damage.

⁹ For further details about the project and its impacts, see “Flowing Freely: [How to Improve Access to Environmental Information and Enhance Public Participation in Water Management](https://www.rec.org/publication.php?id=63),” April 2007, <https://www.rec.org/publication.php?id=63>.

resources to develop a water database. Through the Bor demonstration project, NGOs developed a database on wastewater and drinking water, and provided training in its use. The database was accessible to officials managing water-related information, as well as to the public. The NGO also created collection points for gathering, processing, and distributing information (tasks subsequently taken over by municipal authorities); conducted a public outreach campaign on water-related issues; and developed an information resource network. These and other positive outcomes of the Bor project demonstrated that important steps towards providing public access to environmental information could be made rapidly, with minimal resources, through collaboration between local water officials and NGOs; and suggested that the project might be replicated successfully elsewhere.

2. The China Challenge: Training Environmental Law Drafters of China's National People's Congress

Beginning in 1995, Dick and I conducted two sequential, multi-year projects in China, funded by the Asian Development Bank, to provide training for law drafters of the newly-created Environmental Protection Committee (EPC) of the National People's Congress (NPC). Until then, all law drafting had been done by the Party through the ministries, and the National People's Congress did not have a meaningful role in developing legislation. The EPC was the first of its kind: a somewhat U.S.-like Congressional Committee that was tasked with overhauling environmental laws that no longer met the needs and circumstances of a China whose economy was liberalizing and transitioning to a more market-like system.¹⁰ The personnel assigned to this new committee had no prior experience with law drafting. Our two projects were intended to train the fledgling law drafters and help them prepare three major environmental laws slated for enactment by the National People's Congress (NPC): major overhauls of the existing Water Pollution Control Law and the existing Environmental Framework Law (containing NEPA-like provisions), as well as a brand new law, China's first Land Law.

Through steps including those described below, our China projects helped EPC law drafters identify and utilize promising legal tools and strategies used in other countries that might be adapted for use in China to address some of the country's major environmental challenges. And in at least one case—with respect to the Water Pollution Control Act--the draft law developed with our assistance was in fact enacted by the NPC following completion of our project. But along the way, there were some interesting surprises, especially with respect to the Water Pollution Control Law, which was the focus of our first Chinese law drafting project.

Taking Emily to Beijing

¹⁰ The National People's Congress (NPC) still has an environmental committee, although it is now called the Environment and Resources Protection Committee. There are a number of other NPC "Special Committees" with law drafting responsibility.

The launch of our first project training law drafters in China took place in 1995 with a two-week series of seminars at Peking University, at which academics, government officials and Chinese law drafters were due to explain the severe surface water pollution situation in China and how attempts to adequately deal with it had failed in the face of developments stemming from China's recently "opened" economy and the country's outmoded water pollution control law. We in turn would be giving an overview of U.S. water pollution control law and policy and its enforcement by EPA (Dick) and the role of NGOs and citizens in enforcement against polluting factories (Jane).

We brought our 14-month-old baby, Emily, along with us to Beijing. We were able to find a babysitter to care for her while we were working, but certain practical problems remained: where would we buy disposable diapers and baby food in Beijing? I was somehow certain that we could not count on the baby supply situation in Beijing and should bring everything with us. Our luggage for the trip thus included a very large suitcase dedicated entirely to multiple packages of Pampers and several cases of Earth's Best organic baby food. Soon after we had settled into our room at the Friendship Hotel, Dick took a walk around the neighborhood, only to discover that we were directly across the road from the Beijing equivalent of Costco—and it was stocked to the nines with disposable diapers. (The jarred baby food we had brought also proved superfluous; our baby preferred Chinese food!)

Compared to the situation when Dick first visited Beijing in 1983, this was dramatic evidence of the way in which the transition to a market economy had raised the living standards of the urban middle class. Yet the environmental situation, although better, was still very bad. One lesson was that, for reasons of demonstrating its legitimacy, the Party had placed a higher priority on consumer goods. Yet public concern over environmental degradation was then (and still is) rising. Facing this additional threat to its legitimacy, as well as for other reasons, the Party had begun to invest serious effort in reducing environmental harm. This effort included updating old environmental laws and generating badly needed new ones, creating the impetus and need for law drafting projects of the sort we were involved in.

An Impromptu Heads-Up from a Seatmate on the Plane

On the plane to Beijing Dick happened to sit next to an executive from Du Pont, which had built a synthetic fiber plant for a Chinese state-owned enterprise and had trained Chinese engineers to run the operation. The executive had visited the new plant to ascertain how it was operating and what impact China's environmental requirements were having, in practice. After walking Emily up and down the aisles for the seventh time in the 12-hour trip, Dick asked his seatmate about the company's training program. He replied that the company had arranged to bring all of the key workers who were to run the new plant to a Du Pont plant in North Carolina for training. The Chinese personnel chosen for training were very able and did well in the U.S. training. However, upon visiting the plant in China, it became clear that the people sent for training in North Carolina were nowhere to be found at the Chinese plant. The engineers actually running the plant in China had been bumped from the trip by higher level personnel who wanted to visit the U.S. and take per

diems. (We took note of this and later made sure that our planned training workshops in the U.S. included only the law drafters of the EPC.)

Dick then asked about pollution control equipment at the plant; did it have any? Oh yes, the executive explained, the company installed state-of-the-art equipment at all of its non-U.S. plants, and the Chinese regulatory authorities made sure that the equipment was in place and well-functioning before they would allow the plant to start up. That sounded very promising, until the executive mentioned that in order to save on the costs of electricity, the Chinese plant managers made sure that the pollution control equipment was...never turned on. As later became clear, the dichotomy between the national-level anti-pollution laws and regulations on paper, and their actual implementation and enforcement at the local level-- created in substantial part by corruption of local officials—was, in fact, the central problem our Chinese law drafters faced as they put together a new water pollution control law for China.

What China Was Ready For

As noted above, the initial sessions held at Peking University dealt with China's surface water pollution problems, enforcement challenges, and the need to overhaul the outmoded Water Pollution Control Act. Our Chinese colleagues began with presentations providing a compelling account of the scope of increasing water pollution and its causes and the deficiencies in the current law and its implementation and enforcement. Dick followed with a succinct overview of the U.S. Clean Water Act and how it had successfully tackled the U.S.'s previously massive surface water pollution problems. He emphasized the important roles played by federal and state standard setting, the permitting system, self-reporting by permittees, government enforcement and citizen enforcement, as well as significant fines for non-compliance. He also explained a bit about emissions trading systems as an economic incentive strategy for pollution control being adopted in the U.S. At the end of his presentation, there was much enthusiasm (especially for fines and emissions trading) and many questions. A question about emissions trading, however, highlighted that China was not quite ready yet for this strategy: "This emissions trading sounds very good," the participant commented, "but how does the *government* set the price for the emissions?"

The response to my presentation--on public access to environmental information, public participation in environmental decision making, and citizen suits-- revealed that another potential U.S. water pollution control strategy might have to be put back in the bag. I spent roughly 30 minutes explaining the importance to water pollution control outcomes in the U.S. of federal laws guaranteeing public access to environmental information (including the self-reporting data produced by Clean Water Act permittees) and public participation in permitting decisions. I also emphasized how instrumental the Clean Water Act citizens' suit provisions had been in enabling citizen enforcement (such as that conducted by NRDC in the 1980s) to supplement limited resources for, or inaction by, government enforcement personnel. My presentation was listened to politely but, when I had finished, was met with dead silence. There were no questions or comments at all. Finally, one participant stood up and said firmly, "China is *not ready* for public participation."

China has more recently begun to experiment with major changes in its environmental programs, especially the use of market instruments in regulation of electricity generation emissions. The country has cautiously begun to embrace limited forms of public access to information, participation and access to justice in the environmental area. Although major decisions are made by the Party, engaging the public in these procedures can improve the design and implementation of local programs and compliance with national laws. The viability of this approach under the current political circumstances in China is an issue, but the regime still appears to allow various forms of public engagement at the local level, apparently concluding that the benefits of these practices in quelling popular discontent with environmental degradation justify their use.

Dumpling Diplomacy

Part of our strategy for assisting the Chinese in revising the Water Pollution Control Act was to identify and discuss a variety of effective legislative approaches, based on successful experience in the US, the EU, and several developing countries. Another part was to bring participants to New York and to Washington, D.C. for two weeks to meet and gain insights from clean water law- drafting counterparts on Congressional Committees; NGOs monitoring compliance with the Clean Water Act, such as NRDC; EPA and state water enforcement officials in the Agency's regional and headquarters offices; the Delaware River Basin Commission; the Hudson River Keeper and others.

The final days in the U.S. were spent at NYU working intensively with the law drafters to review a working draft of the Water Pollution Control Act that they had prepared, and to discuss an extensive "Options Memorandum," that the two of us had written. The memorandum analyzed the pros and cons of a range of the most promising approaches to water pollution control that might be effectively adapted to the context and circumstances of water pollution in China. Participants deliberated on the insights they had taken away from their encounters with counterparts and the options presented in our memorandum; there was a good deal of debate and redlining of the draft water pollution control law that they had brought with them. It was intense work, and everyone was relieved when it was successfully concluded.

In many cultures it is traditional to celebrate this kind of milestone with a feast of some sort. In China it is especially important to have a banquet, preferably an elaborate one. Somehow, our project budget had made no provision whatsoever for a celebration! We hastily invited everyone to our house for dinner the next night. The Chinese participants agreed to come, but they insisted that they would provide the food. Arriving at our place and moving towards the kitchen, they inquired how many rolling pins we had; we had none. Wine bottles would have to do. What emerged from the kitchen some time later (with much laughter) were the participants and our kids-- all somewhat floury-- and an unforgettable feast of dumplings.

B. Other International Environmental Law and Policy Work

Frankenfood or The Second Green Revolution? Project on International GMO Regulatory Conflicts

One of our favorite projects examined the policies of developing countries regarding GMO crops and foods and the implications for those countries of E.U.-imposed restrictions on foods and crops grown using GMOs. Funded by the Rockefeller Foundation, the project assessed widely differing public and political perceptions of the risks and benefits posed by GMO crops and foods, official domestic GMO regulatory regimes, on-the-ground farmer practices, and the impact of international trade and international trade law on the availability of GMO seeds and foods. It did so through the lens of ten country studies carried out by in-country experts and NYU law students under Dick's direction. The study countries included India, Brazil, Argentina, China, Costa Rica, Colombia, South Africa, Kenya, the U.S., and the E.U.. The project analyzed the underlying issues in terms of expert assessments and citizen views of the risks and benefits of GMOs and the role of market factors.

We were fortunate that NYU law students who hailed from Brazil, Argentina, and Costa Rica wanted to help with the case studies on their respective home countries. The law students researched and wrote legal memoranda on study-country GMO regulatory regimes and practices, reviewed the more extensive draft country studies prepared by in-country experts, and helped shepherd the country studies to conclusion. The students also assisted with preparation of our comparative analysis of the various regulatory regimes and conducted research needed to inform our assessment of the impacts world-wide of E.U. restrictions on GMO foods and crops. E.U. restrictions (amounting to virtual bans of GMO foods and crops at the time we undertook this project) limited the availability to developing countries, especially in Africa, of GMO seeds (e.g., those resistant to drought or insects) that might mitigate hunger; this was argued to be the case especially in countries suffering famine due to drought, extreme heat, pests and other acts of nature. But, as we learned, the picture was quite a bit more complex and nuanced.

One exciting aspect of the project was the Rockefeller Foundation's intense institutional interest in our GMO work. The Foundation had been an instrumental force in launching the so-called "Green Revolution," which is credited with increasing the world food supply and averting famine in developing countries in the 1950's and 1960's—although this initiative was later castigated for promoting excessive use of pesticides and water consumption. Rockefeller did everything it could to facilitate our work. For example, the Foundation hosted meetings with its renowned agricultural experts at its headquarters in New York, gave us access to the experts as we went along, and enabled us to hold a week-long intensive meeting at Bellagio with in-country experts from around the world to critique and discuss the draft country studies and distill and debate the lessons learned from them.

A highlight of the meeting in Bellagio was an impassioned presentation by our Colombia expert, a photographer who had been the country's first environment minister and had established a national park to protect indigenous peoples living in a remote mountainous region of the country. In a stunning slide presentation, we heard about the indigenous

culture of that region, where heirloom seeds are passed down generationally and are not only the source of subsistence but have enormous cultural and spiritual significance. Our expert asserted that introduction of GMO seeds, which are developed by a few multinational corporations with exclusive proprietary rights, could threaten this kind of indigenous legacy. The presentation added an important countervailing dimension to the predominant argument then being advanced in the U.S., namely that restricting GMO seeds, as the E.U. had done, would necessarily harm developing countries that needed access to them as a bulwark against hunger. This project and its conclusions are presented in much greater detail in two academic publications.¹¹

I believe that the lasting impression left by the Colombian presentation ultimately led Dick, when he became Director of the law school's Global Law Program, to work to establish a strong connection with the law faculty of Los Andes University in Bogota, which both of us visited in 2010, and where we met human rights law professor Cesar Rodriguez-Garavito. Cesar had participated in one of Dick and Benedict's GAL conferences the prior year, and his work at Los Andes included teaching a human rights litigation clinic which gave students the opportunity to participate in Cesar's cases involving indigenous rights and pollution and resource disputes. The clinical work was quite analogous to the international environmental projects that Dick and I were pursuing at NYU, and Cesar was eager to broaden his human rights work to more fully encompass environmental issues; so we began a joint academic collaboration between Dick's international environmental law clinic course at NYU and Cesar's human rights litigation clinical program at Los Andes. Further, the intellectual sparks and a sort of "critical mass"-- ignited by the confluence of Cesar's participation in the 2009 GAL conference, our meeting at Los Andes the following year, and Cesar's time spent at the law school in 2011 as a Hauser Research Scholar--have led to a variety of very productive "North-South" collaborations between us and our law schools over the years. These have included Cesar's co-authorship, with Professor Rochelle Dreyfuss (whom Cesar first met at the 2009 conference) of a GAL book featuring case studies from Latin America,¹² his deepening involvement with the law school's human rights teaching and academic research programs, and more recently, his co-directorship, with Professor Philip Alston, of the NYU Center for Human Rights and Global Justice. And very happily for Dick and me, these bonds have nurtured our warm friendship with Cesar and his wife Ulpi over the years.

IV. "The Book": *Fuel Cycle to Nowhere*

Perhaps a little-known fact is that for over 15 years, Dick and I have been part of a multi-disciplinary academic think-tank called the Consortium for Risk Evaluation with Stakeholder Participation (CRESP), based at Vanderbilt University. Academics engaged in

¹¹ Richard B Stewart, *GMO Trade Regulation and Developing Countries*, 2008 *Acta Juridica* 320; Ernestine Meijer and Richard Stewart, *The GMO Cold War: How Developing Countries Came from Being Players Rather than Dominoes*, 13 *RECIEL* 245 (2004).

¹² R. Dreyfuss and C. Rodriguez-Garavito, eds., *Balancing Wealth and Health* (2014).

CRESP's work come from multiple universities and are leading scholars in their disciplines, including: environmental medicine (University of Pittsburgh; Rutgers University); sociology/risk assessment and ecology (Rutgers University); environmental, chemical and nuclear engineering, hydrology and flow and transport modeling, and environmental and waste management (Vanderbilt University; University of Virginia; Georgia Institute of Technology; Howard University); and radiologic risks and impacts to humans and the environment (Oregon State University). The mission of the group is to serve as an external, independent, intellectual resource for the Environmental Management (EM) Office of the U.S. Department of Energy, the federal agency that is in charge of addressing the government's single largest environmental liability. That liability consists of the of radioactively-and-chemically-contaminated facilities across the country, where the U.S. arsenal of nuclear weapons was once produced, beginning with the Manhattan Project in the 1940's and continuing into the 1980's. Cleanup of these facilities has been going on since the early 1990's and is predicted to continue for many more decades, at a cost to taxpayers of up to \$1 Trillion.

As the law and policy arm of CRESP, and drawing on our respective backgrounds, Dick and I have had the opportunity to ask (and have attempted to answer) some of the fundamental questions that government agencies often don't, but that are crucial to a successful environmental remediation program. What are the most significant risks to human health and the environment at each site? Is cleanup addressing these priority risks, dealing with them effectively, and leaving sites protective of human health and the environment? And is the remediation being done cost-effectively, as required by CERCLA,¹³ the cleanup statute? If not, why not, and what can be done about it? But before we could answer (or even ask) these and other important questions, we encountered a first-order problem: the patchwork of different, often conflicting federal laws and policies that govern the management and disposition of nuclear waste. Why and how this disjointed and inadequate framework had evolved was not entirely clear, and the implications for remediation of the former nuclear weapons complex were not well understood. We discovered that there was no single reference work available that told the full story or attempted to integrate the disparate pieces. Before we understood the dimensions of what we were embarking upon, we were drawn into writing a book that would attempt to tell that story. It was meant to be a short book—but it didn't turn out that way.

Dick has a rather democratic habit of expecting everyone he works with (or is it just me?) to have the same strengths as he does. When we started work on *The Book*, Dick suggested that we divide up the chapters, each of us writing a certain number of them, and that we then trade them back and forth with suggested edits and comments. We should have a complete first draft ready in several months, Dick believed. This sounded perfectly reasonable at the time. But then we discovered that this plan led to a kind of screeching-halt, book-production gridlock. Dick was able to organize complex material at lightning speed and excelled at sketching out the perfect chapter; but doing the detailed digging needed to substantiate each point did not interest him as much. (Was that what research assistants were for?) I was slower to organize my chapters and did not especially enjoy

¹³ Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601.

writing them; but I was a good editor and an obsessively deep researcher, able to ferret out the irritatingly elusive facts and details needed to substantiate our work. After some wrangling aimed at turning him into a detail person and me into a faster chapter organizer/writer, we realized that “No Book” was going to be the result of that approach. Thereafter, Dick agreed to my suggestion that he take the lead on chapter organizing and initial drafting, and I would follow on with close editing, revision and deep-diving to provide any missing meat on the bones. After three or four years of this, much productive brainstorming, and a good many forgone outings with our children Emily and Ian (borne by them with either admirable patience or sheer resignation), we had a 446-page book with an embarrassing number of footnotes, called *Fuel Cycle to Nowhere*, published in 2011 by Vanderbilt University Press.¹⁴ It has turned out to be a uniquely useful and widely appreciated reference work in the (albeit rarified) field of nuclear waste site remediation. (And, an added bonus, when not in use it makes a perfect doorstop.)

V. NGO Activities

In 1978, Dick began service as a Board member of the Environmental Defense Fund (EDF). He was later Chairman, and is currently Advisory Trustee. He has also long been a member of the EDF Litigation Committee (now Legal Advocacy Committee). In these capacities he has been engaged for more than four decades in overseeing and reviewing the work of the organization and advising EDF on policy and litigation decisions covering the full range of environmental issues.

Dick was also a Director of the Health Effects Institute (HEI) from 1997-2007. This organization, jointly funded by EPA and industry, enlists prominent scientists to conduct research on the health effects of air pollutants with the goal of reducing uncertainty and informing better regulatory policy. Its work, for example, on the health effects of particulate matter, has been widely praised as authoritative. More recently HEI has expanded its work to Asia. As a Director, Dick advised the organization on its policies and helped evaluate its performance and future directions.

VI. Advancing Global Law at NYU

A. The Birth of Global Administrative Law

I like to think that it was from our decade collaborating on the international projects described above and our longstanding practice of brainstorming--together of course with the essential ideas and input of Dick's NYU Law colleague Professor Benedict Kingsbury — that the now well-established Global Administrative Law (GAL) field was born. In 2003, Dick was due to become the inaugural John Edward Sexton Professor of Law, and was expected to deliver a substantial lecture. We brainstormed. It was clear to both of us that Dick should address some international dimension of regulatory law. I wondered aloud whether Dick could somehow “internationalize” his important contributions to U.S.

¹⁴ R. Stewart & J. Stewart, *Fuel Cycle to Nowhere: U.S. Law and Policy on Nuclear Waste* (2011).

administrative law. Dick agreed and from this rudimentary notion delivered a now-seminal lecture entitled “Administrative Law in the 21st Century.”¹⁵ The concluding section examined the development of a variety of administrative bodies, public, private and hybrid, operating beyond the state. These included treaty-based bodies, agencies established through intergovernmental networks, hybrid public-private entities, and private organizations. The lecture noted the growing power exercised by these bodies in many different fields of global administration and regulation, the substantial degree of autonomy they have in making decisions, and concerns as to how to hold them accountable for those decisions. The essay then argued that the tools of domestic administrative law, including transparency and participation, could go a long way towards meeting the need for such accountability.

Shortly thereafter, Dick and Benedict launched a seminar, entitled Global Administrative Law, which has been taught at NYU for the last fifteen years. Early on it led to a framing article, the “Emergence of Global Administrative Law,”¹⁶ that established GAL as an important new field of legal thought and scholarship. The article has stimulated the production of books and many other articles, and been the focus of conferences and workshops throughout the world. It refined classification of the entities operating beyond the state as treaty-based, intergovernmental, hybrid public-private, and private. It then examined how administrative law tools – transparency, participation, reason-giving and review -- could be used to fulfill several functions: enhancing these bodies’ effectiveness, securing rights, making decisions more responsive to the various constituencies affected by their decisions, and promoting democracy.

The GAL project (institutionalized as the Global Administrative Law Program of the Institute of International Law and Justice (IILJ), directed by Benedict) provided a vehicle that Dick and Benedict used to help expand the reach of GAL, and NYU’s emerging Global Law School Program, described below, into Latin America, the E.U., Japan, and China, Israel, the U.K and Australia, through conferences, workshops, publications and exchanges involving both prominent and emerging scholars, as well as officials from leading international organizations.

B. Leadership of NYU’s Global Law School Programs

In the 2000’s, Dick served for five years as faculty Director of the Hauser Global Law School Program. In that capacity, he supervised the selection of and program for Hauser Scholars, generally LLM, students; Hauser Global Fellows, generally post-doctoral researchers; and Global Law School Faculty, selected to teach and carry on joint academic projects with regular NYU faculty. The Scholars, Fellows and Faculty were selected from candidates around the world in order to bring global perspectives to NYU students and faculty.

¹⁵ 78 N.Y.U. L. Rev. 437 (2003).

¹⁶ Benedict Kingsbury, Nico Krisch, and Richard Stewart, “The Emergence of Global Administrative Law,” 68 *Law and Contemporary Problems* 15 (2005). Professor Krisch also was integral to the GAL Project.

In conjunction with IILJ, the Global Law School Program coordinated lectures and workshops on global law both in New York and abroad. Dick also helped formulate, and secured faculty approval of, a unique program of law study abroad that enables NYU law students to study for a semester at a law school in another country (currently at Buenos Aires, Argentina and Paris, France) in order to become acquainted with other legal cultures as a foundation for potential global practice. Finally, through meetings abroad and in New York with deans and other counterparts at law schools abroad, Dick built relationships between NYU and other pre-eminent law schools-- throughout Latin America and the E.U, and in China, Japan, India, Israel, U.K., and Australia-- to develop programs for joint workshops, collaborative faculty research, joint work on clinical projects, and ongoing academic relations. The GAL project and other academic work provided fertile soil for these relationships to germinate and grow.

Dick's leadership role in the Global Law School Program brought legal scholars from many lands, and myriad fascinating conversations, into our home, a wonderful, lasting benefit for our family. And it has resulted in far-flung but enduring friendships that continue to enrich our lives.