Lessons from a Lawyer's Life

Leslie Carothers

Pace University School of Law, lcarothers@law.pace.edu

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Lessons From a Lawyer’s Life

Leslie Carothers, scholar-in-residence at Pace Law School, received the 2013 ABA Award for Distinguished Achievement in Environmental Law and Policy. A pioneer in the early years of environmental protection, she expands in this space on her remarks in accepting the honor, drawing insights for today’s environmental professionals.
Leslie Carothers is a former president of the Environmental Law Institute. She served as vice president for environment, health, and safety of United Technologies, as commissioner of the Connecticut Department of Environmental Protection, and as deputy administrator of EPA Region 1. Photo by Jay Pendergrass.
Environmental lawyers and other leaders, many of them also lawyers, who have carried them out. As we approach the half century mark for many framework environmental laws, it is time to renew the mission, rebuild public interest and support for a more complex agenda, and energize and modernize the environmental laws. We can learn much from our successes and shortcomings.

As a regional EPA official, I addressed two especially memorable cases illustrating those types of pressure. One was the inexplicable failure of a highly competent program administrator to deal with a facility emitting severe and visible smoke close to residences. Much later, I learned that the owner was a close relative of a legislative leader in the state. In another case, the water pollution agency in a state greatly needing industry issued a permit to a new factory with inadequate controls on chemical releases. In both cases, Region I intervened without great fanfare to correct the problems. The fact is, governors of all political persuasions consider growing jobs to be their top priority, and some like to blame environmental rules for economic distress. Indeed, some governors would abolish the Environmental Protection Agency if they could only remember its name.

Friction can be reduced if EPA continues to work toward streamlined but more effective methods to oversee and support state environmental programs, with less emphasis on review of individual activities like permits and grants and more intensive reviews of the results of complete programs. During my 15 years with two major corporations, I was impressed by the extremely thorough preparation for annual shareholder meetings. Company executives wanted to be prepared for every conceivable question, whether from disgruntled employees, feisty nuns, or advocacy groups, and the briefing process before the annual meetings surfaced and settled many issues. I’d like to see the EPA regions and states offer concise and readable environmental program assessments for discussion at joint public meetings, annual or biannual, to provide more meaningful oversight and public participation in evaluation of significant regulatory and resource issues and solutions.

I learned much more from my service as environmental counsel at PPG Industries and vice president at United Technologies. The first was my shock and surprise that running a business involves almost as much unpredictability and irrationality as running a government agency. True, you are less likely to have people picketing outside your window or media bent on making you look like an idiot. But markets are fickle, and making important business decisions is hard, no matter how many numbers you crunch. I learned to respect the demands of judgment in business watching several men who were very good at it.

I also saw how helpful it would be for everybody if we could simplify environmental rules. Try reading and explaining the definition of solid waste, a rule that emerged from under a rock somewhere when I was at PPG and has been undergoing review and revision by oppressed junior lawyers ever since.
Of course, industry lawyers contribute to regulatory complexity in the quest for ingenious provisions that will lessen the burden for particular clients. There is no escaping the technical and regulatory complexities of anti-pollution standards and reporting requirements. But it would help to ask questions like whether low impact categories need to be covered, whether annual rather than quarterly reports would be enough, and whether a person of average intelligence and diligence can understand what the particular provisions are trying to accomplish.

In industry, I also witnessed the power of information disclosure as both a company management system and a governmental regulatory strategy with the implementation of the Toxics Release Inventory. With all its burdens and limitations, the TRI nonetheless showed companies how their factories rank as polluters in their states — lists that drove major efforts to reduce emissions and provided a tool for useful comparisons with the performance of peer companies and competitors. It will be interesting to see whether the greenhouse gas reporting program will be transparent enough to enable such comparisons, given the business confidentiality provisions and the sensitivity in some sectors about getting too specific about energy use. Of course, the IT revolution adds many new ways to communicate more widely and build new constituencies.

Above all, my corporate experience showed me the importance of setting specific goals, measuring their accomplishment, and enforcing accountability. Some were internal goals, providing comparisons among company divisions. Some were external goals supporting comparison to peer companies and public review. Each mobilizes the competitive spirits of business people. The lack of clear environmental and natural resource policy goals, preferably government wide, at the federal level is the biggest single weakness in our environmental regulatory regime.

The broad goals in our federal statutes can present a vision, but they are not specific enough to set priorities, command resources, commit agency actors to deliver results, and communicate environmental progress to the public. Examples of the types of goals that could define program success are the “no net loss” of wetlands policy announced in the first Bush administration and the specific and measurable energy use reduction goals set early in the Obama administration in Executive Order 13514 on Federal Leadership in Environmental, Energy, and Economic Performance. Although bipartisan participation would be desirable and is unlikely to be forthcoming from Capitol Hill, the work of developing environmental goals and measures could be led by nongovernmental science and policy organizations, collaborating with business and state governments and drawing on the long-range strategies and other work that many organizations are already producing.

These are challenging times for environmental organizations struggling to mobilize citizens on issues such as climate change, biodiversity protection, or chemical risks, where the problems are less visible, the impacts are harder to understand, and the solutions, such as transformation of the energy sector, seem so far out of reach. Many in the Congress and the statehouses and even on the Supreme Court are hostile to the environmental policies that we need. That said, it was not easy to get the lead out of gasoline either, an action that now seems like a no-brainer, but was upheld by only one vote in the D.C. Circuit’s 1976 en banc decision.

A new generation of business leaders is being joined by a new generation of environmental leaders, many of them aligned on the principle of sustainability, that environmental, economic, and social objectives can and must be optimized to make progress. They share the traits of “American ingenuity and optimism” in Ruckelshaus’s words, and the can-do attitude that has been the key to innovation and achievement throughout our history. My work with young lawyers and students as the Environmental Law Institute’s past president and as a current scholar-in-residence at Pace Law School gives me confidence that new leaders will be joined by young people with passion and skill who are choosing careers in environmental law and policy and the many adjacent fields where they can make a difference.