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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

By way of history, in 1969, I went to work as legislative assistant for Representative Gilbert Gude, an outstanding environmentalist legislator from Maryland. Among other assignments, I accompanied the congressman on several memorable visits to the then-decrepit and odiferous Blue Plains wastewater treatment plant serving the Washington metropolitan area and wrote many speeches calling for funding of the future D.C. subway system. I still feel a certain proprietary bond whenever I ride the Metro, although both the Metro and Blue Plains could use a tune-up.

One afternoon in 1971, I received a call from a friend urging me to join the new Environmental Protection Agency. He said he thought EPA would be in the 1970s what the Securities and Exchange Commission had been in the 1930s: an agency with sweeping new mandates to achieve important social change and a great place for an activist lawyer to be. I agreed, and I went.

The SEC and the securities laws were part of the nation's response to a depression and the collapse of the financial markets. They aimed to shield investors from fraud and market manipulation and to protect the national economy from the impacts of shaky capital structures. Animated by new ethics, new laws changed the legal relationships between the government, companies, investors, and the public. By the 21st century, regulation of the financial sector had lost some of its edge; high tech skullduggery outran the regulators and produced the most recent recession. The Obama administration and Congress have revived the ethical principles and retooled the regulatory system.

The EPA and the first environmental laws responded to a different kind of crisis. Increasing visibility of gross environmental degradation — or as William Ruckelshaus put it, the “smell, touch, and feel kinds of problems” — including Great Lakes pollution, plans to dam the Grand Canyon, and smog in Los Angeles all caused many Americans to ask: who owns our air and water and natural wonders anyway? We do, they answered. New rules inspired by an environmental ethic to protect public resources and public health changed the legal obligations of governments, businesses, farmers, and individuals toward the natural environment.

Environmental laws and the agencies enforcing them have generally remained potent for many decades, thanks to the support of the public and to an unusually committed and capable group of envi-



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Photo by Jay Pendergrass.

ronmental 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.

My first big job at EPA was to serve as the agency's lawyer on the development and defense of the rules to cut the use of lead in gasoline. Last summer, I had lunch with Dr. Kenneth Bridbord, the physician who was part of a small team of junior employees (all of us under 30) who did much of the staff work on the lead additive rules. I told him that the D.C. Circuit's 1976 decision in *Ethyl Corporation v. EPA* upholding our lead rules and the precautionary standard of endangerment it espoused were cited in 2012 by the same court upholding Administrator Lisa Jackson's finding that greenhouse gases endanger public health and the environment.

Although economic analysis and statistics of varying value have tended to dominate rulemaking in recent years, precautionary standards remind us that the most important issues still demand judgment and decisionmakers who are up

to the task. We recalled the privilege of working for William D. Ruckelshaus, Russell Train, and John Quarles, who led EPA during those early days. Many people who have served under other EPA administrators, including its recent spate of female leaders, doubtless feel the same way. Competent and courageous leadership matters.

After my stint at EPA headquarters, I spent seven years as an EPA regional official overseeing state environmental programs and four years running one in Connecticut. There is considerable ideological bluster around about the virtues of federal oversight, states' rights, and local decisionmaking. For me, the keys to making cooperative federalism work are respect and realism. Respect for the legions of dedicated and capable people working close to the problems in our diverse states. Realism in the recognition that they almost all have grossly inadequate resources and that even the smartest and strongest state environmental program managers can be sidelined by political pressures.

As a regional EPA official, I addressed two especially memorable cases illustrating political pressure at the state level

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 orga-

nizations, 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.

The work of environmental lawyers will continue to be a critical component of the ongoing effort to achieve “a healthy environment, prosperous economies, and vibrant communities,” in the words of ELI’s vision. ELI advocates the old-fashioned virtues — I call them classic — of an environmental ethic of stewardship, a belief that you get more objective and better decisions by considering diverse viewpoints, and a conviction that lawyers as researchers and litigators, analysts and activists, problem solvers and protesters are a potent force for positive change. Whether we’re young environmental lawyers or not so young, our planet needs us, so let’s all get on with the job. •

A new generation is coming online to join the early activists to meet today’s environmental challenges