



Terry D. Avchen; Senior Partner and Chair of the Environmental Practice Group; Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP; Los Angeles

[by Regan Morris]

Environmental attorney Terry D. Avchen has been lauded by several publications as one of the best lawyers in America. LawCrossing speaks with Mr. Avchen about his practice and the many changes in environmental law since he started practice in the late '70s.

Much has changed in environmental law over the last few decades, but attorney Terry Avchen said the basic principles are the same: Who cleans up the environment, how does it get done, and who pays the bill?

Avchen, who graduated from UCLA School of Law in 1978, said he knew even as a student that he wanted to work in environmental law. He viewed the profession as a way to change the world by helping the environment, while making good money.

"I began practicing as a general litigator, and I thought that was the right way to go," he said. "In the back of my mind, I thought I would lean toward environmental law, and the opportunity arose around 1984 to work on a case on behalf of Bank of America, which was a client of mine."

At the time, Bank of America was being asked as the trustee of a trust to clean up a property, he said, adding that the initial estimate to clean up the property was \$500,000. The beneficiaries refused to clean it up, Bank of America resigned as trustee, and eventually the state of California unsuccessfully pursued the bank.

"Cut to the year 2000, and at that point in time, finally, the bank was considered free from any liability by the state, all of its legal fees were paid for, but the interesting thing about it is that the cleanup was not valued at \$500,000," Avchen said. "It was now valued at \$30 million. So that should give you an

idea about one of the issues and one of the problems early on associated with environmental law."

The disparity was way beyond inflation. The problem was not that the contamination had become significantly worse. In 1984, the difference between estimates and reality in costs to clean the environment was routinely disparate, he said. With technology, experience, and new insurance products, that has changed significantly.

"Years ago, it was not that uncommon to have significant disparity between estimate and reality," he said. "In many cases—many, many more cases than not—today, you will find the estimates for costs of cleanups are pretty realistic. That enables people making the decisions about taking on the risk of buying contaminated property or buying a business to assess that risk in a real way and to do a cost-benefit analysis and make a determination as to whether the financial deal works."

Because there are so many insurance options now for businesses buying contaminated properties, which require clean ups, Avchen said he believes contaminated property is one of the most undervalued groups of real estate assets. For example, if you think it will cost \$40 million to clean a property, you can insure that if it costs \$100 million, you won't have to pay the overage. If there is a possibility of toxic tort lawsuits in the future, you can insure around that.

"There are all of these risks that can be insured around, and clean-up companies are much more sophisticated and experienced compared to what we had 20 years ago," he said. "There is a real estate bubble now, some would say. It's a statement that I agree with. When people hear the words 'contaminated properties,' they cringe, they shy away, they really don't want to get involved. As a matter of fact, it's worth a taking second look."

Avchen believes more and more businesses will consider buying and cleaning up contaminated properties in the coming years.

And chances are many will ask Avchen to help them navigate the complexities of environmental law. Los Angeles Magazine recently named him one of its "2004 Super Lawyers"; and starting in November 2005, Avchen will be coming to an airplane near you: He will be featured in an in-flight segment called "America's Best Lawyers," sponsored by Forbes Radio.

Avchen's practice is diverse, and he represents both individuals and companies. While some blame big companies for wrecking the environment, Avchen said that is a simplistic view and many big businesses are interested in protecting the environment.

"If there is any theme in what I preach to my clients, it is that it's good business to be environmentally conscious," he said. "And I would say that I feel comfortable that my



clients believe in that approach to business and that they have for some time."

Avchen, who volunteers with an organization to help the homeless, said young lawyers have many opportunities to get involved in environmental law and that volunteering at an environmental organization could be a good place to start.

One of the founding partners of Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, Avchen also chairs the environmental group.

"There are a lot of firms that don't have environmental departments, with reason. It's the kind of area of law, which if you don't practice, it's so easy to step on a landmine; it's not worth doing it," he said.

The firm now has twelve people working on environmental projects, including many litigators. "A significant portion of our work revolves around the issue of who pays, and that issue involves litigation, where we represent both plaintiffs and defendants. These cases can be complex and involve significant dollars." Avchen said helping to start the firm from scratch was one of the greatest challenges of his life. They started the firm in 1988, and Avchen was one of the youngest founding partners.

"It was the scariest time and most exciting time of my professional life," he said. "What we were able to do was to build a firm from scratch the way that we wanted it to be built. It was very exciting, and today we're enjoying the benefits of that. There is a closeness among the partners; there is a real feeling of camaraderie, of cooperation."