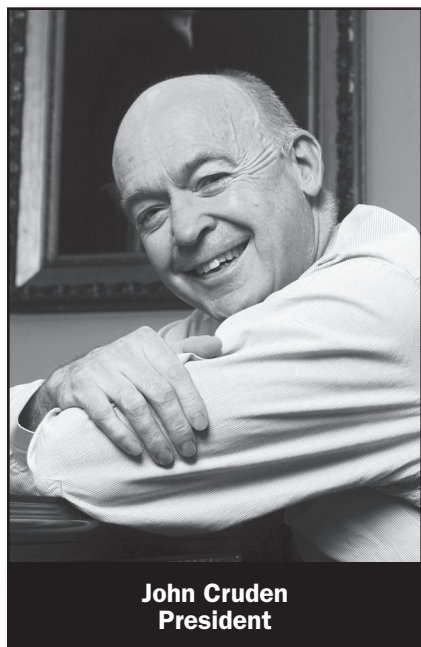


Closing Statement

A Talk to a First Grade Class, a Lecture at a Law School



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President

This past fall I had the honor of giving the Gilbert and Sarah Kerlin Lecture on Environmental Law at Pace University. The law school established the annual lecture to expand its programs of research, education, professional and scholarly activity, and publications in environmental law — a field in which Pace has received international recognition. Mr. Kerlin was a distinguished attorney for Shearman & Sterling in New York City and founder of the Riverdale Community Planning Association. As such, he was a leader in protecting the natural environment of the Hudson River. And, returning to Pace allowed me to be with Leslie Carothers again, and I came away with even more admiration for her energy and intellect. Other extraordinary professors, including Nicholas Robinson and Ann Powers, made this a memorable experience.

My presentation was on the subject of environmental enforcement, covering four general areas: basic principles; the state of the art in the United States; weaknesses in the current system; and where the future may lead us. I relied on my experience leading federal

environmental enforcement at the Department of Justice the past several decades, as well as several publications that I have written, the most recent being the chapter on environmental protection, published in Spanish and English in the 2011 book *Environmental Legislation in North America* by the NAFTA Commission for Environmental Cooperation.

I began my speech with a story about visiting my daughter Kristen's first grade class (she was the teacher). Prominently displayed were Kristen's rules, including the familiar phrase, "If you make a mess, clean it up." This formed the basis of my lecture at Pace, for my conceptual framework of environmental laws and the necessary enforcement of those standards, which includes the concept of preventing polluters from economically benefiting from their actions.

My presentation set forth what I consider to be five core enforcement principles: the need for a set of comprehensive and well-known laws that provide an array of enforcement options; a trained, honest group of professionals who have resources to go after polluters; a monitoring, reporting, and detection capability; a judicial system that resolves violations in a clear, final way; and a measurable way to ensure that enforcement and environmental improvement is occurring.

I took some time outlining the current structure of environmental enforcement in the United States, analogized as a pyramid. The base of the pyramid, with the highest number of annual actions, is environmental enforcement by state and local governments. The next level consists of administrative actions that may be brought by a variety of agencies, including the U.S. Environmental Protection Agency, Forest Service, and Department of the Interior. Above this tier are the civil and judicial actions brought by the Department of

Justice and citizen groups. The peak of the pyramid is criminal enforcement. By way of example, EPA completed 20,000 inspections in 2010, which resulted in an estimated 2,000 administrative penalty actions and 233 judicial referrals.

After explaining the process, I then pointed out some potential weakness, the central one being a lack of state resources. To support that proposition, I cited a recent study conducted by University of North Carolina School of Law Professor Victor Flatt, who is currently a visiting scholar at ELI, which concluded that states that had higher per capita spending on environmental enforcement programs had higher compliance rates. I also highlighted some areas in which we were lacking either clear, comprehensive legislation or an adequate array of enforcement options — to regulate such new areas as hydrological fracturing, nanotechnology, and genetically modified organisms.

Yet, I concluded my presentation on a positive note, forecasting the future development of better mitigation options to make the environment whole after an enforcement action; enhanced technology to better monitor, detect, and even report emissions; and an enhanced focus on restoration of ecological services as the guiding path to more comprehensive results.

Other than meeting with the faculty and students, my favorite part of being at Pace was being allowed to take a water color painting off of the wall of Professor Karl Coplan's office. Some years ago we went backpacking together high into the mountains of Rocky Mountain National Park. At one stage, while I recuperated, he painted a wonderful water color, capturing the view of Epsilon Mountain with streaming water and small lakes. I admired it (again), and he gave it to me. It is now in my office at ELI.