



By Carolyn Raffensperger

Brief Cites Crimes Against Nature

An internal memo to Co-counsel for future generations of all Species:

Our clients have been asked to join a suit against Humanity brought by the Council of All Beings. The charges:

Over many thousands of years Humans have proven themselves incapable of living as citizens and members of the Community of Life, and in recent centuries have become so numerous and so hazardous to other members of the community and the Biosphere that they should be banished from the Earth forever.

The complaint was drafted by Mr. Fox, lead counsel for Plaintiffs, with the help of a Human, Oberlin College environment professor David Orr. Professor Orr asked his students, "What defense might be made on [Humans'] behalf? What supporting evidence could be presented? Who among the Animals and Plants would speak for us?"

In preparing for the suit, Plaintiffs are drafting two motions for Justice Owl, presiding magistrate. First, to reverse the burden of proof; Defendants need to show why they shouldn't be banished.

Second, the legal standard should be changed from the Reasonable Person to the Respectful Person, or in this case, the Respectful Species. According to the philosopher Paul Thompson, "A Respectful Person is a person who measures his or her action in terms of its

consistency with, and effect on, a network or web of relationships," such as the Biosphere.

Our motion to reverse the burden of proof comes after 200 years of unilateral action by Defendant to our harm. The burden of regulating noxious activities, particularly toxic chemicals and habitat destruction, has been borne by Plaintiffs rather than Defendants. Humans have lately tried to be responsible by creating Regulations to reduce emissions and protect us from toxic chemicals. The regulations are administered by a group of their wise ones, which they call a Government Agency. Other Humans are responsible for the pollution and toxic chemicals; they call themselves Industry.

But Plaintiff contends that the Agencies depend on Industry to test whether a chemical will place an "unreasonable" burden on Humans or the Biosphere. If the Agencies cannot meet the test, because Industry either hasn't done the studies or has withheld information, then the chemical enters the market.

Placing the burden of proof on Government represents a policy decision that in the absence of information a chemical cannot be restricted — the Humans have willfully chosen to be ignorant. When there is little or no information on the safety of a chemical, it may be placed or remain on the market, even if it poisons this and future generations. Reversing the burden of proof gives the benefit of the doubt to the Earth, to future generations, and yes, even Defendant's health.

Most decisions protecting future generations will be filled with uncertainty, a situation where reason is valuable, but humility and respect are essential. Thus, the second motion, that the court adopt the Respectful Person Standard, a concept first proposed in

the mid-1990s for sexual harassment. In 1997 Professor Anita Bernstein published an article on this standard in the *Harvard Law Review*, a totem of the Humans' advocates. The nexus of sexual harassment and environmental law is that Defendant's behavior creates a hostile environment.

According to Professor Bernstein, respect is more than an abstract moral virtue, it is the recognition of a person's inherent worth. When Defendants are charged with making a hostile environment of the natural world, they have damaged the inherent value of the Biosphere, of clean air, clean water, and ecological integrity. Even if they may

have been reasonable within the limited and outdated confines of their jurisprudence, Defendants have been disrespectful of Plaintiffs to our injury.

"Reference to reason in hostile-environment sexual harassment may be worse than beside the point," Professor Bern-

stein writes. "It subtly denigrates some claimants and minimizes or denies the nature of their injury." Bernstein notes the importance of respect to the precautionary principle: "Urging policymakers to err on the side of non-encroachment and distance, the Precautionary Principle expresses respect. . . . The respectful person understands the prudence of caution."

If Justice Owl agrees to these two changes, we would ask for a different remedy — an injunction against any activity that compromises the health of the Planet, and give Defendant some time to clean up the messes it has made. If this fails, we will reopen the case and demand banishment.

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"What if the Plants and Animals were to take us to court for damages? What would be Humans' defense?"