

NEAL WEINFIELD

Renaissance Man Takes on Big Government

by Mike Bailey



Both in law and in life, Chicago attorney Neal Weinfield is at his best when the deck is stacked against him.

That's fortunate for his clients since, by his reckoning, environmental laws are often drafted to stack the deck against industry.

Weinfield, a partner at **Schiff Hardin LLP**, is considered by peers, clients and environmental engineering experts to be one of the foremost environmental attorneys in America. It's reputation earned in a field with obtuse regulations and poorly worded statutes.

His practice includes defending clients against liability for remediating hazardous waste sites, counseling in and defense of enforcement actions brought under the Clean Water Act and Clear Air Act and climate change projects.

"I'd say if you laid all the (environmental) regulations on top of each other, it would reach about 12 feet high," he said. "If you included all the guidelines, it would reach hundreds of feet."

This often poses a nightmare for his clients

who, through no fault of their own, have run afoul of the complex regulations and face tenacious and unrelenting government agencies.

But complex challenges and long odds suit Weinfield well in both his professional and personal life.

As a lawyer in constant demand across the country, he constantly endeavors to find creative solutions for his clients. In his personal life, he constantly challenges himself as a sculptor, ice climber and parent of two exceptional children.

Weinfield's clients in environmental law cases did not set out to break the law he says.

"These are people who typically were caught in the ambiguity of the law. They wanted to comply and believed they were."

Defending clients against federal agencies is costly and time consuming since some cases can take years from filing to resolution. Complex legal and technical environmental analyses can be expensive. But those costs can pale in comparison to government fines

and compliance measures that can reach into the tens of millions of dollars.

Even with the best legal representation and compelling evidence, winning cases against the government can be difficult.

"They wrote the regulations," Weinfield says. "Until recently, there were not many precedents to rely on. That has changed over the past few years as more cases have been tried." But it is still an evolving field of law with new regulations and case law on a daily basis.

"It doesn't really matter whether Republicans or Democrats are in office. The attorneys working on the cases don't change," he says. "The government has endless resources and the regulations are written so that industry is not designed to win."

Quick Return of Nabbed Equipment

His clients often ask Weinfield to take an aggressive posture with regulators. He remembers one case in which the government confiscated his client's equipment without any

notice, warrant or subpoena. The action put the client out of business. Weinfield got the call on a Friday night.

"I drafted a civil rights complaint over the weekend. On Monday morning, I got a call from the agents and regulators to discuss compliance issues. At the beginning of the call, I told them I had added their names as defendants in a civil rights case, and that I would file suit unless my client's equipment was returned immediately. Ninety minutes later, they returned the equipment."

Weinfield often is required to conduct an analysis of the case at the "micrometer level." Chemistry, geology, equipment operation and even natural forces are evaluated in almost every case. He tries to see aspects of the case others have missed. To overcome the difficult statutory burdens, he then has to become very creative.

"His preparation is second to none," says Bruce Clegg, of Conestoga Rovers & Associates, an engineering and consulting firm advising municipalities and industry on environmental matters and infrastructure. Weinfield has called upon Clegg's expertise in several cases and Clegg's testimony carries great weight.

"Our firm did the original site investigation and design remedy for Love Canal in New York," he says, citing one of the worst environmental disasters in United States history.

During the course of a trial, Weinfield relies on documents, graphs, photos, soil analysis and the testimony of highly respected experts to make his case. While some cases can take several years from filing to disposition, Weinfield said the presentations at trial must be intense and dynamic.

"If your case is boring and your presentation is boring, you should really ask if the case should even be brought to trial," he says.

Weinfield has amassed an incredible volume of knowledge about chemistry and industrial processes and their interaction with the environment. When necessary, he relies on experts like Clegg.

"I testified in a case in federal court in Wichita, Kan.," Clegg remembers. "Neal represented a trust that was being sued over a huge plume of pollution discovered in ground water."

Weinfield remembers it well. He was first chair of the defense of a petroleum refiner and solvent distributor sued by the City of Wichita.

"My client owned a solvent distribution terminal and we were sued for allegedly contributing to a six-square-mile plume of chlorinated solvent beneath downtown Wichita," he says.

While the city sought to hold his client responsible for the majority of the plume, Weinfield successfully demonstrated it was not

possible to ascribe all the pollution to his client.

"Numerous other businesses in town used chlorinated solvents, including the plaintiff, the City of Wichita," says Weinfield. "We proved that the other plumes, including the city's, were the source of almost all the contamination. We also showed the chlorinated solvent plume allegedly coming from our client's former property had been co-released with gasoline, which caused rapid biodegradation of the chlorinated solvent plume. The court held that instead of being liable for miles of contamination, our client was liable for less than a two-block area."

After an eight-week trial, the court found his

defense. Clegg said he is impressed by how thorough Weinfield is prior to trial.

"His reputation in the industry is that he is very detail-oriented. He meticulously explored every detail and every angle and when trial starts, he is fully prepared. I've never met anyone who is better at preparation than Neal," he says. "He gives his clients 100 percent."

In one case, he represented a client who retained him after the U.S. Customs Service sought to collect up to \$20 million in importation duty and criminal penalties. The client imported resins, which is the secretion of, among other things, pine trees. The resins are later refined and have a variety of uses, including varnishes,



Neal Weinfield of Schiff Hardin spends much of his "leisure" time ice climbing and sculpting. His friends say Weinfield continually challenges himself in both law and pursuit of his passions. Here, Weinfield presents one of the sculptures he makes and often donates to be displayed outside public buildings like libraries and schools.

client was liable only for about 1.72 percent of the \$33 million cleanup, millions less than sought at trial.

Weinfield has made similar arguments against other government agencies in other cases.

The whole issue of what is a pollutant and who should be responsible for cleaning it up and how, is what drives environmental law.

"When I teach environmental law, I ask students to name something that contains a hazardous substance," he says. "And then I tell them to hold up their pens because even ink can be considered a hazardous substance in some circumstances."

All About Those Pies

Weinfield said this demonstrates just how difficult it is to interpret the regulations.

"I am not representing businesses that are intentionally dumping toxic materials into the environment," he says. "These are people who are trying to do the right thing in a complex and often in an ambiguous regulatory setting."

No one is better than Weinfield at ferreting out small details around which to build a

perfumes and some industrial uses. Refined resins also are used to make rosin, which is used, for example, on violin strings.

The case hinged on whether the client was importing was rosin or resin. The processed rosin is taxed; the tree sap—resin—is not. Weinfield looked carefully at the description of the taxed goods in the Customs Tariff, "rosin and resin acids," and concluded that it was ambiguous. Is it the taxed, pure chemical "rosin acids and resin acids" on the one hand, or is it the duty-free pine sap, "rosin" on the other?" If the statute were ambiguous, the law would be construed in favor of his client.

"So I contacted a linguist at Northwestern University who had written an entire book about the meaning of the phrase 'pecan and apple pie.' Was it two separate pies, an apple pie and a pecan pie, or multiple pies containing both apples and pecans, or some pecans and some apple pies?"

"Our linguist prepared an expert report on the phrase's ambiguities and concluded that our client's interpretation was indeed reasonable. We met with the U.S. attorney and



There's more to Schiff Hardin attorney Neal Weinfield than the practice of law. Weinfield vigorously pursues his passion of ice climbing, pushing himself to his limits in the Wind River range in Wyoming and the Sierra Nevadas, the site of his next climb.

showed him our expert report explaining the linguistic ambiguities. We then asked him, "What are you going to do, hire your own linguist to tell us the statute is not ambiguous?" The investigation was dropped a short time later.

While he annually bills more than 2,000 hours, Weinfield has many interests outside the law. He is a true Renaissance man.

He's sailed across the Atlantic, routinely enjoys whitewater kayaking and is an avid and experienced ice and mountain climber. In his spare time at home, he is also a respected and accomplished sculptor, something he originally studied in school before entering law.

Into the Wild, Sometimes with Sons

"I go to the Wind River Range (in Wyoming) and the Sierra Nevada a lot," he says of his climbing expeditions. "The hardest part is when you are on waterfall ice, climbing over a protruding segment that actually forces the (you) to be parallel to the ground.

"In the movies, they always show the guy smacking his ice axe into the ice and it holds on the first shot. That's not reality. You'll do that and a big chunk will fall out, so you hit it again until it sticks. You have to be very careful to get a good hold and get the crampons in firmly. Sometimes there is water just a few inches under the ice. You'll poke through the ice with the axe and the water will shoot out of there like a fire hose."

Weinfield's wife, Mardah, has encouraged him to include their sons, Sam, 9, and William, 13, in his hobbies, something he has eagerly done. "Sam is an experienced climber and Will is an experienced kayaker. I take each boy on his own one-week remote wilderness trip with just me every year. Those are the best two weeks of the year."

Weinfield is preparing for his annual January climb in the Sierra Nevada.

"Usually we climb for more than 15 hours a

day. You climb up a 900-foot rock wall and you hurt a lot when it's over. You have to be very patient and conceive of solutions to problems that arise," an analogy to law that is not lost on him.

"There are times when you look down and wonder what you're doing up there," he laughs. "But I guess fun doesn't always have to be fun."

Bruce Wiesenthal, a partner at Schiff Hardin, says Weinfield is not only an elite lawyer, but also a dedicated parent.

"His children are exceptional," he says. "He has dedicated himself to them and wants to expose them to the world and to utilize their gifts. Raising gifted children can be a burden if the responsibility is not shared uniformly. Neal is an excellent parent."

Wiesenthal also admires the richness of his fellow partner's life.

"He doesn't waste his time," he says. "He has that Old World work habit. Even when he's relaxing, he's pushing himself. In fact, he's always pushing the parameters to test his limits. He doesn't use his time trying to escape, he uses it to test the limits of his skills and to express how he feels."

One of his outlets is the sculpting, a hobby at which he excels. His work is displayed in many public and private settings and is available for viewing at weinfieldsculpture.com.

Wiesenthal purchased some of Weinfield's sculptures years ago and has followed his friend's passion with interest.

"He was working with wood and he used water and clamps to shape it into free flowing wavelike forms which he then painted. It has a vibrancy and a life," he says. "Now he's interested in metal and builds fairly large pieces which can be displayed out of doors."

Giving Dying Man Joy

Weinfield often donates pieces to municipalities for display outside public buildings. Some of his work is on display in his

hometown of Highland Park, as well as Des Plaines and Deerfield.

"I donated one of my pieces to a school in Deerfield. The local newspaper carried a story about the piece with a picture," he says. Later he learned of a man who was dying of cancer who drew such joy from the picture of the artwork that he positioned it so he could see it from his hospital bed during his final days. "That was very humbling when his family visited me," he said.

Mark McGreenery has known Weinfield for 30 years, since their days at Cornell University, and considers him one of his dearest friends.

"He's just a really sweet guy," he says. "He's very loyal and very funny. He's conversant on a wide range of topics like politics, art, sports and, of course, the law."

McGreenery also has a theory about his friend's extreme hobbies, and sculpture in particular.

"I told him that as a lawyer he is concerned with rules and procedures, but with sculpture, it is all abstract, with no rules and no



With the encouragement of his wife, Mardah, Weinfield often includes his two sons, William and Sam, in his hobbies. Here Weinfield summits in a recent trip with Sam, then 9.

procedures. I think he likes it because it allows him to push the boundaries. He's a unique man with a wide range of interests, which is what makes him so fascinating."

Why does Weinfield think he continues to push so hard?

"In sculpting, or in law, I am using creativity to take on precedent and find a way to do it differently, distinctly. With climbing, I am seeking the intense experience of a new challenge."

Both themes are apparent in his legal practice. ■