

Walter Kuhlmann -- Vector of change

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Honoring Walter's induction into the **Wisconsin Conservation Hall of Fame**,
April 9, 2005, Sentry Theater, Stevens Point, Wisconsin.

We are here today to celebrate the remarkable achievements of 3 great conservationists. It is impossible to compare their achievements, so I won't try. However, it's fair to say that all 3 richly deserve the honor, and for different reasons.

Why are we here to honor Walter Kuhlmann? He was not a native son of Wisconsin but an immigrant from a Land to the East – New Jersey. He loved Wisconsin, but so do many others. He was no celebrity politician like Gaylord Nelson. Walter clearly loved nature but was not an eminent naturalist in the traditions of John Muir or Aldo Leopold. Walter did not seek to stir imaginations about nature with his writings after the fashion of Sigurd Olson. So what has earned this lawyer a place in Wisconsin's Conservation Hall of Fame? Don't litigators need to be reigned-in rather than honored?

Who was Walter Kuhlmann?

He was our guide into the legal wilderness – a natural leader and pathfinder. He led us into the overgrown thickets of administrative law, through the swamps of Rulemaking and appeals, and up mountains of the public trust doctrine and the precautionary principle.

But Walter was interested in more than just crossing terrain. He would set fires to the tall straw of code to restore and reform the law.

When the going got rough and we were all torn and tired, Walter would salve our wounds, show us all we'd accomplished, round us up like a sheepdog, and push us ahead.

In retrospect, I think his most remarkable achievement was bringing together all the various clans and tribes of conservationists to work together as a team to achieve lasting change.

When we faced discouraging obstacles like the glaciers of legal interpretation and had to turn back, Walter was also good at returning us gently to where we had started without revealing the depths of his own disappointment.

What did this attorney do for Wisconsin's grand tradition in conservation? LOTS, and too much to relate in any 15 minute tribute. Instead, let me reflect on his accomplishments, his example, and his legacy. I hope you'll also catch a glimpse of the personal side - his motivation and style.

I knew him best from our 17 years working together on public lands forestry issues. In 1986, I was one of a small group of biologists concerned with the way the Forest Service had treated biodiversity issues in their 1986 long term Management Plan. The John Muir chapter of the Sierra Club and the Wisconsin Audubon Council were also deeply concerned. Naively, we biologists had assumed that the FS would reform its approach once we pointed out the clear gaps in their treatment of biotic issues. We tried informal letters and discussions but did not get very far. Things changed when Walter joined us - science and the law have a peculiar alchemy where the two together can be far stronger than either on its own. We were therefore grateful when this lawyer from a local firm showed up, offering to take the case *pro bono*. Grateful, but also suspicious . . . of his leather briefcase and 3 piece suit. Could this guy really care about fish and birds? Aren't lawyers to be distrusted?

To drive home the need for responsible practices, Walter led our efforts to appeal the 1986 Plans for both the Chequamegon and Nicolet National Forests. His contention was simple: The U.S. Forest Service was not protecting biodiversity in our National Forests as required by the 1976 National Forest Management Act.

What began as a simple skirmish soon escalated into a protracted and intricate set of battles across several fronts. When we won points on administrative appeals, we faced mediation and Roundtables. Appeals denied begat lawsuits, which, in turn, begat further mediation and legal appeals. While we eventually lost our litigation battle, we collected strong support from the country's top conservation biologists and leading scientific societies. These efforts brought national attention and some imitators. It also forced the Forest Service and other land management agencies to re-think how they dealt with biodiversity issues.

Walter was always at the front of these efforts, forging consensus and leading conservationists in what emerged as a unique effort to broadly apply conservation biology to protect biodiversity on all levels of public land

managment. He sought to make the practice of land and forest management congruent with both an ethical commitment to conservation and our emerging understanding of the complexity and fragility of ecosystems. A few quotes make these points even more clearly:

“From Walter I learned that the practice of law can and should be much more than a way to make a living. Walter always practiced law with his heart and conscience, not just his substantial legal skills. His passion for the environment led him to seek out opportunities to apply his exceptional intellect and legal talents to causes and issues that moved him (often for no fee). Many lawyers and legal groups talk about the profession's obligation to contribute to social needs and causes -- more than any other lawyer I have ever worked with, Walter took that responsibility seriously and devoted much of his professional life to fighting for causes that were dear to him and important to all of us.”
Rick Delacenserie, attorney colleague.

George Hall's Recollections of Walter -
(George Hall led the Sierra Club's Forestry Committee for many years through the 1970's and 80's)

“Did you know Sierra Club v. Marita is given extensive treatment in a new Foundation Press (Thomson-West, 2004), Natural Resources Law and Policy casebook. Fair to say Walter had the intellect to develop new legal theories relating to understanding and applying NEPA, and was not shy about articulating them . . . This casebook makes the suggestion that if the case had been heard after the 1999 Committee of Scientists meeting, the outcome would have been favorable. At the very least, one could say it pushed the Forest Service to redirect its focus to ecological sustainability (which Bush has reversed).

I work with 100's of attorneys, and count a number of them as close friends, but I have yet to meet anyone with Walter's unique blend of skills. Recall during our work with Jim Addis (DNR division administrator) and Charlie Higgs (DNR director bureau of forestry) when we successfully accomplished the state forestry statute revisions how much respect everyone had for Walter - you knew he would come after you and expose weak and fallacious arguments, but how he did it preserved relationships and the ability to truly do collaborative problem-

solving. Addis told me sometime later that the ecological additions to the "purpose statute" for the state forests would not have happened but for Walter.

"I first met Walt Kuhlman on paper, reading a set of Wisconsin forest cases in which he was setting out an extraordinary theory, new to me, on forest conservation. I had toyed with the idea, but it never occurred to me that it could be translated into a legal theory and a cause of action. He did both; I'd say that more than anyone else he moved ecosystem protection to the front of the environmental law agenda. I met with him only a few times, in DC and in Baraboo, workshops on biological diversity, he always in the middle, pushing the ideas, a superior intelligence, an obvious kindness, an inspiring passion. Even down here in Louisiana, I miss him. When he died I called our good mutual friend Roger Schlickheisen and we couldn't think of a word to say. Just there on the phone together, in pain."

Oliver Houck

Professor of Law, Tulane University

(and co-author of amendments to the Endangered Species Act)

"Walter was an intellectual giant. I'm convinced he was ahead of his time legally and that, eventually, his interpretations and theories will be widely accepted (even in the 8th Circuit!). And he was, perhaps more importantly, a dogged yet gentlemanly litigator. It is safe to say that think of him almost daily in my own continuing practice.

It is ironic that I was able to take my own legal leaps only after he died. It's as if those he touched realized they ALL needed to work a little harder to even have a chance of capturing what one man did."

Bill Snape, Vice-President for law and Chief Counsel,
Defenders of Wildlife

The law and many attorneys are sometimes criticized for consistently taking an adversarial approach. Adversity proceedings exist for lots of good reasons in law, of course, and Walter was well-aware of the need to take adversarial positions. This is the way we push and test the law, forcing courts to interpret what it really means. Walter was adept at these proceedings – a fierce litigator who never shied away from the fights he saw as necessary. He could be a combative litigator, capable of quickly knitting scientific and legal arguments into a cohesive and persuasive legal brief. He could also insistently badger those he felt were ignoring

key issues. This side of him impressed and intimidated his foes, sometimes to the point of looking distinctly uncomfortable.

Walter knew his skills and could use this reputation, when it suited him, to demand serious attention. He never used these skills without reason, however, and could switch with remarkable speed from adversarial to conciliatory in his tone. I hope they still teach this in law school.

It would be a mistake, however, to see Walter only as a pit-bull attorney or to evaluate his legacy only in terms of the lawsuits he filed. It soon became obvious to me that Walter had skills of an entirely different sort that he could deploy when he detected opportunities to use carrots instead of sticks. Walter turned out to have surprising skills as a coach, cheer-leader, and mediator. He used these skills to encourage and richly praise those many working in government agencies.

In a long letter penned by DNR staff, noting his accomplishments on the occasion of his untimely death, what is most remarkable to me is the number of signatures. Walter was clearly trusted and esteemed by many colleagues within the ranks of our State's distinguished conservation agency. This letter makes clear that Walter served on dozens of DNR committees, providing counsel on a broad range of issues. He was always "tough on the issues" but in a way that earned him respect rather than enmity. Most significantly, he master-minded and guided a three year effort (1993-1995) to revise and re-orient the laws guiding the management of our exceptional state forest system. Biodiversity and recreation now exist as co-equal uses alongside silviculture because of these efforts. This law deserves to stand intact, by the way, despite current legislative efforts to turn back the clock.

Walter was fond of certain terms that took getting used to.

'Work-product' - an oddly prosaic term for someone capable of such remarkable productivity in terms of both quality and quantity.

'Sideboards' - Walter borrowed this concept from his extensive work with air and water quality law. The idea is that rather than setting a static target, the law should set some range of variation that cannot be exceeded. Walter wanted forest managers to recognize when their actions were exceeding the resilience of the system. He recognized the need for such sideboards to protect diversity, particularly when dispersed activities had cumulative effects.

My favorite Walter-ism is ‘**Vector of Change.**’

Critics of conservation sometimes argue that it made no sense to manage for any particular level of ‘biodiversity’ as we can never re-create pristine forests or habitats and species as they were before European settlement. Such critics point to how dynamic natural systems are to make the argument that it is artificial and infeasible to restore forests to their condition at any particular point in time.

Walter had a simple answer to this argument. We are not trying to re-create pristine or primeval forests, he would always point out. Rather, we are only asking for a positive **vector of change**. This, for Walter, was a simple yet stringent criterion for judging how we manage natural systems. Is the forest gaining or losing native species? Are populations of rare or sensitive species becoming more or less secure? Are conditions for the biota improving or declining?

Walter asked those responsible for managing our great public forests to meet this criterion and held them to it in his legal work and writing. Of course, it is rarely easy to evaluate just how we are affecting the forests, fields, and wetlands around us. Nevertheless, we should always be asking ourselves Walter’s question – are things improving? Why, or why not? What are the biotic effects of our actions, or inaction?

Let me finish by asking, What are our current Vectors of Change?
How would Walter judge our current directions?

He would be **distressed** by some trends – habitat losses have continued, and habitat degradation continues. The Millenium Ecosystem Assessment issued last week by the UN notes that 60+% of the world’s habitats are degraded in terms of their ability to support human life and economic activity. There are desperate needs to recognize that human well-being is intimately connected to the well-being of our natural systems.

Walter would doubtless also be angry to see the Bush Administration’s efforts to undo our 35 year federal legacy of effective laws to protect air, water, & wildlands.

On a more local level, Walter would be **encouraged** by the proliferation of land trusts we see around us, by the new State Forest planning process he helped to spawn, and by successful recovery of species like the Sandhill Crane in Wisconsin. I imagine he would be even more pleased to learn of the recent re-introduction of Whooping Cranes. Let us celebrate these vectors.

Walter would also appreciate the progress we are making with the Ice Age trail that skirts the Kuhlmann property.

What about the vector of legal change that Walter cared so much about? I suspect Walter would find particular satisfaction in recent legal decision. Judge Lynn Adelman of the Federal District Court in Milwaukee decided a lawsuit on April 1, 2005, brought by the HEC and ELPC of Chicago. These parties argued that the environmental impact documents prepared for timber sales in the Chequamegon / Nicolet NF failed to adequately consider the cumulative impacts of logging. Judge Adelman agreed, noting that the FS had not adequately considered how Goshawk, Red Shouldered Hawk, Pine Marten, and various sensitive plant species populations would respond to the cumulative effects of logging. This decision strongly vindicates the legal and conservation principles that Walter pursued so vigorously in the 1980's and 90's.

Walter would be greatly distressed, however, to see the introduction of Assembly Bill 254 in the current legislature. This 'right to log' bill would replace the remarkable synthesis forged by Walter, the legislature, and the DNR by insisting on active silviculture even on lands better suited to other purposes. Walter would be saddened to see undone what he worked so hard to accomplish in the final years of his life.

Walter Kuhlmann was himself a potent vector of change. He embodied the spirit of concern, dedication and effectiveness that characterizes all the heroes here in Wisconsin's Conservation Hall of Fame. Let us celebrate this final achievement of his short but remarkably effective life.