

Case Materials on Environmental Law by Oscar S. Gray / Environmental Law by Frank Gray

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Cases and Materials on Environmental Law. BY OSCAR S. GRAY. Washington, D.C.: The Bureau of National Affairs, Inc., 1970. Pp. 1252 (excluding Special Supplement and Pocket Supplement). \$25.00.

Environmental Law. BY FRANK GRAY. New York, New York: Matthew Bender & Co., Inc., 1971. \$16.50.

Both the novelty of environmental law as a separate focus of legal inquiry and its expansive scope dictate that pioneer jurists in this field be judged substantially in terms of the specific goals they set out to accomplish in a vast complexity of legal and interdisciplinary studies. Although there are many possible perspectives to any environmental concern, both authors have directed their efforts to the students of environmental law. This audience includes not only the immediately perceived one of students in law school, but also the wider audience of those in practice. Indeed, this is perhaps one of those unique areas of law where professors, practitioners, and law students are all to some degree learners in a legal field that has equalled in interest, if not surpassed, the cynosures of poverty law and consumer law. Both writers are nonetheless clear that their aim is the availability of a useful law school text.

In his preface, Professor Gray is quite explicit that his casebook is designed "[p]rimarily as a teaching tool for law schools."¹ Although he hopes that the book may be of interest to other groups, it is evident that Gray has foremost in mind the needs of the law teacher and his student. His attempt is to tame the new field of environmental law with a modified "casebook" pedagogy that has become the hallmark of standard legal education in recent years. Gray presents both legislative and judicial materials without prejudice about which of these two governmental branches is best suited for the war on environmental degradation. Gray even advises the reader to avoid any "preconception" as to which clients do or do not deserve legal advice in the area of environmental law.² On the other hand, Professor Gray, while also writing for the law school student, is convinced that developments in environmental law have largely passed from the courts to the legislatures. Gray favors this trend inasmuch as it comports with his belief that legislatures are better able to balance environmental interests and to do a cost-benefit analysis of environmental problems. His concern is that the litigative process will protect private and specialized interest rather than the broad commonwealth.³

1. O. GRAY, *Preface* to CASES AND MATERIALS ON ENVIRONMENTAL LAW at V (1970).

2. *Id.* at VI.

3. F. GRAY, ENVIRONMENTAL LAW § 1.02(2) (1971). Others have taken the position that public interest litigation, working through the common law, provides most of the current legal remedies for public protection. N. LANDAU and P. RHEINGOLD, THE ENVIRONMENTAL LAW HANDBOOK at 20, 155-214 (1971).

Cases and Materials on Environmental Law succeeds in proving that the careful editing and cohesive arrangement necessary for casebook method virtues can be used to subdue the quickly growing thicket of tangled statutes, cases, administrative decisions, and ordinances that make up the unexplored wilderness of environmental law. The author has carefully pruned legislative material down to its essential core with the same facility that skillful law writers have traditionally used in relation to cases. The juxtaposition of pointedly arranged cases and materials gives the reader a sense of dealing with a unified legal system. Although American legal education has probably not yet devised the ideal way to absorb increasingly important public law statutes into traditional casebook methodology, Gray's attempt is a creditable performance. He also wisely consigned the full text of the lengthy *Clean Air Act of 1970* to a special supplement where it would not interfere with the flow of textual development. However, the real achievement of *Cases and Materials on Environmental Law* is that while maintaining a concise casebook approach, the author does not sacrifice scope for analysis. In organized fashion Gray touches upon every aspect that might interest a current student of environmental law. His text covers the latest developments in population growth, historic preservation, herbicides, aesthetics, weather control, and international law problems, all of which are covered either very little or not at all in *Environmental Law*. At the same time *Cases and Materials on Environmental Law* also contains an in-depth study of the legal and extralegal aspects of such landmark confrontations as the Miami Jetport controversy.⁴ It is no mean achievement for a book operating within the traditional limitations of casebook writing to convey a sense of both breadth and depth. If nothing else, Gray proves that the casebook method still contains sufficient vitality in even the most recent of legal studies.

Gray acknowledges that his book is a "very long course book" which is perhaps best suited for several different courses each using a different part of *Environmental Law*. He intends that this book should be used for second and third-year courses.⁵ Unlike Gray's volume, *Environmental Law* is clearly no traditional law school text. The pages are collected in a hard-covered loose leaf binder with each chapter subdivided into decimated sections of unequal length. In addition to the decimal system, each chapter is also internally paginated, which is probably consistent with the author's design that the text be parceled out between several different courses. This form alone would indicate that here is a volume more destined to be a handy sidekick for a research project or seminar rather than a basic teaching text on environmental law. Although *Environmental Law* does not grapple with all the environmental nuances posed by Gray's edition, it does provide broad coverage in the basic areas of water pollution, air pollution, solid wastes, and land use planning. Consistent with its author's belief in the basic efficacy of the legislative process in environmental matters, *Environmental Law* scores a superior success in revealing important legislative history behind recently enacted environ-

4. *Supra* note 1, at 1001-74.

5. *Supra* note 3, at iii.

mental legislation, including especially valuable congressional subcommittee reports and Senate reports. Nevertheless, the basic difficulty in using *Environmental Law*, aside from its meant-to-be-browsed environmental law reporter format, is the massive, somewhat undigested and undigestible block of law review articles, cases, statutes, ordinances, technical studies, and legislative history that could profitably be read at random rather than in any sequential form. Actually, the "Notes" and "Problems for Research and Discussion" that follow the original source material are oftentimes lengthier and more informative than the source material meant to be expounded.⁶ In fact, some of the original source material, especially charts and statistical material, would be better suited to an appendix or supplement. Even when considered as a pure research tool, the sketchy eight page index makes it a more cumbersome reference work than the twenty page index of *Cases and Materials on Environmental Law*. The table of contents in *Environmental Law* is only slightly more helpful in locating specific legal material. Here Gray has foreseen the difficulty in his work by providing both a summary table of contents and then a more detailed table of contents which consists of an excellent overview for the legal elements of his book.

In terms of the specific audience designed to be served by both authors, *Cases and Materials on Environmental Law* seems better suited to the needs of law students. If law study is characteristically a systematic and organized attempt to analyze the principles and policies that bind together discrete specimens of legal data into a system or process, then Gray's work better meets this need in an introductory course on environmental law. Chapter one, the cornerstone of the text, is specifically designed to reveal the perennial principles and policies of environmental control from *William Aldred's Case*⁷ through the *National Environmental Policy Act of 1969*. By tracking down explicit statements of legislative and executive policy in scattered executive orders and statutes and by gathering them all in one chapter, Gray has dramatically confronted the student with all the consistencies and inconsistencies of many of our national environmental goals. It is in fact doubtful that the legal profession can wisely regulate the environment until fundamental principles and policies are first made explicit and established in some ordered relationship. Otherwise, environmental law runs the continued danger of developing willy-nilly into a scattered wasteland of grandiose, multijurisdictional laws often working at cross-purposes for lack of adequate consensus on fundamental premises. Gray provokes the student to develop a principled philosophy toward the environment by exposing him to existing ones in chapter one and by pointing toward the future in chapter seven: "Quo Vadis?" *Environmental Law* does not provide this same sense of ultimate intellectual confrontation; it seems better designed to catch the latest insert for the loose leaf collection of assorted environmental laws. It is significant that not until the last chapter of *Environmental Law* does the reader come upon the *National Environmental Policy Act of 1969*. Both books are designed for students and

6. *Supra* note 3, at §§ 8.01, 10.01.

7. 9 Co. Rep. 57b, 77 Eng. Rep. 816 (K.B. 1610).

both provide a wealth of the latest environmental law materials. But whatever be the needs of a researcher, the needs of the law student are still better served by a liberalized casebook approach to environmental law than by a mismatching between a casebook and a loose leaf service.

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