I first encountered grizzly bears in a court room—though not in the flesh. I was a student working for the Pacific Environmental Advocacy Center (PEAC) a nationally-recognized, domestic environmental legal clinic of Lewis & Clark Law School in Portland, Oregon. As an independent organization, the Center’s lawyers collaborate with students to protect natural resources through pro bono representation and litigation, training, and education. Law students gain experience, while the natural world is defended by a host of eager young lawyers.

I had attended law school with the hope of effectuating some sort of change for the better for nonhuman animals—change beyond what activism could accomplish. I felt somewhat desperate about dwindling species and cruelty to animals. At the time, I was just beginning to understand the possibilities of the legal system for protecting animals, and this was my first chance in the courtroom. I had been assigned a lawsuit against the Forest Service and the Fish and Wildlife Service (FWS) for the Flathead National Forest. Though we were mere students working with supervising attorneys and professors, our job was to convince these government agencies to comply with their own forest plan standards for protecting brown bear (grizzly subspecies) habitat (Swan, “Lawsuits” 3). Government agencies—officially responsible for protecting wildlife—are too often the deciding factor between wildlife populations flourishing or going extinct. Yet convincing the Forest Service and FWS to comply with federal laws—and with their own regulations—can be nearly impossible.

With only two years of law school behind me, I could barely keep up with my supervising attorney while he explained the complicated legal system surrounding endangered wildlife, including brown bears, and the agencies charged with protecting these diminishing populations. At that time I still believed that Congress passed laws like the Endangered Species Act and the National Forest Management Act to legally provide animals and public lands with protection because this was sensible and necessary. I did not see that

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1 Now Earthrise Law Center: http://law.lclark.edu/centers/earthrise/.
2 Special thanks to Professor Daniel J. Rohlf for his inspiration as a teacher and tremendous guidance.
agencies like the Forest Service and FWS perpetually created loopholes to get around these legal mandates, or that organizations had to bring these government agencies into court to combat violations, uphold laws, and protect species. I had no understanding of the ensuing “battle of the briefs,” whereby each side would throw creative, complicated arguments at a judge in the hope that he or she would “take their side.” I had no conception of the hours and hours that these courtroom battles consumed, or the cost of such battles to small environmental organizations, pitted against more expansive pockets of government agencies. At that time, I was a naïve student who believed that justice for animals would be served in U.S. courts because the Forest Service and the Fish and Wildlife Service were breaking their own laws. It seemed to me that all we needed to do was to point this out. In my mind, it was as simple as that. Indeed, I was naïve.

Grizzlies in Trouble—Gaps in the Endangered Species Act

Historically there were about 50,000 brown bears in North America. Their numbers have been reduced to somewhere between 1,000—1,200, largely as a result of human expansion and hunting. Brown bears in the U.S. now exist only in fragmented populations in Alaska, Wyoming, Montana, Idaho, and Washington (McLellan et al).

Bear habitat is harmed and diminished by our ever-expanding human numbers. Humans build homes and roads connecting homes. We log forests and mine deep in wilderness areas, forcing bears to move to less desirable habitat, including rugged mountains and remote forests. Bears wander into communities that have been built in their habitat, and are shot and killed because humans have claimed new land and have no intention of sharing “their” area with wildlife—especially grizzlies.

Grizzlies are listed as “threatened” under the U.S. Endangered Species Act (ESA), and remaining populations are therefore entitled to certain protections guaranteed by law (16 U.S.C. § 1531 et seq.). Most people would assume that this includes some bulletproof government protection, but this is not the reality. While laws such as the ESA establish general goals (like conserving threatened and endangered species), most of the details as to how this will be accomplished are left to government agencies. Still, the ESA does provide some important protections. For example, Section 7 of the ESA includes critical habitat designsations and substantive consultation requirements for threatened species. Consultation requirements are designed to prevent federal agencies from jeopardizing the continued existence of listed species and from destroying designated critical habitat. Consultation requirements obligate federal agencies