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The Impact of International Trade Agreements on the Environment

by Nathan M. Murawsky

On Saturday, November 5, the Environmental Law Journal presented its sixth annual symposium titled "The Impact of International Trade Agreements on the Environment." Turnout for the symposium exceeded 100 people, many of whom were local attorneys joining Continuing Legal Education Board Credits for attending.

Dean Brogan welcomed the guests and gave a brief speech on the topic of the symposium followed by the introduction of the moderator and the speakers.

The moderator for the symposium was Villanova University School of Law Professor John F. Murphy. Professor Murphy is on the Council of the Section of the International Law and Practice of the Americas Bar Association and has been invited to co-direct a joint project between the American and Israeli branches of the International Law Association on Dispute Settlement in International Trade. Furthermore, in 1992 he received a Certificate of Merit by the American Society of International Law in 1992 for his textbook, The Regulation of International Business and Commercial Relations.

Professor Murphy introduced the members of the "distinguished panel" and then commented that the title of the symposium could be reversed to the impact of the environment on international trade agreements, noting the symbiotic relationship between the two areas.

The first speaker was Mr. Robert Housman, a staff attorney with the Center for International Environmental Law. Mr. Housman discussed the procedural issues in the interplay of trade and environmental policies, noting that the procedural systems for trade and environmental law differ enormously. Mr. Housman stated that the major distinction between the two areas was that trade rules are often "closed door" proceedings, whereas environmental rules are primarily "public driven" and more transparent. The results, therefore, are often a conflict of procedures between the EPA and trade agencies. Mr. Housman stated that the solutions to these conflicts would be to open trade proceedings thereby preventing "closed door pork-barreling."

The second speaker was Mr. Steve Wolfson, an attorney with the Environmental Protection Agency in EPA's Office of General Counsel. Mr. Wolfson specializes in international environmental legal issues and on the regulation of international trade in pesticides and toxic chemicals. Mr. Wolfson discussed the problematic laws regarding the import and export of pesticides as an example of the emerging multilateral prior informed consent system in international environmental law. Mr. Wolfson explained that while the use of many pesticides is illegal in the U.S., the export of these chemicals is permissible. As a result, these chemicals are often sent back to the U.S. on imported food and products. The significance of this problem with pesticides, Mr. Wolfson explained, symbolizes the lack of ENVIR. LAW Cont on Page 4

The Sentencing Controversy: Punishment and Policy in the War Against Drugs

by Nathan M. Murawsky and Bryant Linn

On Saturday, November 12, the Villanova Law Review held its Twenty-ninth Annual Symposium titled "The Sentencing Controversy: Punishment and Policy in the War Against Drugs." Approximately 100 people attended the symposium, including numerous professors and student group leaders.

As a short welcome by Dean Garbarino, moderator Professor Donald D. Dowd gave an introduction into the issue before the panel. Professor Dowd explained that the sentencing controversy was a symposium topic seventeen years earlier, and that many of the problems that were addressed then still existed today.

The first to speak was the Honorable Margaret P. Spencer. Judge Spencer graduated from the University of Virginia School of Law and currently serves as a General District Court Judge for the City of Richmond. Before her appointment to the bench, she was an Associate Professor at the Marshall-Wythe School of Law at the College of William and Mary. Judge Spencer is a former Assistant Attorney General, having worked in the Appellate Section, Criminal Division of the Attorney General's Office in Richmond, VA. She also served as an Assistant U.S. Attorney in the Civil Rights Division of the Justice Department. Judge Spencer has written extensively, including Prosecutorial Immunity: The Response to Prenatal Drug Use, 25 Conn. L. Rev. 393 (Winter 1993).

Judge Spencer began by raising the question if our society was irrationally dependent on incarceration to eradicate the drug problem. Judge Spencer explained that the majority of prisoners are "low-level" drug offenders. This group consists of mostly first time offenders for possession, and more importantly does not cover the more dangerous people involved in drug trafficking: the people who really need to serving time.

Judge Spencer concluded that "we are incorporating the wrong offender. Rather we should be incarcerating the people responsible for the origination of the problems."

The next speaker was Professor David N. Yellen. Professor Yellen is a graduate of Cornell Law School and is an Associate Professor at Hofstra University School of Law.

Sports and Entertainment Law Society Symposium

"Major League Baseball: Labor's Fall Classic or Classic Fall?"

by Matt Kelly

On Thursday, October 27, the Villanova Sports and Entertainment Law Society presented a symposium titled "Major League Baseball: Labor's Fall Classic or Classic Fall?" to discuss the reasons for and ramifications of the current Major League Baseball strike.

Among the panelists were Eugene Orza, Associate General Counsel for the Major League Baseball Players Association; Jeffrey Moorad, equal partner in the law firm Steinberg & Moorad, the nation's largest firm representing professional athletes and media personalities; and Gerald Crawford, veteran umpire and president of the Major League Umpires Association. Moderating the event were Dean Garbarino, chairperson for the Villanova University Professional Sports Counseling Panel and Jody McDonald, Philadelphia sports radio host for the all-sports radio station 610 WP. Orza believed differently, stating "I can guarantee that the reason [Giles] is not here is not because of negotiations."

After a brief introduction by Michael Siegel, president of the Villanova Sports and Entertainment Law Society, panelists quickly delved into the issue of why the disagreements between owners and players resulted in a strike. Mr. Orza noted that Major League Baseball owners are not subject to competition like that which exists in other industries. As a virtual monopoly, Orza stated, the owner’s "cartel" has great political leverage in the cities in which the baseball clubs are situated. They may ask city mayors for tax breaks, favors, and exemptions using threats of moving their ballclubs to more "accommodating" cities as leverage. "Brokers are therefore not subject to the same disincentives regarding labor relations as any other industry."

Orza further noted the reason behind the existence of the American and National baseball divisions: to reduce the price of baseball players. Competition between the two divisions is eliminated when they are

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Slawsky stated her belief that this provision, a "safety valve" provision that allows judges to look back at mandatory minimums, was a large part of the recently passed crime bill. Ms. Slawsky is the General Counsel of the Department of Justice, Circuit of the United States. Before her current position as Circuit Executive, she served as an attorney in the Administrative Office of the United States. Ms. Slawsky is a graduate of Temple University School of Law and currently serves as a professor at Villanova University School of Law, teaching courses on International Narcotics and Organized Crime.

The fifth speaker was Phyllis J. Newton. Ms. Newton represents five years working on domestic violence related research at the University of California, Santa Barbara. She received an undergraduate degree from Ohio State University and graduate degrees from Arizona State University and University of California, Santa Barbara, where her academic work focused primarily on sociology and criminology.

The SBA would just like to remind all Villanova Law students of the current law school smoking policy. The present smoking policy bans smoking in all areas of the law school building, except for the smoking section of the cafeteria. There is some obvious confusion as to what constitutes the smoking section of the cafeteria. The cafeteria's smoking section (from the perspective of a student entering from the parking lot) consists only of the tables against the walls in the left-hand side, and the row of tables adjacent to those wall/window tables. The smoking section does not make up one-half of the cafeteria. Part of the problem is that first-year students were never informed of the policy and the problem is definitely not their fault. Hopefully through this reminder and through additional signs, table separators, etc., the situation will get resolved.

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For 12 years, Ms. Anderson attended meetings in which the Pennsylvania bar exam questions were drafted, essay points were assigned, and students' answers were analyzed. During the BAR/BRI bar review course for PA, she will tell BAR/BRI students:

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lack of U.S. policy in the international environmental arena.

Gerald Hapka, a twenty-eight year member of the Corporate Counsel for the DuPont de Nemours and Company staff, spoke on the issues raised by the Vienna Convention and the Montreal Protocol that can be used in the management of global environmental issues. Mr. Hapka commented that the main problem with environmental reform was that such reform often begins with economic purposes. Consequently, the most effective environmental proposals often “take a back seat” to the economic obstacles that arise through implementation of the proposal. Mr. Hapka believed that the Montreal Protocol was a model treaty that adequately addressed economic matters without compromising the environmental agenda of the agreement.

The last speaker was Mr. Mark Sandstrom, previously an attorney in the Office of the Assistant General Counsel for International Affairs of the United States Department of Treasury and a Professional Staff Member of the United States Senate Committee on Finance. Mr. Sandstrom first stated that he was a “pro-environment trade lawyer” and further noted that “trade laws are not inherently anti-environment.” Mr. Sandstrom explained that the conflict between trade laws and the environment originates from a lack of concern regarding the clean up of other countries. By concentrating on countries with less sophisticated environmental procedures, Mr. Sandstrom believed that existing problems could be more easily solved.

After the symposium, the audience and guests were invited to the cafeteria commons for a reception. At the reception, the panelists and numerous students gave excellent marks to the Environmental Law Journal and Pam Clarke, the symposium editor, for a topical and important discussion on a globally significant legal issue.

LAW REVIEW Cont from Page 2

Ms. Newton, the staff director of the Commission on Sentencing Guidelines was not as critical as the first four speakers on the effectiveness of mandatory minimums. Ms. Newton explained that minimum drug sentencing needed to be passed by Congress before the Sentencing Guidelines could come into effect. While such a process may have been a mistake, Ms. Newton believed that mandatory minimums were still a much more efficient system than what previously existed.

The view was shared by Mr. William B. Carr, Jr., the sixth speaker. Mr. Carr is a graduate of Cornell Law School and has been an Assistant United States Attorney since 1981, concentrating in white-collar criminal cases. Formerly, he was an associate in the litigation department at Morgan, Lewis & Bockius in Philadelphia. Mr. Carr guest lectures regularly at Villanova and Rutgers Law Schools on the sentencing guidelines. He also lectures at seminars on the sentencing guidelines sponsored by the American Bar Institute, American Bar Association, Philadelphia Bar Association and the United States Attorney’s Office.

Mr. Carr exposed the same view of Ms. Newton that the Sentencing Guidelines in place now substantially better than the previous system. Mr. Carr explained that in pre-guideline practice, “discretion was so unfettered and unfurl” that the sentencing policies were completely unpredictable. The solution, Mr. Carr explained, lies in the Sentencing Guidelines. “While the guidelines may not be perfect, uncertainty is largely eliminated with the guidelines.”

The seventh speaker, Mr. Michael J. Holston, a graduate of Villanova Law School and is a senior associate at Drinker Biddle & Reath in Philadelphia. Mr. Holston is an integral part of Drinker Biddle & Reath’s white-collar criminal defense group, which represents organizations and individuals on a national basis. Mr. Holston is a former Assistant United States Attorney, having worked as a prosecutor in the criminal division of the United States Attorney’s office for the Eastern District of Pennsylvania from 1990-1993. As an Assistant United States Attorney, he prosecuted more than 100 criminal cases, including more than 20 jury trials in the United States District Court, and more than 20 appeals before the United States Court of Appeals.

Mr. Holston began by noting that “the Sentencing Guidelines are here to stay.” Mr. Holston stated that downward departures away from the guidelines are the “defense counsel’s promised land”. However, he believed that such a shift in sentencing policy is highly unlikely. Mr. Holston explained that through a defendant’s cooperation with the government, a defendant can have his charge reduced below a certain level, thereby giving rise to a lesser sentence. Through these guidelines the prosecution has wide discretion in whom they wish to bargain with, and consequently, can more effectively get additional information on other drug offenders.


Judge Dazell was the only speaker who was clearly in favor of the sentencing guidelines. Judge Dazell stated that he was totally in favor of the guidelines. However, Judge Dazell noted that he was not a judge while the previous system was in use, and therefore could not compare the current guidelines to the old procedures. Nonetheless, Judge Dazell stated that “I know what I see as a Judge, and I like the Sentencing Guidelines as they are.”

After a brief question an answer period, the panelists and the audience were invited into the cafeteria commons for a reception. Symposium Editor April Byrd was pleased with the symposium, and received high praise from numerous administration and faculty members for a well educated and informative panel.

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Villanova Law School BARRISTER’S BALL

February 3, 1995
Valley Forge Sheraton

check the SBA bulletin boards for more information
Another group of victims in the Susan Smith Case: An Open Letter

Villanova Law: Summer 1995 in Israel

By Jennifer R. Reinelt and Scott M. Kleerman

If you have come out of rooms 29 or 30 lately you have probably noticed a new bulletin board announcing Villanova Law’s Summer Abroad Program in Israel. If you have considered completing a summer abroad program and are afraid that the classes you want to take won’t be the subject of the law and Legal Education,” Dr. R.M. Huchins of the University of Chicago said: “The student here is not necessarily the cause of his own existence, it must first be, and that the causes of its being are not the same as the causes of its change. Knowing that the student exists, we must understand the student and his role in light of the causes of his being. Knowing that the student exists, we must understand the student and his role in light of the causes of his being.

The point of all this is simple; trying to find work is a job in and of itself. I think VLS should offer a Category V course in finding a job. It would be a writing intensive course with an emphasis on networking and interviewing skills. I know that I’d take it. (Besides, how bad could the grading be?)

Seeing as such class does not already exist, how about giving some course credit for every third year without a job? No. Oh well, just thought I’d ask.

Anyway, good luck to all of you and may Santa bring you an offer this holiday season.

By Karin M. Gunter

In the midst of all the rush to complete casenotes, outlines and the like, I find it necessary to take a few minutes to address the issue of students who are working part time jobs in a worrying yet growing trend in our society. This trend, though not new, found its most recent resurgence in the widely publicized and horrific horror of Charles Stuart, Stuart, in an attempted insurance fraud conspiracy, shot and killed his pregnant wife, Carol, at point blank range in their car in October, 1989. He then called Boston police on his car phone, and upon their arrival described the assailant as a “black man in jogging clothes.” Carol Stuart died shortly after precipitously giving birth to the couple’s son, Christopher. The child died 17 days later. Stuart was found guilty of first degree murder and sentenced to death on May 5, “The Washington Post, Nov. 3, 1992, at A3.

Philadelphia has also had a part in this wave. On January 7, 1989 a young mother, Terri Brown, reported that her 5 week old Zachary, was kidnapped by two black men while on her way to the pediatrician’s office in Northeast Philadelphia. Ducit alleged that one of the men grabbed her around the neck while the other grabbed her son and purse. Both men reportedly sped away in a car. Later it was discovered that Ducit had actually drowned and dismembered her son disposing of his remains in garbage bags. (See G. Bovhill et al., “Baby Not Recovered From Fishtank,” The Philadelphia Daily News, Jan. 12, 1989, at 3.)

And more recently, Susan Smith in Union, South Carolina alleged that while waiting at a traffic light a black man forced Smith out of her car and sped away with Smith’s two sons in the back seat. Smith was able to provide a detailed description of her assailant which launched a nationwide search. On Thursday, November 3, 1993 Smith was arrested after OPEN LETTER Page on Cont page 7

By D avid Dai ge

People orally study philosophy when they go to college, but most law students were not philosophy majors in college. Nevertheless, you may have taken some formal philosophy courses or not, all of us have thought about philosophical problems on our own at one time or another: whether we can know anything; whether anything is really right or wrong; whether life has any meaning; whether death is the end. Philosophy is thus different from mathematics and science. Unlike science, it does not rely on experimental observation and testing. Unli ke math, it has no formal methods of proof. With this brief introduction to the essence of philosophy, an introduction into philosophy and law seems worthwhile, since, although, we are at law school and we should at least occasionally delve into the deeper issues involved. We write about the subject of the law and Legal Education,” Dr. R.M. Huchins of the University of Chicago said: “The student here is not necessarily the cause of his own existence, it must first be, and that the causes of its being are not the same as the causes of its change. Knowing that the student exists, we must understand the student and his role in light of the causes of his being. Knowing that the student exists, we must understand the student and his role in light of the causes of his being.

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competing networks for television rights, from etc. They thus enjoy the benefits of and from companies competing for the rights encompassed within the same major league.

BASEBALL Cont from Page 1

encompassed within the same major league.

Owners also enjoy profits resulting from the competing networks for television rights, from vending companies for the sale of hot-dogs, and from companies competing for the rights to use team logos on T-shirts, hats, pennants, etc. They thus enjoy the benefits of competition without having to be subjected to.

Jeffrey Moorad pointed to another problem in the dispute between players and owners: the application of "old-school analysis" to a big business, multi-media situation. "This is no longer a group of teams run by owners." Moorad stated, "but with media managers, lawyers, and other industries involved, it has become more of a big business problem of increasing complexity."

Moorad also noted that although it is hard to feel sorry for a baseball player making 1.2 million dollars per season, those salaries have risen proportionately to the rise in revenue from the baseball leagues, and should not be considered astronomical in light of the overall profits from the industry.

Gerry Crawford, giving the umpire perspective on the strike, tended to side with the players, offering that "management has created a monster, and has been unable to control it. They now want the players to control themselves."

Moorad compared the current baseball situation with professional football and basketball, stating that the challenge of the baseball owners will be in distributing big revenues among the smaller clubs, and to the players. In professional football and basketball, a meaningful revenue sharing program has worked in distributing the lion's share of revenue among the teams. Baseball owners will have to "bite down and get realistic," Moorad said, in order to resolve the dispute.

On the subject of salary caps, Orza stated "a salary cap is a rule by which an owner pays less than market value for a player. Who would agree to that?" He noted that big baseball clubs desire caps to curb spending on players, but the smaller clubs would rather keep things as they are. If revenue sharing is in place, however, the small clubs might agree to a salary cap in exchange for money from the big clubs.

Crawford suggested that a salary cap was not the answer to the problem, and offered that somehow the owners would eventually get around a cap if they wanted a player badly enough.

Jody McDonald asked "how can owners ask players to go from a 58% share of profits to 5% when baseball is still making money?" Moorad agreed, reminding the audience that these players are among the best in the world in what they do. They have an incredible talent level and should be compensated for making into the arena of professional sports, a feat accomplished by only a select few.

McDonald did not agree with this favorable rendering, adding that players like Dave Winfield should not be so canonized for their manipulation of professional teams for greater salaries. (Winfield bargained between the Toronto Blue Jay and the Detroit Tigers for a 2.25 million dollar salary.)

Orza contended that the ball players are not greedy, but that they are giving up money now, by not playing, so that future ball players can benefit. Some are giving up over one million dollars and part of their short professional lifespan so that labor conditions will improve for those who come after them.

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Friday - January 13
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Saturday - January 28
Quarter-Final Arguments, Semi-Finalists Announced

Wednesday - February 8
Semi-Final Briefs Due

Tuesday - February 21
Semi-Final Arguments

Friday - March 3
Final Briefs Due

Saturday - March 18
FINAL ARGUMENT

NOTE: This schedule is tentative and schedule to change at the discretion of the Moot Court Board.
Natural Law Cont from page 5

He insisted that right is not a postulate of a pre-existing framework within which law must operate, but is actually a product of the law: "I think that the sacredness of human life is a poorly municipal idea of no validity outside the jurisdiction. I see no reason for attributing to man a significance different in kind from that which belongs to a baboon or a grain of sand." (Holmes-Pollack, Letters, Vol. II, pp. 13, 36, 252). He insisted on divorcing all considerations of morality from the law, insisting, for example, that the violation of a contract entails no more than a liability for damages. He explained, "But such a mode of looking at the matter stinks in the nostrils of those who think it advantageous to get as much ethics into the law as they can." (Path of Law, p. 172). He rejected the idea of absolute rights, and the possibility of absolute truth, and once said that "truth was the majority view of that nation that could kick all others." ("Natural Law," Papers, p. 310).

In 1951, Herbert Hoover, speaking of our nation said: "Our greatest danger is not from invasion from foreign armies. Our dangers are that we may commit suicide from within by complaisance with evil. Or by public tolerance for scandalous behavior. Or by cynical acceptance of dishonor." Perhaps we should for scandalous behavior. Or by cynical complaisance with evil. Or by public tolerance looking at the matter stinks in the nostrils of those who think it advantageous to get as much ethics into the law as they can."

OPEN LETTER Cont from Page 5

having confessed to drowning her young sons. (See R. Davis, "Town Feels 'Pain, Betrayal,' Outrage," USA Today, Nov. 7, 1994, at A3.)

Like any other senseless crime, the above tragedies involve many victims and many unanswered questions. What could drive a husband to stump to the level of brutally murdering his wife and causing the premature birth and death of his own child? Or a young mother to drown and mutilate the body of her young child? And then there are the children; beautiful, young, innocent, trusting and betrayed. They have been betrayed by the very ones who offered them the chance at life.

Yet there is another group of victims that has been equally betrayed in these matters. This victim is the African-American male. Almost without question, mainstream America accepts as a conclusive presumption the allegation that a criminal perpetrator is a black male. Many young African-American males have been stopped, searched, detained and otherwise accorded based on faceless accusation, suspicions and general paranoia. Much more disturbing however are the witch hunts resulting from total fabrications made by those in the mainstream who have learned that the best way to commit a crime and avert attention is to point to this nation's easy scapegoat, the black male.

Perhaps the events cited above and the countless others like them point to a deeper rooted ill in America. Perhaps they are a signal that all is not well in "the land of the free and the home of the brave." I remember during the first inauguration ceremonies for the former Mayor Harold Washington, the first black mayor of Chicago, he stated it is hard being a black male in America. Perhaps he had the insight to see that although our schools are integrated and our doors are theoretically open to all who seek asylum here, the United States has a serious problem within its borders. Its promise of freedom and self-determination has a decidedly limited scope for the black male. He is free, yet subject to the false accusations of a racially intolerant and biased populace. He may determine his destiny as long as he does not happen to look like the fictitious bogeyman created in the minds of those who are afraid to look in the mirror to see the real criminal.

As future lawyers, we represent a specialized group charged with the formidable task of upholding the law. We study black letter law and its application to various fact patterns in an endeavor to learn rules and general lawyering skills. Whether we are wearing the hat of advocate, investigator, lawyer or intermediary, we play an influential role in the fabric of American society. It is my hope that in our development we are also challenging our minds to expand.

There is no place in our society in particular and our world in general for the repeated and continued victimization of the African-American male. I do not mean to suggest that all accusations are faulty. Clearly this is not the case. But what I do mean to say is that we must reassess and restructure our administration of justice in America. No longer should we provide an environment whereby innocent and often upstanding people are subjected to the whims of a decidedly fearful and fantasy prone public.

NFL Cont from Back Page

Kansas City has been a very un-Joe like throwback to the days of leather uniforms and no helmets on offense. The Steelers, with Neil O'Donnell nursing a sore elbow simply have been unable to generate much downfield. Bill Cowher is instead content to let the offense not lose it by handing off 35 times a game, and let the defense win it.

The Raiders are our pick to emerge out of the middle of the pack. They have begun to establish a running game with Harvey Williams. They have proven leadership in Jeff Hostetler. Most importantly, they have one of the best secondaries in football led by Terry McDaniels, with six interceptions. With comebacks capable of man to man coverage, a defense is free to stack the line of scrimmage to stop the run or blitz the quarterback without the worry of being burned deep. This is a trademark of Al Davis teams that does not receive the notoriety of the vertical passing game but is just as prevalent in Raider history (remember Leiter Hayes and Mark Haynes?). John Madden wrote in his first book that he and Al Davis used to disagree as to the number one need of any football team, an offensive line or a strong secondary. They both agreed they were one-two in importance. This philosophy is still present in Raider land and is a big factor in the team's current and future successes.

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excessive hype and excessive injuries. In a for. One did not get to enjoy the marquee feature all the matchups one would have hoped quite what it was cracked up to be, due to starting tackle Ralph Tamm's backup). Dallas meeting again, Troy Aikman will be able to grip (Williams is out for the year while Dent may of the line, lefthander Steve Young's blind impact Deion Sanders will have on this offensive line should the teams meet in the

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