Great Strides in Environmental Protection Mark Manila Meeting

By Nicholas A. Robinson

 Philippine Chief Justice Hilario G. Davide, Jr., presided over the first gathering ever held in South East Asia of Supreme Court Justices, High Court judges, and other judicial officers on the role of the judiciary in environmental protection. The Philippine Supreme Court and the UN Environment Programme organized the sessions, with the co-sponsorship of the UN Development Program and the Hanns Seidel Foundation, March 4-7, 1999. Judicial delegations attended from 9 nations in the region.

The President of the Philippines, Joseph Ejercito Estrada, opened the meeting with a bold message:

“"It is said that planet earth has been around for some 4.5 billion years, although man has been around only for about 1.5 million years. Yet, starting with the Industrial Revolution barely a hundred and fifty years ago, man learned to exploit natural resources faster than these resources could replenish themselves. Later on, we realized that not only were these resources very limited, but by exhausting them, we actually threatened the support systems upon which all forms of life depend. Our denuded forests could replenish themselves. Later on, we realized that not only were these resources very limited, but by exhausting them, we actually threatened the support systems upon which all forms of life depend. Our denuded forests

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New Pace Law Dean Bolsters Environmental Program

Earlier this year Pace University President Patricia Ewers announced the appointment of David S. Cohen, dean of law at the University of Victoria in British Columbia, Canada, as the dean of Pace University School of Law. Dean Cohen was asked by Environmentally Friendly for his vision on the Pace Environmental Law Program. Here are excerpts from his reply:

My scholarship and writing in the environmental area have been focused on three major topics — forestry law, institutional analysis of sustainable development, and eco-certification processes.

In one obvious way, the issues of water resources, forests, fish, aboriginal land claims, and managing conflicting land use issues at a Provincial level are at the forefront of environmental concerns in Western Canada, and my work has thus been linked to those very real concerns. However, I have also written on the relationship of globalization and local land use management, and have recently been appointed to the first Expert Group appointed under the North American Agreement on Environmental Cooperation which is reviewing Canada’s enforcement of fisheries legislation against hydroelectric firms in British Columbia.

It is my impression that the globalization of trade and the development of a new world economic order, with vastly increased trade among nations, will require increasing co-ordination of environmental agendas at an international level. We are already seeing the need for integrated multi-national agreements to deal with these issues — manifested in the NAFTA side agreement, the Montreal Protocol, and the increasingly active role of the international...
Alumni Corner

Irene P. Atney ‘90 LL.M. is counsel at Brookhaven National Laboratory and the Princeton University Plasma Physics Laboratory.

Barbara Brenner ‘93 is practicing water law in California.

Daniele Cervino ‘89 has become a partner at the Hackensack, NJ law firm of Cole, Schutz, Meiser, Forman & Leonard, where she practices environmental law.

Bobbie Anne Flower ‘98 is practicing environmental law at Nixon, Hargrave, Devans & Doyle, LLP.

Martus Granirer ‘93 is now in solo practice focusing on land use and land conservation matters.

Tara N. Swinchat ‘96 is an Environmental Analyst for Northeast Utilities, working with environmental regulations and doing community outreach.

The Editor is pleased to receive materials from Alumni for publication in this column.

Non-Point Sources: Environmental Program Briefs

Superman on the Environmental Faculty?

An article in The New York Times about Professor Karl Coplan’s efforts to prevent the expansion of what would be the second-largest shopping mall in the United States, implied that the Co-Director of the Pace Environmental Litigation Clinic commuted to work daily by first kayaking across the Hudson River, then bicycling the rest of the way to his office at the school’s White Plains campus.

Coplan denied this super-human feat, “no one ever said everyday.”

Douglas 100, Scalia 11

Professor Richard J. Lazarus of the Georgetown University Law Center delivered the Garrison Lecture at the law school on March 11, 1999. His topic involved the evaluation of some 240 Supreme Court cases on environmental issues, and the development of a rating system of the Justices. The rating ranged from 1 to 100, with 1 being the least “environmentally friendly.” While Lazarus noted that scores in the middle range (from 33 to 67) were inconclusive, there were Justices whose scores clearly demonstrated their attitudes. Justice William O. Douglas (to no one’s surprise) scored a perfect 100. On the other end of the spectrum, with an 11.8, is (again no surprise) Justice Antonin Scalia.

The Garrison Lecture can be heard (and seen) in its entirety on the Internet at the law school’s web site (http://joshua.law.pace.edu/env/newvell/researchprojects.html).

Pace University Environmental Law Initiatives Around the World

REPORTS FROM ARGENTINA, PUERTO RICO, SENEGAL, & ITALY

Buenos Aires, Argentina: Sustainable Development in Argentina — Professor John Nolon.

The Constitution of Argentina was amended in 1994. Added was Article 41 which gave to the country’s citizens a “right to a healthy, well balanced environment, suitable for human and economic development that does not compromise the needs of future generations.” That year, I received a Fulbright scholarship to go to Argentina to learn what that country’s plans were to implement this unique constitutional ideal and to offer any assistance that seemed appropriate.

I began by organizing a seminar of environmental law experts in the U.S. who were asked to address the strengths and weaknesses of our environmental protection regime to assist Argentines in evaluating whether and to what extent to emulate it. A similar group of experts was assembled in Argentina to evaluate the conclusions of the U.S. seminar and to discuss effective strategies available to national, provincial, and local leaders.

The result of my work was a proposal for the adoption of a framework law, one which lays down basic legal principles for sustainable development, without codifying the relevant statutory provisions. This proposal, the results of my research, and the remarks of dozens of U.S. and Argentine professionals and leaders who spoke at convocations I organized were published in both countries.

Students at Pace University School of Law were involved in this work. One traveled to Argentina to complete an inventory of its environmental problems which was published. Another researched the framework laws of other Latin American countries and wrote an article on the subject which was also published. A third became the editor of a symposium edition of the Pace Environmental Law Review which contained over 25 papers and presentations that were commissioned in the course of this Fulbright-
11th Annual
National Environmental Moot Court at Pace

CONGRATULATIONS TO THE 1999 WINNING TEAM
THE UNIVERSITY OF HAWAII WILLIAM S. RICHARDSON SCHOOL OF LAW

TEAM MEMBERS
Kaiulani Kidani, Paul Tanaka, Elijah Yip

TEAM COACH
Professor Denise Antolini

The Finalists
UNIVERSITY OF HAWAII
Elijah Yip, Paul Tanaka, Kaiulani Kidani

HASTINGS COLLEGE OF LAW
William Sloan, Justin Locke, Diane Korbel

UNIVERSITY OF TEXAS SCHOOL OF LAW
Leah Castella, Charles Ragland, Edwin Aradi

Best Oralist
LEAH CASTELLA
UNIVERSITY OF TEXAS SCHOOL OF LAW

Best Brief, Appellant
OHIO STATE UNIVERSITY COLLEGE OF LAW

Best Brief, Appellant/Appellee
SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW

Best Brief, Appellee
UNIVERSITY OF MICHIGAN SCHOOL OF LAW

Save the date
MILLENNIAL NATIONAL ENVIRONMENTAL MOOT COURT COMPETITION AT PACE
February 17-19, 2000

The Winning Team (l. to r.): Coach Professor Denise Antolini, Elijah Yip, Paul Tanaka, Kaiulani Kidani.

Master of Ceremonies Dick Cavitt clowns around with Gail Hintz ’92.

Keynote Speaker, New York State Department of Environmental Protection Commissioner John Cahill, ‘85, LL.M. ’91 with (l. to r.) Dick Cavitt and sponsors David Yetter, President of Texaco’s Environmental Health and Safety Division, and Rickard Pfizenmayer, Texaco Assistant General Counsel.
**Introduction by Dean Richard L. Ottinger, Pace University School of Law:**

I would like to welcome everybody to this marvelous conference, appropriately coordinated by Pace Law School, and Professor Robert Goldstein. Pace Law School, as you may know, has one of the most prominent environmental law programs in the nation, for which we are very proud. A number of our faculty, including Ann Powers, is going to participate in the proceedings today. Also, Consolidated Edison (Con Ed) with whom I have had a long involvement, will be participating in the proceedings today. Con Ed has become one of the leaders in corporate responsibilities as far as the environment is concerned. It is leading the way as a good corporate citizen and working out ways of meeting government regulations with respect to environment and safety. Finally, I would also like to thank and acknowledge Kate Mau for her efforts in putting this event together and Peter Lanahan, who is the Con Ed Vice-President for Environment and Safety.

You will have the privilege of hearing a speech from Sherwood Boehlert, with whom I served in Congress. I was in Congress for twenty years; in fact, I was the first congressman to speak out on environmental issues and try to save the Hudson River, which at that time was quite polluted. I must confess, and not with regret, that after being in Congress for sixteen years, I took part in framing the environmental regulatory system, by which the corporate representatives here still abide today, and I think it has served us quite well. This system has produced noticeable decreases in pollution in water and air. However, it did so almost entirely under a command-and-control system, with specific requirements for pollution diminution, that had to be met under penalty of damages, injunctions, or citizen action suits. This is still very important, I think, as the basis for improving our environment, and I find that the corporate world as I deal with it, needs that uniformity.

My father was in the plywood business; he always said he would have liked to be able to have a sustained yield of logs, by requiring companies to plant as much as they cut down, but he could not do it on his own. This is a scenario where the government really needs to step in, so that competitors all have to meet the same requirements and I believe it is the same with respect to the basic foundations of regulation. However, I do think there is a real opportunity that is evinced by a corporate responsibility movement, which Con Ed, as a leader, has been able to move beyond the command-and-control, by working out ways of forming partnerships and creating incentives to

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**Professor Ann Powers, Pace University School of Law:**

Good Morning, my name is Ann Powers, and as Dean Ottinger mentioned, I am on the faculty at Pace University School of Law. I teach in the environmental program. Like the Dean, I would like to extend to you a warm welcome today. The conference will explore the issue of compliance and enforcement in the context of today’s political and regulatory economic climate. I might add meteorological climate too, since global climate changes are certainly at the forefront of environmental concerns. The emphasis is on new mechanisms, calling attention to ways to collaborate among all the sectors in improving the protection of the environment. I believe that the presence today of people on the panel and in the audience from all of the various sectors such as the government, industry, academia, and public interest organizations, is a testimony to the importance that we all place on this kind of collaborative effort. I think it merits taking a few moments to look back to assess just how far we have come, and to reflect on some of the changes.

Certainly not all is sweetness and light at this point among the various sectors, but there have been a great number of changes since I first became involved in environmental work, almost twenty years ago. I can recollect as a brand new environmental lawyer, brand new lawyer at the Department of Justice, with no environmental background, I walked into my boss’ office and he said: “I have got a first case for you. It’s a really great case, it’s a wetlands enforcement case.” I said: “Tremendous, tremendous, Vance. What’s a wetland?” That was generally, I think, the attitude of the public. People really had not, at that time, begun to focus on some of the environmental issues that we take for granted now. At the time when I was with the Justice Department, we were engaged in a rather bitter litigation with many corporations and large segments of industry over the details of new programs such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the Resource Conservation and Recovery Act (RCRA). Combat was really the mode of contact between the parties, and I have to admit that I even had to spend some time trying to keep pesky
The EPA’s enforcement program made the front page of the New York Times last June. Ordinarily, that should be good news, except that in this case, the headline was “EPA and States Found to Be Lax on Pollution Law, Enforcement Is Faulted, Agencies Are Failing to Inspect Issue Permits, and Report Violations.” That was the bad news. The good news is that this was, to a certain extent, old news, at least here in EPA Region 2. The concerns that were being reflected in this audit, and reported in the New York Times and elsewhere, were concerns that were centered around a period in between 1995 and 1996. At that time, the pendulum (that always swings back and forth) had, indeed, swung rather far towards what I would call the “soft side,” or the “soft path,” in the compliance/enforcement spectrum.

Imagine a spectrum. The “kinder and gentler” approach to compliance — in which government is there to support, to inform, to educate, to help bring people into compliance, and only uses heavy-hammered enforcement as a last resort — is one end of the spectrum. The other end of the spectrum is the tough prosecutor, “if-you-step-one-inch-outside-of-the-box-we-will-get-you,” attitude. This is a wide spectrum. Of course, there is an infinite number of points between the two extremes.

You can imagine the pendulum swinging back and forth across this spectrum as times change, as fads change, as attitudes and philosophies change. I think it is fair to say that during the mid-1990s, the pendulum had swung towards the “soft” side of the spectrum and away from the “hard” side. Certainly this is truer in the states towards the west than in some of the eastern states. Some of the states have been very vocal proponents of the soft path. I understand an ECOS [Environmental Council of the States] member has stated that enforcement — the hard side of enforcement — should be a last resort, since it is an example of failure; and that success should come from all the other options that are available: from compliance incentives, market based incentives, compliance assistance, outreach, educative efforts, and so on.

At EPA, we too have had our dalliance with the soft side. We had heard the criticisms that were being made, and felt that many of them were legitimate (or, at least, had an element of legitimacy).

Walter Mugdan -- cont. on p. 6 col. 3

Captain Richard Bennis -- US Coast Guard:

I am no stranger to response-oriented events. I have been in headquarters, as the Chief of Response, who addresses fires, explosions, natural disasters, oil spills, hazardous materials spills, and I have played in the environmental world, since 1972. I grew up as a child of the 60’s and wanted to be a forest ranger. I watched Walt Disney and ended up in the Coast Guard. So, the response community learned the hard way, during the Exxon Valdez that the way we were responding to events while effective, was not the best way to work. The Oil Pollution Act of 1990 (or OPA 90) came out as a direct result of the Exxon Valdez incident. We discovered early on, that in order to comply with the requirements of OPA 90, we had to make some phenomenal changes in the way we do business, sweeping changes in the way we interact with industry, with the community and with other agencies.

We began working together to build the complex new regulations required by OPA 90 and I truly mean we began working together. We could no longer operate in a vacuum. We had to get together with all of our partners in the Federal, State, Local Governments and we had to draft those regulations within a very strict time constraint. OPA 90 was a very far-reaching, far thinking, almost visionary act. There were times when we hated it tremendously, just because of what it would require us to do in a very short period of time. The oil portion of OPA 90 had a deadline and that was the main problem we faced. There were other aspects of OPA 90, which I will talk about in a few minutes that did not have a deadline, but we were working aggressively to achieve. The groups worked together at the same time.

Peter Lehner -- Natural Resources Defense Council (NRDC):

Thank you for inviting me here to talk about the ways corporations can work together in the environmental community. It is an important starting point to know that the environment is everyone’s business. There is not a single sector of American activity that can protect and restore the environment to the extent necessary by its own or on its own. As we start dealing with global issues such as global climate change, ozone depletion, or biodiversity, we must look at corporations. In many ways, corporations, especially the multi-national corporations, which span jurisdictional boundaries as do no other entities, have an even larger and more significant role than any other entities.

I am going to try to be brief and clear. I will be making three points about how industry can build bridges to the environmental community. I will argue that industrial companies should be honest, open and
citizens’ groups out of my cases. I later saw the light, since I actually spent a number of years working for an environmental public interest organization, as a citizen advocate. The citizens had to fight at every turn to get information from the government, and to be allowed at the table as an equal partner. The relationships with industries were often even more tense and volatile, sometimes even hostile, than with the government. We have seen a great number of changes over time. There is a different attitude on the part of all the players in all sectors. Government is certainly vastly more open, more inclusive; it fosters and tries to foster and maintain working relationships with all the sectors. Furthermore, industry has made tremendous strides in incorporating environmental concerns into the everyday business. Environmental concerns have become part of the business ethic in many corporations, especially the larger corporations. The citizens have now the right to participate in public policy making, they have been recognized and have a legitimate place at the table.

What have been the reasons for these changes? I think there are a number of reasons. Certainly our attitudes have changed. We are all more aware of environmental problems. We recognize the fact that the planet is small and with the Internet it has become even smaller. Indeed, we have come to realize, viewing the earth from space, that it is really quite tiny. We all have to cooperate if we want to pass it on to future generations in better shape than our generation received it. We are all more “green” perhaps in that sense. In addition the issues have become more complicated, and it is much harder, for both industry and the citizens to make their cases to the regulators, to the legislators and to the public. So, combat has not served us in that sense. It has really resulted in a stalemate, often to the detriment of the environment, which serves no one’s purposes.

Finally, I believe the public wants collaboration; it is very important for the public to see the various sectors working together to try solving these various problems. We now operate in a political and regulatory climate that, in some ways, is a little uncertain. I do think that we have made some progress, but there have been many setbacks. The Contract with America, or as some referred to it, the Contract on America, caused a great deal of damage to relationships among the sectors. There were occasions where there was perhaps some overreaching on the part of the industry in attempting to overturn some of the progress that had been made in environmental protection. Perhaps there was an overreaction on the part of the government and some of the citizens’ groups. However, the subsequent elections showed that people really do not want radicals on either side, but they do want the environment to be protected, and they do want enforcement.

Enforcement is an important part of the compliance picture. There are, however, mixed reviews on the extent to which enforcement is now alive and well. Anecdotal evidence seems to indicate a lessening of enforcement efforts. Certainly, attorneys in private practice, representing corporations, have told me that they see very little enforcement either at the federal or state level. However, a recent article in the Environmental Law Review by Mr. Nicholas Yost, an attorney in private practice, looks at the statistics, which seem to indicate that the enforcement is ongoing, but perhaps taking different shape or in different areas than in the past.

The EPA has just recently indicated that it will step up its efforts in air enforcement. The EPA intends to look at the new air permit programs, since the mechanisms to enforce the requirements under those permits are now available. There is now increasing efforts by the industry to further incorporate environmental perspectives into its efforts. I noted in the recent Environmental Defense Fund Bulletin a collaborative effort with British Petroleum (BP) to reduce BP’s global gas emission by 10% from 1990 levels by the year 2010. This was announced by the CEO of BP, John Brown, showing PB’s concern regarding the global warming issue. It looks now, with the recent elections, as though there may be more interest by Congress in moving forward on some of the Kyoto commitments.

These factors indicate that now is an opportune time to look at the question of compliance and enforcement, and how we go about developing partnerships and working in a more collaborative effort in this area.

Walter Mugden -- cont. from p. 5
And, indeed, during the mid-1990s — on a national and regional level — we made a conscious decision to shift a certain amount of our enforcement resources from the hard to the soft side. For example, in my region, EPA Region 2, we developed a specific compliance assistance unit — we are talking about 10 workyears of effort put into that unit. That is a sizable fraction of our overall enforcement resources that we have devoted not to the customary inspections, case development, case support, or litigation support activities, but rather to the compliance assistance side of the house.

What does this really mean? Compliance Assistance is not usually something that we do to help companies like Con Edison, Dupont, Exxon or Dow. These are companies that do not particularly need our compliance assistance. In fact, they can tell us a thing or two about how to come into compliance, for they have highly professional staffs that know the
Robert Bradford -- Chemical Manufacturers Association (CMA):

I am Rob Bradford, a special advisor to the Chemical Manufacturers Association (CMA). I have just completed approximately forty-three years in the chemical industry. I have worked for The Dow Chemical Company, Olin Corporation, and most recently Borden, Inc. First, I am going to give you a background on CMA: who they are, what they are, and what they do. Second, I will discuss Responsible Care® and its effect on CMA’s culture, value system, and performance.

CMA is based in Washington, D.C. It has 17 charter members, 189 members and is the oldest trade association in North America. There are over 2,000 member company volunteers, with over 200 staff members in Washington. CMA is unique because its board is made up predominantly of CEOs from the chemical industry. The CEOs are the majority decision-makers and can make things happen. When the board meets, we do not have to wait for the lowest common denominator, we can force issues through. There is an Executive Committee and also an officers group of about five members. The officer’s chair is a four-year rotational program. John W. Johnstone, Jr., previously CEO from Olin, was an officer at CMA who went through the officers’ chair program. I, as his assistant, was privileged to attend board meetings, executive committee meetings, and officers’ meetings. I had an opportunity to get to know many of the decision-makers intimately, as well as the CMA staff. That is one of the reasons that I was selected by CMA to be the replacement for David Zoll, CMA General Counsel, as a speaker today. David had a conflict today and sends his regrets for not being able to be here.

There are two key missions at CMA. The first mission is Responsible Care®, a commitment to improve performance in environment, health and safety. Assistance is provided to members and partners to improve performance and public acceptance. The second CMA mission is Advocacy to develop promote and defend the chemical industry’s policies, positions and practices. Advocacy has to conform to Responsible Care®. CMA works toward a harmonious relationship between these two missions. Advocacy involves international, federal, state, and local governmental legislation and regulations, including EPA and OSHA regulations. Community outreach, a key part of Responsible Care®, involves dialogue, listening and taking action in response to public concerns. Responsible Care® is the most proactive initiative ever undertaken by CMA, and I believe by any industry association. Some aspects of Responsible Care® have been incorporated into regulations, such as community awareness and emergency response, which became part of the community right to know provisions of the Superfund Reauthorization Act. Several other associations have now adopted Responsible Care®. In fact, we had the Department of Energy ask us if they could use Responsible Care® in their own outreach and performance improvement programs. Thus, the Department of Energy is currently implementing Responsible Care®. It is also a requirement of membership at CMA. All 189 members of CMA have to adopt Responsible Care® and show continuous improvement in environment, health and safety. Otherwise, they cannot continue to be members.

One of the driving forces for Responsible Care® was performance that was no longer acceptable, especially in the public eyes. A big instigating factor was Union Carbide’s catastrophe in Bhopal, India. There were several other incidents that followed in the footsteps of Bhopal, such as the Exxon Valdez spill in Alaska. Despite the fact that the Exxon Valdez incident was part of the oil and not the chemical industry, its occurrence still deteriorated the public trust of the chemical industry. The same thing happened with Chernobyl, in the Soviet Union, which was a nuclear, not a chemical incident. All these incidences created an increased public concern for public health and the environment. We had to do something to improve public trust in the chemical industry. In the 1980’s we were up to a fifty-eight percent unfavorable public rating and only fourteen percent favorable, with seventy-four percent saying we were under regulated. As you know, additional regulations have been promulgated.

The chemical industry rated next to last as an industry to be trusted. I think the only one below us was the tobacco industry. The nuclear industry was actually rated higher than the chemical industry. The public ranked environmental concerns third, only behind crime and drugs. Why were we viewed so poorly? As I mentioned earlier, I believe we were a little misguided about our definition of good performance. The chemical industry was not involving the public, not listening, dialoging, nor addressing public concerns. Due to the incidents I mentioned, there was certainly an increased awareness. In addition, environmental groups and others helped to promote public awareness, which we now realize was very beneficial to us. There were heightened values towards environment, health and safety performance. The industry’s track record was not where it should have been. There was definitely a lack of open communication. In addition, many industry executives were defensive when approached by environmental groups.

In an attempt to address some of these issues, strategic plans were put together, which involved all of the members of CMA. The first plan was to continuously improve performance. We felt that performance was the backbone of the whole problem. Performance was not where it needed to be. Thus we needed to improve performance and demonstrate our progress in measurable terms. Second, we needed to harmonize and extend Responsible Care® throughout the global chemical industry. Forty-two different countries have now adopted it and CMA is working on adding more. Two months ago we added two more countries. In addition, we are trying to extend Responsible Care® to suppliers, users, handlers, and as I mentioned organizations like the Department of Energy. The Battelle Memorial Institute has become a partner in Responsible Care®. The Battelle Memorial Institute performs government research among other things. There are a lot of people out there who are adopting Responsible Care®. CMA promotes Responsible Care® within and without the chemical industry, because environmental, health or safety problems in other industries impact the public’s trust of the chemical industry. Therefore, we need to get others on board to take responsibility for improving their own performance.

It is critical to have enhanced public participation in the implementation of Responsible Care®. There is a tremendous need to improve public trust in the chemical industry.
Capt. Bennis -- cont. from p. 5 col. 2

Table. We all came together to build the regulatory requirements for Open 90, and at the same table you saw a pretty unlikely alliance. You saw the Coast Guard, the EPA, Minerals Management Service, you saw the State folks, you saw folks from small states briefly because they do not have a lot of money. You saw folks from the big states with lots of money, just assigned to Washington D.C. for a period of six months to two years to help build the regulations. We had folks from California, Texas, New York, and Florida. Many came together. We also had the environmental interest groups there. Those that previously perhaps had been kept out of the loop were brought right into the core of the planning and regulatory development group.

It was a heroic test faced with seemingly insurmountable time frames. But through a joint partnership approach, we met the challenge. We have now moved beyond oil to the equally important issues of hazardous materials response. If the community at large had an awareness of what transits our waterways, our highways, our railways in the world of hazardous materials we would be tasked to take a more aggressive approach in pursuing better response issues to those challenges. Fire fighting and marine salvage we are aggressively working on. Generally, you cannot have a fire on ship without having an environmental incident. It is either air pollution or oil pollution. Fires cause bad things in a marine environment, and therefore we are aggressively addressing fire fighting and marine salvage.

The most critical thing I think, since OPA 90 is that we have created area committees. In addition to having the groups get together in Washington and at the states, the area committees are region specific. We have area committees in New York, New Jersey, and wherever the community comes together we have area committees. One of the beauties of that is that we all plan together. We plan together tremendously in these area committees. The area committee membership consists of everyone who is interested, everyone that is involved and some of the interesting things we have done is we have all of the Sierra Clubs and the Coastal Conservation Corporation and all of the environmental groups as part of our area committees. We have the press as part of our area committees. I think you will find that the press reporting of pollution incidents and environmental disasters is infinitely better than it was in the past.

We did some outreach things in many areas, where we would go to the local press and we would say we do not have an oil spill today, we are going to have an exercise. We would like you to come to our exercise. We would like you to role play in the exercise, so as to train you in all of the various aspects of an oil spill, so that when an incident does happen (and they do), they will be up to speed with regards to what exactly we are dealing with, how we are dealing with it and what our plans are. That has worked very well. We did it on the local level throughout the country and then we had folks like CNN & NBC come to the Coast Guard. They said we want to know more, we want to have a group that is trained in advance, we want to know what to do and how to do it. How to give good honest reporting on an oil spill incident, we like that!

Also, as we have demonstrated in the last few years, we are aggressive and there are no secrets. We are very open. We are very honest. We tell everybody everything. There is no such thing as a good oil spill. We do not sugar coat anything. But at the same time, any oil or hazardous materials event we have, we make sure that everybody knows all the aspects of it. Quite simply, we plan together. We respond together and we make course corrections together. When a problem arises, it is our problem and “ours” is the group that puts together the actual issue. There is no more finger pointing. It is truly a team effort and I will give you a quick example of that. We had the Exxon Valdez, which everyone is familiar with. I was there and I can tell you that in addition to the environmental disaster we had, it was truly a contentious and tension filled atmosphere that we were in. It did not matter if you were in Kodiak, Valdez, Anchorage, or wherever your command post was, or whatever your function was in that incident it was a tension filled environment. The State folks had one camp, the Federal folks had another camp. The environmental folks had another camp, and the industry had yet another camp. We would walk down the street and it was certainly not a collegial atmosphere. About three years ago we had an incident when I was in Response in Coast Guard Headquarters. The tanker Julie N was inbound with black oil into Portland, Maine. The tanker was navigating between some bridge work that was under construction, and it filled Portland Harbor with black oil. It was a mess, it was ugly, it was bad. We had area committees established for probably five years at that particular point in Maine. We had a tremendous area committee up there. They immediately set up their unified command and their joint information center. Everything was done together. Everyone was in the same space, and it was just a tremendous response and a joint effort, as they proceeded to respond to this event the way they planned to. When they had a problem, they would all just immediately come together and resolve the problem, instead of having a separate state press release, a separate federal government press release, and a separate environmental interest group. It was a joint press conference every time, every day.

I flew up there with the Commandant of the Coast Guard and the Secretary of Transportation. We flew up at the invitation of the Governor and Senator Snow. We flew to the spill. We flew over the response clean-up site and we flew over the tanker, which was still booming off and still sheening, and we could see the black oil and the marshes. We could see all the people cleaning up. We flew up there, because the Governor was putting on a lobster breakfast, a huge lobster breakfast. He had promised the response community and the area committee community that if everything came together, there would be a lobster breakfast. He kept his promise. It was served up by the lobstermen. The response community would come in from working on the oil spill, they would have their lobster breakfast and go right back out. But the interesting thing to note, was that the Coast Guard Captain of the Port at the time of the Exxon Valdez, since retired, was the owner’s representative for the Julie N, which had the spill in Portland. He and I were good friends and he commented to me that it was two completely different worlds. The pre-OPA 90 oil spill community environment and the post-OPA 90 community environment. It was a wonderful thing, (though oil spills are
It showed that things had changed.

We have established Prevention Through People Initiative, which address the issues of human factors and recognize the responsible carriers on our marine waterways. Those carriers and industry groups, like the American Waterways Operators, are critical to our success. They have a responsible carrier program, which brings folks to the table with innovative new ideas, ideas for compliance that are even ahead of the regulatory requirements.

The Prevention Through People Initiative is aimed at the human element problems that are not addressable through regulatory measures. It establishes partnerships amongst government agencies, marine organizations, port authorities, and classification societies in the maritime industry. We have formal written partnerships with six of these marine industry groups that have yielded significant non-regulatory safety and pollution prevention actions. We have a spirit of cooperation that pervades the Department of Transportation, and increasingly defines the relationship between the Coast Guard and the Merchant Marine Industries.

More and more we see ourselves as joint possessors of keys to a series of locks that we all want opened. We are all trying to solve the same programs. We are interested in safe efficient marine transportation. We are all interested in keeping oil and hazardous substances out of our waterways, out of our environment. And we are working on those together.

A partnership applies to government agency, to all levels of government. I think many of the government agencies in their regions, Department of Transportation (DOT) regions for example, have one. Working aggressively to do what is right just makes sense. I think everything that we are going to talk about today is pure and simple common sense. It is just good business to work together. Times are tight and things are hard as far as government funding. We are streamlined, we are downsized. Corporations are streamlined and downsized and we must work together. I think if you look in your packages later on at the Consolidated Edison Environmental Health and Safety Report, you will find pictures of Coast Guard folks in there. You will see quotes from Coast Guard folks in there. We consider ourselves to be a part of Consolidated Edison’s team and we consider Consolidated Edison to be part of our team. We cannot have a meeting where they are not present. They are always there. They are always part of our team, because we share the same interest and we know that we are going to accomplish those things best together.

Many of you know the Coast Guard recently began enforcing the International Safety Management Core (or ISM). We began a pre-enforcement educational campaign in December of last year, and worked energetically to get the word out. We told everyone that enforcement would begin earnestly in July. This goes with what Walter was talking about. We said it, and we said it, and we said it. As July approached, we were somewhat concerned because our pre-enforcement campaign showed only sixty percent compliance for every 2,000 vessels boarded. I am happy to report that since July, when we aggressively began enforcing this, we have not had to turn away a single foreign flag vessel because of ISM non-compliance. And, we have restricted only one U.S. flag vessel from a foreign voyage because of ISM non-compliance. The result has been higher compliance and not the gridlock that some had feared. We had many articles in the Journal of Commerce, which said if the Coast Guard enforced ISM code on the date they were supposed to, then we were not going to have milk in our refrigerators and Reeboks on our kid’s feet. Gridlock did not happen. It did not occur. At the present time, worldwide, there is an eighty-five percent compliance to the ISM code. We have got a hundred percent compliance from the United States, but think the fifteen percent of the world’s fleet that do not operate here.

The joined industry and government working group that implemented the enforcement of ISM was critical to this success. Again, we got together, we built the regulations together. Those folks who were going to be regulated were participants in developing the regulations. We are currently working with the Maritime Administration to develop a national reporting system on near casualties and near misses. Those events, had they been allowed to develop without last minute intervention would have become major incidents. Unfortunately there are a lot more of those out there than we even want to think about.

Comparatively, few of these near casualties actually lead to major damage, spills or loss of life. But it makes sense to study them, because they contain the seeds of major disasters that fortunately do not occur in sufficient numbers to yield solid statistical understanding of their causes. We are currently engaged in a risk analysis program whose goal is to understand the risk that the maritime community confronts, and the best measures to mitigate those risks. We have done mandated risk assessments in some areas, such as in Puget Sound and Prince William Sound. Currently they have one under way in the Hampton Roads community. It is difficult to do a voluntary risk assessment with folks because you are basically opening yourself up and showing everyone where your strengths and weaknesses are. Model ports are coming together and recognizing that risk assessments and risk analysis are a good thing and that they could make their ports stronger, safer, and better.

I think the bottom line is very simple. The Coast Guard has changed the way we look at accidents, the way we write regulations, and the way we approach our jobs. In improving safety by applying our efforts where there will do the most practical good, we hope to continue that trend with the partnerships, and dialogue with our industry customers and stake holders. We absolutely cannot do what we do without the participation of all segments of the Maritime and environmental response community. It has worked out tremendously in the last few years.
innovative in order to build these bridges, or at least to start building these bridges. But before we even get to these three points, I will start with a baseline that the company should be in compliance with applicable laws. I realize that the title of this whole conference is “Perspectives on Compliance” and my whole presentation is pathways after compliance. However, I hope you will see that it is a continuum and that compliance is merely one intermediate step on the road to where we ultimately should be.

While wondering about what I would say to industry representatives interested in building bridges to the environmental community, I asked a few friends, who run manufacturing businesses. One of them said: “well, I guess you should tell them that they should follow the laws.” I want to emphasize that it is very hard to build bridges with the environmental community if you are out of compliance with your environmental obligations. This sounds basic, but unfortunately it is not. A recent U.S. Inspector General’s study of water permits found over twenty percent non-compliance with water permits. A study performed by an industry association of storm water permits found over fifty percent non-compliance. An EPA study of air permits found over fifty percent non-compliance. Simply achieving compliance is still an important goal for many companies. If you want to have a dialogue and build bridges with the environmental community, it is an absolutely necessary first step to comply fully with the law.

In terms of going beyond compliance, the first point is to expand on this conference. Why are we all here today? Why do we hear so often that negotiations can produce win-win situations? I suggest the answer is that when we get together, we find out a lot more about what the other side is thinking. We understand their point of view better. When we get together, we can find opportunities that might not have existed beforehand. The more time environmental organizations spend with industries, the deeper the understanding. Vice-versa with industries: the more time they spend with an environmental or community organization, the deeper their understanding of the concerns.

Thus, one of the most important ways a company can build bridges is by being open with environmental information, providing it freely to the community and environmental organizations. If you run a company, you may think your company discharges are safe. You may feel quite confident that you are in compliance with the law, and that nobody in the community is being harmed. However, if you tell the community nothing, if you refuse to disclose any information beyond what is legally required (and even delay providing what is required to be disclosed) then it is going to be difficult to build trust with the community.

Unfortunately, business representatives often challenge openness. Every expansion of the toxic release inventory is challenged: no more chemicals, no more facilities. Freedom of Information Law (FOIL) requests are repeatedly challenged. Permit notices are pared down to provide virtually no useful information. Electronic availability of corporate environmental documents is rejected (even though the same businesses may want to allow electronic filing). When we seek information from the government, we often hear businesses on the other side saying: “no, no, no.” Businesses claim a wide variety of information as being confidential business information. However, that claim could often be scrutinized to check whether in fact the disclosure of certain environmental information opens these businesses to competitive disaster. Again and again, the first and often only reaction to information requests is refusal.

I do not mean to condemn all businesses. Many are more open than others. However, it is very difficult to avoid suspicion and exaggerated claims if the environmental community or the local community does not have the facts on which to base opinions. If a company actually discloses what is going on, a local environmentalist may disagree about some of the implications. But it will be harder to either accuse the business of nefarious conduct, or make claims that the data does not support. If your discharges are really safe, why all the concern for secrecy?

In a different context, you should know that it is extremely hard to bring an enforcement case when there is a dialogue going with the company. If you are actually talking with people and you think you are making progress, it is hard to drop that progress and start litigation. You are afraid you may lose the dialogue. You have much more to lose. The flip of this is that from the industry’s side not only it is good public relations, but it is also a good defense to be open to the community. Perhaps do regular briefings; perhaps have a citizen’s advisory committee. Most important of all, however, is to provide the information that is being requested. As a business, you will find that it is much less likely that you will be sued, that you will be attacked in the press, or other ways, if in fact, the community knows the truth. I suppose that there are always some companies where the truth is so bad, they do everything they can not to disclose it. However, if we are talking about a company going beyond compliance, or even a company that is interested in getting to compliance very solidly, it is not going to be the kind of company that has quite so much to hide.

It is also important to remember that NRDC and other environmental organizations are committed to the public’s right to know. It is one of our strongest tenets and we will continue to fight for the local community’s ability to know what goes on at a plant, what is being discharged, and what is being stored at the plant that might be released. We, as well as others, will work for the workers’ right to know what is happening to their own health as they work in the plant. Therefore, there will be a continual pressure for more information. There is a terrific opportunity for the industry to get ahead of the curve and provide the information and be open with the environmental information, rather than waiting until they are forced to disclose by litigation or other means.

The second way to build a bridge is to be honest. By this, I mean that a company should practice what it preaches. The environmental community is continually disgusted — and I do not really think that is too strong a word — when we are confronted with a company that on one hand proclaims a fabulous environmental ethic, and then on the other hand does something quite the contrary. We often find that the company may use a surrogate to do its dirty work. On Capitol Hill, it is usually trade associations or specially created “councils,” often with purported pro-environmental names. We can talk with an industry executive who will say, “we are very interested in having the laws so that we can comply, we want to clean
up.” Then they have a trade association up on Capitol Hill, or in front of the EPA, saying that America’s business will shut down if some regulation is promulgated, and that there is absolutely no way we can do more. They fight very hard to resist the very thing that individual corporate executives may be willing to discuss. We often find situations where we may negotiate a new program and in the negotiated rulemaking think we reached an agreement and then someone else litigates to overturn the agreement. Sometimes the companies confronted with the pollution in one of their facilities, clean up that facility with a big fanfare, but do nothing to their other facilities in other states where there are less information or in other countries. Companies may say “enforce the law to level the playing field,” but EPA staff feel that every time they do, their enforcement budget is cut.

It is important to remember that in building bridges to the environmental community as in any relationship, sincerity is important. I compare this in some ways to the ISO 9000 model, which is that you can state whatever your environmental policy is (we would like it to be relatively strong but state what it is) but then you must follow it. If you do not intend to follow a strong environmental policy, do not pretend that you do. It is very difficult for a community organization or an environmental organization to trust a company that does not practice what it preaches. We would rather have the truth come out and deal with that, than have misleading views being presented all the time.

The third point is that most good relationships start slowly and this is no exception. You can start to build bridges by building the approach roads. You can find ways to go beyond compliance that do not cost an enormous amount. Time and again we find ways that a company can both save money and improve its environmental performance. You can recycle more and find ways to purchase less of your expensive raw materials. You can recycle in your office area or even in your cafeteria. You can find ways to conserve fuel. You can tell your employees about what you are doing so that you are not only conserving fuel at the plant, but encouraging them to do so at home. There are a lot of ways a company can move beyond compliance, in ways that are not regulatory and that again can earn the trust and begin to build the bridge with the environmental community.

We did a study with a fairly significant manufacturing company. With an industrial engineer at the plant, we found a number of ways that this company could both reduce its costs, save money and reduce its discharges. What surprised us was that after the study, not all of these suggestions were implemented. As best as we can tell, it is because even though these investments would be profitable for the company, the company would not make as good a return on these investments as perhaps some other investment. Therefore, the company put the activities that had a higher return, higher on the priority list. This might have been a shortsighted calculation of return on investment. Think how much companies spend on public relations. Think how much companies spend defending lawsuits. If all of these things are calculated into the equation, since these things are affected by a company making the choice to go beyond compliance to be a leader in some sector of environmental performance, then all of a sudden the return on investment calculation becomes very different. There are furthermore many other benefits besides saving money that can come from making these positive environmental steps. I am not saying that finding ways to do this is simple or that running a business is simple. But there are certainly in many circumstances opportunities for a company to go beyond compliance that are not being taken.

It is appropriate to note, since this Conference is being sponsored by Con Ed, that conserving energy is probably one of the easiest ways to go beyond compliance and do yourself a favor at the same time. There are many opportunities -- your lighting, heating, and power systems -- to conserve energy and to spread the gospel of energy conservation. These are not being required of you right now, but can be done, they can be cost-effective and even if not as cost-effective as some of the other potential investments, they have terrific payback if you are sincere about building these bridges to the environmental community.

You will find that the environmental community itself is eager to find examples where economic efficiency and environmentalism can work together. We are tired of hearing the usual jobs-versus-the-environment arguments, and the economy-versus-the-environment debates. These will get us nowhere; we recognize we need the jobs and we need the environment. To keep us in that old debate does not move anything forward. For that reason, the environmental community is quite excited when they can find examples of an industry finding a way to have better jobs, have a more effective company and also protect the environment.

To summarize, then, if you take these three small steps of being more honest and open with your information, practicing what you preach and taking these small steps beyond compliance, you will find a real opportunity to build some bridges with the environmental community. It is often the case that the public does not expect a lot of corporate or industrial executives. The image of the seven tobacco executives swearing that tobacco is harmless is pretty well engrained into the minds and has become an emblem for many of how industries treat the truth. But that image represents our fear; our hope is that industry is going to do its share. If we did not have a hope to succeed, by partnering with the general public and with industry, we would not be environmental activists. Industry has the opportunity to either play to environmentalist fears and stay closed, by trying to present one public image and do something else, or to play to the environmental community’s hopes. Be honest with information, be honest with what your policies are and find the opportunities to move beyond compliance. It is a choice that is up to you. But if you are going to build a bridge, I suggest you start with the three steps we discussed, since they are easy and effective.
Mendous amount of public involvement as we go forward in shaping the whole concept of Responsible Care®. We must also work to ensure and communicate the congruence between Responsible Care® and the CMA Advocacy program. Our goals are to show continuous improvement and be responsive to public concerns.

There are several elements of Responsible Care®. However, I am only going to discuss a few. But anyone who is interested certainly can contact me for further information. There are ten Guiding Principles to which all CMA companies have to commit. The Guiding Principles have to be signed by the CEO of the company. Most companies have them posted at their front entrance. There are also six Codes of Management Practice. I will review those briefly later. There is a Public Advisory Panel that reviews all parts of Responsible Care® on a regular basis. The Panel meets about four times a year. The membership of the Public Advisory Panel is periodically renewed. The members are activists and leaders in their own right. They are people that are independent of the industry and hopefully objective in their feelings and their approach to Responsible Care®. They are public citizens, environmentalists, local, state, and federal government officials. We have one member who has been very active with the League of Women’s Voters.

CMA member companies must perform Self-Evaluations that is another of the basic elements of Responsible Care®. The companies each have to evaluate their own performance and the status of their management systems and discuss them with their communities. There are measures of performance that each company must define and track. In addition, there is a Management System Verification Program (MSV). It is very similar to ISO 9,000 and ISO 14,000, except that it combines health, safety, environment, product distribution, and product stewardship and includes public outreach and dialogue. Product stewardship is defined as responsibility and accountability for a product from cradle to grave, from the time a product is developed in a test tube, to its ultimate evolution into the environment by its user, who may be a customer’s customer or the public.

A company can elect to be verified by MSV. All of the board member companies have volunteered to be verified. We have put fifty companies through the MSV Program already. It is systems verification using a team of experts, which consists of people like myself who have years of experience in the industry. However, we always include members of the public that are independent of our industry. If we are going to evaluate a facility, we usually have a local public person attend. If we are going to a corporate headquarters, it may be somebody known nationally. We obtain public involvement at all evaluations. The companies are given a report of the verification showing areas needing improvement. Many of the companies have posted their results on the Internet or made them available to the public in other ways. The MSV system has been a real strength in forcing continuous improvement and ensuring that all aspects of an effective system are in place. We have Executive Leadership Groups (ELGs) made up of the executive contacts from each CMA member company. Generally, these members are the CEOs. They meet regionally, where they are subjected to a lot of peer pressure, from one CEO to another. As the ELGs review status against the Responsible Care® ethic, they spread best practices throughout the industry.

We also have a Mutual Assistance Program where as a member of CMA you commit to help other member and partner companies. We have a whole network of Responsible Care® coordinators, one from each company, that work together. We have company code stewards for each of the six codes. The stewards also get together and offer assistance to each other. I am working as a special advisor to CMA and I was just asked to visit a brand new member company last week to help them determine where they are and what they need to do to get started with Responsible Care®.

The Partnership Program extends membership in Responsible Care® beyond chemical manufacturers. You do not have to manufacture chemicals to be a partner. For example, the Department of Energy is a partner. We have a number of associations that are partners as well as a number of different companies. A lot of transportation companies have become partners. As part of the partner membership, a partner receives all the resources of CMA and Responsible Care®.

Responsible Care® is an obligation of membership in CMA. The ten Guiding Principles are the underlying philosophy and ethic of Responsible Care®. Outreach, where a company dialogues with the public to ensure that they are meeting the public’s concerns, is also a requirement. The Codes of Management Practice are statements of expectations. There are six codes and a total of 106 practices. They focus directly on performance. One of the requirements is that each company must create performance measures and share them with the public. However, it is not CMA’s role to put together standards of performance for the entire industry. While we do not develop performance standards for the industry, we ask each company to develop their own.

First, the company defines the gaps between where they are with Responsible Care® and where they should be. Next, they assign responsibility and accountability for action to fill the gaps. They understand the intent behind the practices and this is where Mutual Assistance can help. The companies can find out what other companies have done to define the practices in their terms. Similar to Con Ed’s involvement in re-writing regulations so everyone can understand them, we have companies that have done the same thing. Next, the practices are interpreted and described in the company’s terms. The company programs and initiatives that relate to each practice are reviewed. The gaps are defined and then tasks to fill them prioritized based on the public’s concerns, and the potential impact to public and employee health and safety and the environment. In addition, the company performs a risk analysis and uses that to help prioritize. Then the company develops goals and time tables and integrates them into company procedures.

Company Self-Evaluations are required. There is an annual Self-Evaluation that is required for every code. The Self-Evaluations for each code are due at different times during the year. In those Self-Evaluations, the companies are required to define areas of improvement. The Self-Evaluations become a management tool for the companies and CMA. There are six codes for Responsible Care®: 1) Community Awareness and Emergency Response (CAER); 2)
pollution prevention; 3) process safety; 4) distribution; 5) employee health and safety; and 6) product stewardship. We have put together measures for each of the codes that are used to composite member data to show industry trends. Each company also develops their own additional measures under the codes. We do surveys of both the communities as well as employees to determine how well the company is doing with community awareness and emergency response. We do the same thing with product stewardship. Product stewardship involves suppliers and customers. The only way we really know if the appropriate dialogue is taking place is through surveys.

To address pollution prevention, we adopted the Toxic Release Inventory (TRI) data because the EPA is already collecting it. It is available to the public. We use it for pollution prevention, even though pollution prevention includes all pollution, not just TRI pollution. Some companies have categorized their waste, including their non-toxic paper waste, and everything else, and they are actually measuring the performance improvement in terms of all emitted waste.

For process safety, we use a special incident report that measures the magnitude of the incident, what occurred, and any other pertinent information. We actually have to report on the number of incidents that meet a certain criteria. Within distribution, we use the Department of Transportation (DOT) reports. For employee health and safety, we use the Occupational, Health and Safety Act (OSHA) incident reports. We try to keep the bureaucracy to a minimum by using existing measures where possible.

Just as an example of improved performance, the TRI releases have gone down fifty-six percent since 1988, even though we had an increase in production of eighteen percent. Now, we do not credit all that to Responsible Care®, some of that improvement is due to command and control and other enforcement activities. However, we feel that Responsible Care® was a proactive initiative that kept us ahead of enforcement activities. Some of the companies also enrolled in the EPA 33-50 program. In my experience, every CMA company that participated in the EPA 33-50 program beat the 33-50 deadlines and targets. Due to the public’s involvement, the MSV System provides an objective third party role. In addition, MSV promotes performance improvement and credibility. We have received tremendous input from public participation in MSV. The public advisory panel identifies the concerns of the public and reviews Responsible Care® implementation. We have established over 400 community advisory panels throughout the country. A lot of facilities have their own community advisory panels made up of concerned non-industry people. For instance, Dow Chemical has put together its own public advisory panel just for Dow, in addition to many community advisory panels. Another key is peer pressure. We have code stewards and on-line networking through the Internet. This creates a network where you have your Responsible Care® coordinators feeding into the Mutual Assistance network. The network consists of Executive Leadership Groups (ELGs), the Internet, the partner associations, and the International Chemical Council Association (ICCA). The ICCA includes most of the chemical associations throughout the world, such as CMA and the Canadian Chemical Producers Association (CCPA). There is an ICCA Responsible Care® leadership group made up of more than forty-two countries. The countries work together to set international goals. We have loaned executives like myself and practitioners, to assist companies that are not involved in the chemical industry to also commit to Responsible Care® by joining the partnership program. We have developed many tools and are certainly willing to share these tools with anyone who has an interest. The only obligation a company has is to meet certain criteria showing responsibility and to have their CEO sign the guiding principles. This requires a company to: 1) communicate their commitment throughout their company; 2) implement the codes; 3) submit self evaluations and performance data; and 4) use the Responsible Care® name and logo to promote the initiative.

Now, I am going to take you into the future. Changes to the initiative were approved in January. We have been doing a lot of work to take Responsible Care® to the next level. We reached out to many different audiences to get their input. A committee was set up at the board level. CEOs are on the committee and oversee the entire program. That is a brand new addition, but it provides a further high level board commitment. The executive contacts feed their input from the ELG meetings to the board committee.

The Synthetic Chemist Manufacturers Association (SOCMA) consists predominantly of smaller chemical companies. There are 120 members, who generally perform batch operations as opposed to most CMA companies who perform continuous process operations. SOCMA has joined as a partner association and is committed, and has made Responsible Care® a condition of membership in SOCMA.

We have used the Council for Ethics and Economics to provide additional input. I am familiar with them because I was involved in their environmental committee. The Council is headquartered in Columbus, Ohio, made up predominantly of ethicists, religious leaders, professors, lawyers and others including philosophers from all over the world. There were a few of us in industry who participated in discussions to explain what we were doing. They have been involved in some of our MSVs and have advised us on where we should go next with Responsible Care®.

The overarching themes that came out of our review with our stakeholders are as follows. First, they were positive with where we were today and what we have done from ground zero. The initiative began after the incident at Bhopal and is now ten years old. Initially, it was set up in Canada. CMA took it over shortly thereafter, worked on it and started developing the codes and the principles. I have personally been involved since before its inception, so I was involved in a lot of that initial work. The end result was very positive. But, we need to do more. We need to continue our success. It is a process, not a program. It does not have a time limit on it. We must put it into the ethic; into the culture. We need to improve performance, outreach and gain trust. We are focusing outreach on local audiences around our facilities, on our employees and our neighbors. We are not now doing major outreach to the general public throughout the country. We did have an advertising campaign for a while, just to make people aware of our new commitment. But we feel now the money can be bet-
ter utilized locally on performance improvement. Continuous improvement is very important. We are trying to get more data on hazards and risk assessment and more performance indices. A lot of CMA money is going into research right now to get more data on endocrine disrupters and synergistic effects of chemicals. We just committed to a program with the EPA to test high volume chemicals. The Environmental Defense Fund worked with us. Carol Browner, at a conference a couple of weeks ago at Columbia Law School that I attended, was extremely positive about the cooperation she now sees about the cooperation she now sees about the cooperation she now sees between the EPA and CMA. She said that most industry associations are lowest common denominators. They reach the lowest common denominator of the members. She said that was not true of CMA. She said that is probably because of our CEO involvement and commitment to improve the industry.

We broke our effort to define the future of Responsible Care® into three sub-teams. One team worked on the principles, the ethics and the vision. The second team worked on the process and the tools to get it done, including the codes. The third team worked on the results and the performance.

We are stressing continuous improvement by making the language more proactive. The education requirements were not as strong as they should have been. Training is critical to teach employees what to do and how to do it. We have now included resource conservation and the need for sustainability. In addition to the proactive language, we may put in an ultimate goal of no-accidents, injuries or harm to the environment. The key is to try and do the ultimate. We are stressing global performance improvement. Remember the Bhopal incident was in India not in the United States. Public reporting of progress and the requirement of dialogue are emphasized.

The Responsible Care® team is evaluating changes to the codes and considering enhancing the MSV process. The team recommends Self-Evaluation process revisions and re-evaluating the Public Advisory Panel’s role. We are working with the Public Advisory Panel to determine what it believes its role should be. It has helped us get the codes developed. Now with implementation of the codes nearly complete, it has a major role to play on recommending how we continue to drive continuous improvement.

A Company must have performance goals and communicate them if it is going to gain the public’s trust. It must tell the public what it is going to do and then prove it can do it. Building trust is a long process. While it takes a long time to earn trust, it does not take long to lose it. Goals drive performance improvement and we get what we measure. We need to adopt association-wide goals, including a communication strategy that is being developed. Some things that have been merely suggested in the past and left as voluntary initiatives may now be a condition of membership. A member company should establish specific meaningful performance goals, make steady progress toward those goals, and communicate the goals and progress to CMA and the public.

The ultimate goal is no-accidents with emphasis on continued performance improvement. The chemical industry has achieved a four-year drop in illnesses and injuries, and performance is five times better than the average of all manufacturing industries. The chemical industry has always had a good performance compared to other industries but now we are demonstrating continuous improvement as well. Releases to the environments measured by TRI are being reduced further each year with an overall reduction of fifty-six percent since EPA started collecting the data ten years ago. Despite an increase in production of eighteen percent, process safety incidents are also down. The hazardous materials transportation incidents are down. We have added more than fifty partner companies and an additional 120 companies through the Synthetic Organic Chemist Manufacturers Association.

The CMA board level committee has been established. There are more than three hundred community advisory panels, many mutual assistance networks, and strong ties with our suppliers and customers through product stewardship. Hopefully, we are seen as a more open industry. We have received a lot of positive feedback, particularly from regulators. They feel that we are easier to deal with. The only thing Carol Browner said is: “if you are going to deal with the chemical industry, make sure you deal with the CEOs and the management rather than the lawyers.” Browner said that if you want to get things done and have better relations with legislators and regulators, you have to have a CEO overrule some of the legal safety net. Despite ten years of progress the industry is still viewed as doing poorly on issues of trust, honesty and communications with key audiences. We are seen as a highly technical industry that is effective in developing new products, but perceived as not totally honest in dealings with the public. So we still have some work to do. We have a steadfast commitment to Responsible Care®. It is the right thing to do. The positive attributes of Responsible Care® have been validated many times by many different stakeholder groups. We did not expect Responsible Care® to be a quick fix. But the key mission remains clear – long-term performance improvement with the public involvement. Thank you very much.

EPA Enforcement Chief at Moot Court Professors Workshop

Steven A. Herman, EPA’s Assistant Administrator for Enforcement and Compliance Assurance, led the Third Annual Environmental Law Professors Workshop at the National Environmental Law Moot Court held at Pace in February. Joining him to examine current issues and events in Washington with the professors, were Carol A. Werner, Executive Director of the Environment & Energy Study Institute, and David F. Zoll, Vice President & General Counsel of the Chemical Manufacturers Association.

The wide-ranging exchanges included assessments of legislative and administrative initiatives and candid discussions of enforcement and compliance programs. Of particular interest were the participants’ assessments of the effects of devolving environmental programs to the states, especially in the area of enforcement.

The workshop is designed for professors accompanying their teams to the Moot Court competition, but others are welcome.

Planning is already underway for next year’s workshop and suggestions are welcome. Forward them to Prof. Ann Powers, apowers@law.pace.edu.
Walter Mugden -- cont. from p. 6 col. 3

regulations as well as or better than some of the governmental staffs.

We need to recognize that our environmental problems in 1998 are different than they were in 1970 and 1971, when the modern environmental era first began. Back then, if you looked at power plants, petroleum refineries or steel mills, in many instances you saw black smoke belching out (maybe not here in New York City, but certainly in many places around the country). You saw untreated effluent being poured into the rivers. Stating that the Hudson River was dead — a biological wasteland or a biological desert — was a true statement that was often made back then. It is not the case today. The large, obvious, clear-cut problems have been dealt with. It is rare to see a smoke-stack belching dark black smoke in a place like New York or, for that matter, almost anywhere else around the country. What we have come to recognize, is that although those problems still exist from time-to-time (and we need to be vigilant), the remaining environmental problems — those that still bedevil our ability to get to where we want to be in terms of environmental quality of life — are more and more from smaller, but numerous, diverse sources.

Think of the air pollution here in the New York Metropolitan area, probably the more obvious case. The biggest source of air pollution problem in this area is the automobile or the motor vehicle. Thus, it comes from numerous small sources, each one contributing a little bit. Even when we look at stationary sources of air pollution, which have more traditionally been the subject of governmental enforcement efforts and activities, we find that increasingly it is the small, numerous facilities which are the problem that still needs to be confronted. We look, for example, at facilities like dry cleaners, which use perchlorethylelene, a dangerous chemical solvent, an evaporative carcinogen, which becomes an ozone or smog precursor when it evaporates. There are thousands of dry cleaners everywhere, densely scattered throughout the metropolitan area. Many of them, especially in places like Manhattan, are in the first floors of buildings that are fully occupied. Any of these evaporative emissions that come out of dry cleaners will filter right up through the building and affect people where they work and live. Other examples of such small pollutants are automobile repair facilities, print shops, underground storage tanks, etc. Each of these tend to be small, and are often owned by small business people rather than by big corporate giants. Yet, cumulatively, they end up being a big component, a big percentage of the remaining environmental problems that we have to deal with.

Thus, our enforcement efforts are tending to shift over time to looking at how to deal with these smaller, ubiquitous sources. This is one of the reasons that during and after the mid-1990’s, the enforcement activity throughout the country at the state and at the federal level has dipped. That is what is being referred to in the New York Times article I mentioned earlier. However, it is fair to say that in the State of New York and at the EPA, the trend has been markedly, if not totally, reversed.

As I said, at EPA we have actually shifted a certain number of resources from the hard path to the soft path. Therefore, inevitably, if you just look at the statistics of how many enforcement cases we bring, there will be a permanent dip, because we have taken people away from that particular arena; and where we put them is into the compliance assistance arena. Thus, we have people who work full time with dry cleaners in the metropolitan area. We are publishing compliance assistance brochures not just in English, but also in Spanish and, most importantly, in Korean, since forty percent of the dry cleaners in the metropolitan area are owned by Koreans. If you speak to them in Korean, you have a much greater chance of being able to teach them what you need to teach them and help them the way you need to help them.

Now there are those who say that when it comes to these small businesses, compliance assistance is really all that we ought to be doing. We ought to be having those seminars, those outreach efforts, those brochures, those facility visits (where we or the state actually send our people to the facility to stand there, speak to the proprietor, talk to them, hand them information, hand them literature, give them web sites they can use on their home computers to get the information they need), and try and help them come into compliance with the various and sometimes complicated rules that we have promulgated. These people need this kind of compliance assistance. It is an old legal maxim that ignorance of the law is no defense, and as a lawyer, that is comforting. If I need to go into court, I do not have to prove (in a civil case, at least) somebody knew that what they were doing was a violation of the law. However, it does not help me get them into compliance in the first place, if they do not know what they are obligated to do.

The compliance assistance — the outreach — is particularly important when we are dealing with smaller, more numerous, and less sophisticated types of facilities. What we are learning, however (which should have been obvious to any sort of sane observer all along), is that if you go down only the soft path you will not get to where you need to go. A compliance assistance program, without the heavier hand of enforcement to back it up, does not seem to do the trick.

Let us take for example underground storage tanks. Underground storage tanks exist in numbers, beyond comprehension, throughout the United States and presumably the world. Every gas station, many fleet operators (whether it be a taxi cab fleet or a bus fleet), contractors who have heavy construction equipment, municipal governments, federal government agencies, state agencies — all of these are entities that have underground storage tanks, typically for fuel but sometimes for other chemicals as well. The fact is, any underground tank that was installed prior to 1988, if it has not leaked yet, will leak. It is almost that simple. Tanks installed underground before 1988 were made out of steel, and steel rusts over time. These tanks were generally not protected in any way from corrosion, and therefore if they have not yet leaked, they will. Fifty percent of all ground water contamination in the United States is caused by leaking underground storage tanks. Fifty percent of all the ground water contamination comes from these thousands of sources all around the country, each of them small, but each of them potentially very dangerous.

We have had, for the last 10 years, nationally applicable underground storage tank regulations, requiring corrosion protection, leak detection, and things of that sort. A major deadline in this regulatory package is coming into effect this month, December 22, 1998. The regulations that are coming into effect this month have been on the books for ten years. They went into effect on December 22, 1988. For ten years underground storage tank operators have known about them. For the last six of those ten years, we have had the most aggressive out-
That is quite a large number. Currently active tanks out of compliance. Between thirty and forty percent of the cur- rently active tanks out of service altogether and sim- ply eliminating them — and have spent a lot of money doing so, are telling us loudly and energetically that if we do not enforce, and enforce aggressively, against the folks who sit back and waited, then we essentially are making “chumps” out of them. And they are right. They are right, and the fact that some of these are small businesses, who may not be terri- bly sophisticated or may be operating a little close to the economic margins, does not really matter. The fact is that they did not do what they needed to do in a timely manner, and the other folks did. That is just not fair, unless we do something to level the playing field through our enforcement program. True, it costs a lot, and true, in some cases it may end up putting people out of business, because they cannot afford that cost. However, because of the environmental threat, this work must be completed. This is not some trivial paperwork violation (the criti- cism sometimes assert that most of the enforce- ment cases we bring are paperwork violations and trivial, marginal violations). This is real stuff. Again, if those tanks have not been protected from corrosion, then they will leak. It is just a matter of time. And, when they leak, it becomes an extremely dangerous matter.

The other example that I will offer you is with dry cleaners. With dry cleaners we have had an extremely active compliance assistance outreach for four or five years now, and we have been joined by the state and in this case by the City of New York as well. Yet, we still find a very large percentage of dry cleaners out of compliance, when we go to visit them. As of now, we are shifting into a more aggressive mode. In my region we have not previously initiated penalty actions against dry cleaners. We have been offering compliance assistance. We have provided them with compliance assistance and we have issued to some of them compliance orders — administrative orders requiring them to come into compliance, but not imposing a penalty. We feel the time has come to shift to the next level and start to penalize those who we find are continuing to be in non-compliance despite all of this outreach that has taken place. We do not anticipate that these penalties are going to be enormous. They are going to be appropriate to the sizes of the businesses that we are confronting, but they are going to be designed to hurt a little bit. That is their reason for being.

So, what is the moral here? Well, it is sort of what any second grader could probably tell you, which is that you need a balance. One path or the other does not get you to where you need to go. You need to have a sufficient number of activities on both sides of the ledger; you need to blend your activities.

We have quite a few tools at our dis- posal. We have the compliance assistance tool that I have been talking about. We have our traditional enforce- ment tool — administrative and judicial civil enforcement — which primarily looks toward securing injunctive relief and of- ten looks towards imposing a civil penalty of some sort to create the deterrent effect that we believe is needed. And then we have the criminal enforcement tool, the heavy hammer in the arsenal of environmental tools. Prior to about 1980, almost none of the federal laws and very few of the state environmental laws pro- vided much in the way of criminal enforce- ment authorities. Now they almost all do, and many that originally provided only for misdemeanors have been upgraded to provide for felony relief, as well. The number of criminal enforcement actions at the state and federal level has skyrocketed over the last years. The number of criminal enforcement agents — gun-tot- ing environmental cops — that we have in the federal government, although still very small in absolute terms, has quadrupled during the 1990’s; and the num- bers of such agents at the state levels, in certain states like New York and New Jersey, are almost as large as the number that EPA has nationwide. Thus, activity in the criminal enforcement arena has in- creased. Obviously, only the most egregious cases are shunted down that particular track, but it is an extremely impor- tant component of a balanced enforce- ment program.

In the last few minutes I want to men- tion a few of the areas of focus that we are attending to and that we are looking at in the next coming year. At EPA we have recognized that we have very lim- ited resources. The majority of environ- mental compliance work on environmen- tal enforcement work is done, as it should be, in the states. At the EPA we have a more limited, and perhaps a more focused role to play. We have been trying to iden- tify geographic areas and industrial sec- tors that are in need of particular focus.

We are focusing our enforcement ef- forts across the different media: air, water, RCRA, TSCA, FIFRA, EPCRA, etc. We are bringing to bear the different re- sources that we have in these isolated programs, bringing them to bear in a more coherent way on a specific geographic area that has some ecological concern or environmental threat. Or we are focusing those resources on a specific industrial sector that appears to be having some systemic compliance problems. That may be a better use of our limited resources — to target them and focus them in this way so as to raise visibility in a given industrial area or a given geographic area.

For example in the last couple of years we have been focusing on some of the following sectors: primary non-ferrous metals, petroleum refining, chemical preparation, pulp mills, etc. These are some of the kinds of sectors that we in our region, or in other regions, have been focusing on.

We try to select these sectors based on information that we have in our data bases. Sometimes that information has
not been up to speed. Therefore, a parallel concern that we have identified is that we need to focus more attention on maintaining good quality data about compliance in our automated data bases.

More and more, all that information that we gather — those reams and reams of data — are now available to the public through the Internet. That, too, has caused us to be introspective about the quality of the data. It is a good thing: as people start to use the data and learn what is going on in their communities, the pressure to get better data quality is also increased. It is a positive feedback cycle: as we get better data, we are going to be able to better focus our enforcement efforts, where we hope they are really needed.

We are also looking at some specific in-depth investigations. Historically, our enforcement efforts have been fueled by two sources: either by a typical inspection, where an inspector goes out and spends a half a day at a facility and comes home and writes an inspection report; or by self-reported information, a for example discharge monitoring reports (DMRs) from people who hold a water discharge permit. In the future we are going to be doing a bit more in the way of in-depth investigations, where we will go into facilities and spend several weeks looking at them in more detail.

Those are some of the things we are going to be doing. We feel that this is a better way to focus our enforcement efforts. We are going to try and maintain a balanced program, and urge our state partners in the enforcement arena to do the same, and we will be happy to talk to you about that a little further later on.

New Dean -- cont. from p. 1, col. 3

NGO community in addressing environmental issues, many of which transcend national boundaries.

I am very interested in the conversation that I hope to have with the faculty, staff and students who are active in delivering the environmental curriculum at Pace, engaged in environmental advocacy, and pursuing environmental research agendas, to further develop Pace as the leading environmental law school not only nationally, but as the leader of an international consortium of environmental legal education programs in North America, Europe, Asia and beyond. I certainly see an opportunity to develop close links with the North American Commission on Environmental Cooperation which was established under NAFTA and which operates out of Montreal. I also believe that it is important to look closely at the development of international environmental standards now being undertaken by the International Standards Organization (ISO) in Europe. Research opportunities exist in exploring how international NGOs will be able to influence national and international environmental policies in the coming years.

Environmental clinical education is, in my view, an important component of all environmental programs that purport to educate young lawyers about environmental law, policy and advocacy. The experiences that students gain through working with multi-party clients who will have conflicting and diverse interests, developing coordinated legal, policy and media strategies to achieve environmental objectives, and recognizing the intensely inter-disciplinary nature of environmental law, are achieved in a clinical setting in a way that is simply not possible through classroom pedagogy. Clinical education is also an important way that the law school gives something back to the communities that support us. One always recognizes the reality of public interest clinical programs — that differing views are almost always strongly held, the issues are very sensitive, and that individuals and firms may not always see the value in “action” research and environmental advocacy. But responsible public interest advocacy — for the homeless, disenfranchised, disempowered, and now the environment — has been a hallmark of legal education in a University setting — it is a tradition that has marked legal academia as an important catalyst for social progress in the United States.

The issues confronting us as we turn the corner into the next century are likely unknowable, or if known, are not understood in a way that would permit us to respond to them effectively today. Thirty years ago the public and few if any experts were aware of the risks of ozone depletion in the polar regions due to chlorofluorocarbon (CFC) reactions in the upper atmosphere; and the imminence of global warming associated with carbon emissions was not widely regarded as a real risk to ecosystem integrity when I went to law school in 1975. The risks that our children will face in 2050 are in our environment now — we simply do not have the perspective or knowledge to be able to be aware of them. Once one accepts that proposition, the prophylactic role of environmental risk management and assessment, and the application of the precautionary principle to a wide range of human endeavors becomes a critically important component of public policy.

Of the issues that we are aware of today, my predication is that access to limited water resources; the impact of population growth on the ecosystems of large parts of the world; the need to develop international agreements to facilitate the sharing and distribution of environmental technologies and knowledge with peoples attempting to develop their economies; and a recognition of the strong links among environment degradation, security risks and immigration pressures will dominate the world’s agenda in the coming decades. In addition we still need to address the issues of habitat destruction (in particular forests and inshore fisheries), global warming, and the aggregating impact of pesticides, herbicides and fungicides in modern agriculture.

Legislation and laws are important components in the array of public policy instruments available to us to address these issues, but in my view they can only touch the most egregious of the environmental risks that confront us, leaving the mass of environmental challenges unexposed to legal solutions. The existence and threat of traditional command-and-control environmental regulation should be conceived of not as the primary tool available to us to generate environmental benefits, but rather as a necessary incentive for industry, communities and individuals to incorporate an environmental ethic into their day-to-day practices and habits. Thus, for example, environmental life cycle analysis must become part of corporate management systems to ensure that product and service designs take into account and minimize environmental costs and risks associated with industrial practices; consumer awareness and education about environmental issues must continue to be fostered so that environmental values become part of our day to day consumption habits; and communities must incorporate environmental values into daily land use planning, transportation and energy management decisions.
In 1999 interest in this framework proposal matured and I am pleased to be returning to make two presentations regarding it during the year:

- The first was a presentation in February to the National Oil and Gas Institute at which I discussed the framework proposal and explored the many advantages to the petroleum industry of getting all petroleum related companies certified under the ISO 14,000 Environmental Management standards to demonstrate the industry’s commitment to environmental compliance. Significant participation in this internationally established and respected private sector certification program would enable the industry to argue that self-regulation and industry created standards can be a significant component of an Argentine system of environmental protection. This presentation is to be published in Spanish in the national petroleum magazine.

- The second is a keynote presentation at a five-day colloquium in June on sustainable development in the Cordoba region involving 500 representatives of all governmental, nongovernmental, and private sector groups involved in sustainable development policy formation. The presentation will discuss the jurisdictional obstacles to developing an effective public policy for sustainable development in Argentina and suggestions for surmounting those difficulties drawn from interjurisdictional experiences in the U.S. This colloquium program is run by the Foundation for the Environment and Natural Resources (“FARN” by its Spanish initials) and supported by the Tinker Foundation, the Avina Foundation, and USIA.

As a result of this work, Pace University School of Law and FARN have agreed to enter into a memorandum of understanding to collaborate in providing bi-national educational programs in environmental and land use law. In the first year, FARN will assist Pace in placing law school students as externs in law departments and firms in Argentina and recruiting Argentine lawyers to study the American legal system and Pace will assist FARN in developing a certificate program in environmental law. Under the memorandum, the two institutions will continue to explore methods of providing educational services to lawyers, law students and those interested in environmental law in both countries.

SAN JUAN, PUERTO RICO -- AGREEMENT OF COOPERATION SIGNED BY PACE LAW WITH CARIBBEAN/MESOA美人ic ENVIRONMENTAL AGENCIES

Many Caribbean and Mesoamerican countries have environmental agencies that are under-staffed and under-budgeted to help fulfill the government’s policy on environmental protection. Critically, these agencies lack the training and experience to carry-out their missions. The Central American governments, at the highest levels, have combined in an effort to make environmental protection a top priority by the formation of the Central American Commission on Environment and Development (“CCAD” by its initials in Spanish). The board of directors of the CCAD is comprised of the environmental ministers of each of the Central American countries, including: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama (Mexico has observer status).

Because of these considerations, on December 15, 1998 the CCAD entered into an agreement of cooperation with the Puerto Rico Environmental Quality Board (EQB), Pace University School of Law and the International Union for the Conservation of Nature (IUCN), in order to enable Puerto Rico’s environmental specialists to train their Central American counterparts. This agreement, an initiative of EQB Senior Staff Attorney Jose Luis Ramirez, an L.M. graduate of Pace, is only the first step in the establishment of an Environmental Training Center for the Mesoamerican and Caribbean Region (the “Center”). The Center will be modeled after the experience of the successful Singapore-based joint IUCN, Asian Pacific Center for Environmental Law (APCEL) and United Nations Environmental Programme (UNEP) course on capacity-building for environmental legal education in the Asian and Pacific regions. The Center, which will be based in Puerto Rico, is poised to also include other Latin American and English and French-speaking Caribbean countries as well.

The Center’s initial work will entail the development of several pilot projects that have been specifically requested by governments in Central America. Two detailed requests for training have been made by Guatemala’s Commission on Environmental Protection (“CONAMA” by its Spanish initials) and El Salvador’s Director of Environmental Quality at their Ministry of Environment and Natural Re-
sources (“MARN” by its Spanish initials). These projects will be discussed in detail at the forthcoming meeting of the parties in San Salvador, El Salvador in early May of 1999.
-- Robert J. Goldstein, Director of Environmental Programs

DAKAR, SENEGAL -- INTERNATIONAL WETLANDS CONFERENCE

A group of pre-eminent international environmental advocates and policy makers have come together, under the auspices of the Biodiversity Conservation Information System (BCIS), to spearhead a number efforts to provide for the preservation of wetlands. One of the most ambitious of these efforts involves the cataloguing and categorizing of the world’s most important wetlands. This effort will identify and delineate wetlands providing an invaluable database to ecologists and preservationists.

Representatives of Pace University School of Law proposed to add a new critical element to this effort. It was suggested that the preservation goals of cataloguing and categorizing wetlands will only be reached if effective legal systems are purposely focused on the problem. To do this, the identification process needs to differentiate among levels of established legal protection mechanisms. Research to-date proves that in many jurisdictions, wetland preservation is assumed despite the surprising lack of substantive protection. In other jurisdictions what is touted as a preservation scheme is not just a facade of procedural protections, requiring nothing more than the ability to procure the proper permits before destroying these vital ecosystems.

The proposal is to identify and then quantify the protections afforded to wetlands jurisdiction-by-jurisdiction. Quantification, always a difficult (and delicate) subject when legal systems are involved, will be somewhat subjective. These evaluations will be based on set matrices that will be applied uniformly. The failsafe will be the juxtaposition of those quantified analyses with the actual law upon which it is based. The casual user can therefore get an overall evaluation by merely looking at the rating, while the legal researcher can simultaneously access the full-text of the statutes and jurisprudence on which the rating is based.

At the 2nd International Conference on Wetlands and Development in Dakar, Senegal, 8-14 November, 1998, this proposal was presented to a specialists’ group on wetland inventories. With the group’s unanimous consensus, the legal component will be included in a comprehensive proposal for a pilot project.

The environmental law aspect of the project will be undertaken by a team of experienced environmental lawyers under the auspices of the Environmental Law Programme of IUCN. This team will draw upon the legal database experience of Pace University School of Law’s Center for Environmental Legal Studies; and the documentary resources of the IUCN’s Environmental Law Centre in Bonn, Germany.
-- Robert J. Goldstein, Director of Environmental Programs

SIENA, ITALY -- INTERNATIONAL CONSERVATION DATABASE

Director of Environmental Programs, Robert J. Goldstein, serves as a member of the Steering Committee of the Biodiversity Conservation Information System (BCIS), a consortium of conservation organizations working together to enhance databases to promote conservation efforts throughout the world. A meeting hosted by Professor Luigi Boitano, of the University of Rome, at a conference facility in Tuscany, drew representatives from member organizations such as the BirdLife International, International Species Information System (ISIS), TRAFFIC International, Wetlands International, World Conservation Monitoring Centre (WCMC) as well as several Commissions of the International Union for the Conservation of Nature (IUCN).

In Oposa v. Factoran in 1993 ... [the Philippine Supreme] Court ruled that “children – representing themselves and generations yet unborn – have the legal standing and personality to seek the cancellation of all logging concessions in the country.”

NICHOLAS A. ROBINSON is a Professor of Law at Pace University School of Law, and is the Chair of the Commission on Environmental Law of the International Union for the Conservation of Nature (IUCN).
In Print:


Distinguished Professor M. Stuart Madden’s article “Joint and Several Liability and Environmental Harm in the 1990s” will be published in the Summer Issue of the Fordham Environmental Law Journal.

Professor Madden’s article “Liability of Raw Materials and Component Parts Sellers: From the Titanic to the Third Restatement” will be published in the Summer, 1999 issue of the Northern Kentucky University, Salmon P. Chase College of Law’s Law Review

Professor John Nolon’s article entitled “Grassroots Regionalism” will be published in St. John’s Law Review.

On the Net:

Adj. Professor Robert J. Goldstein’s award-winning web site for his course in Conservation Law is accessible at http://www.law.pace.edu/env/courses/775frame.html.

Under a grant from the Trust for Mutual Understanding, Guliana Bovaeva, a Russian Environmental Lawyer, from Moscow, Russia is spending the Spring Semester in residence at Pace, creating a database of Russian environmental laws in their original Russian and translated into English. Ms. Bovaeva will return to work at the newly created Eurasian Environmental Law Centre in Moscow.

The final round of the National Environmental Moot Court Competition at Pace was broadcast live over the Internet from the law school’s home pace located at http://www.law.pace.edu. A recorded version is now available for viewing at http://joshua.law.pace.edu/env/newvell/researchprojects.html.