



Transcript of CleanLaw Episode 9: Hana Vizcarra with Joe Goffman on the environmental legacy of George H.W. Bush, December 6, 2018

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- Robin Just: Welcome to this podcast from the environmental and energy law program at Harvard law school. Today's staff attorney Hana Vizcarra speaks with our executive director, Joe Goffman, about the environmental legacy of George H.W Bush. Joe shares his unique insider's view as he reflects on one of the greatest contributions any president has made to public health in the environment. We hope you enjoy the podcast.
- Hana Vizcarra: Former president George Herbert Walker Bush passed away in the last week. As my hometown Houston and the rest of the country mourns him and considers his legacy we are fortunate to have in our office someone who witnessed firsthand how president Bush approached the environmental regulation at a time when many in his party had stopped viewing environmental protection as a bipartisan issue. Joe, you had a special vantage point from which to see president Bush engage on environmental policy issues. What were you doing in the late eighties and early nineties
- Joe Goffman: Well, thanks Hana for teeing this up that way. The decisive years in which President Bush forged this particular part of his legacy span from, I would argue the summer of 1988 until November 15th, 1990 when he signed into law the clean air act amendments of 1990. That spans the time when he was the presidential candidate through about the first half of his term. In that time period, I was a senior attorney at the Environmental Defense Fund for about a year of that period and then I went to become associate counsel to the majority on the environment and public works committee of the Senate.
- Hana: President Bush promised during his campaign that you mentioned the 88 campaign to introduce legislation on air pollution. How big of a break was this from his predecessor from Reagan? He was Reagan's VP?
- Joe: Yes, he was. It was a significant break. What then candidate Bush liked to do was say things on the campaign trail such as I want to be the environmental president or I want to be the education president. In late August of 1988 he gave a major speech on the environment and he said words the effect that the time for the study of the problem of acid rain has ended. If I'm elected, I will introduce legislation that will result in millions and millions of tons of the reduction of the air pollution that causes acid rain and that represented a decisive break from the Reagan administration.



Joe: Candidate Bush and his brain trust have said and I've had conversations with them where they reported this, they looked at the electorate as being very polarized. Ronald Reagan may be remembered now with fondness, but the public was really split on his presidency. He really was seen as a very harsh, if you will, militant political leader and candidate Bush was concerned as were his strategic advisors that what were called at the time soccer moms would turn from the Reagan administration and look for a less polarizing alternative.

Joe: Bush decided that he wanted to be the less polarizing alternative and he reckoned that breaking with Reagan on environmental issues would signal to the public that he was a different kind of Republican. It wasn't so much that he was appealing to the environmentalist constituency. He was appealing to swing voters who saw environment as a marker issue and that's really one of the reasons given by his strategists for his elevating the environment on the campaign trail.

Joe: The effect of that is to have or was to have created a break with the Reagan administration that felt the pressure throughout the 80s from the science community and from advocates and from certain states to do something about acid rain. Throughout the 80s the scientific analysis and investigation of the observed phenomena of forest die backs and clear water stream poisonings was observed and studied and the general consensus was that the emission of oxides of nitrogen and sulfur dioxide from power plants across the country, and I should say coal fired power plants resulted in an atmospheric phenomenon that produced acidic deposition.

Joe: In other words, acid rain was formed in the atmosphere and it came down in an acidic form and had this direct adverse effect on forests and aquatic life. It seemed clear to a lot of people that the weight of solve the problem was to require coal fired power plants to install equipment to reduce their SO₂ and NO_x emissions. Well the Republican, or I should say the Reagan administration wasn't going for that. The Republican caucus on the house and the Senate was following the lead of the Reagan administration. The Reagan administration managed the problem by sponsoring extensive studies of the issue. When Bush said the time for study is ended, the time for action has begun he was breaking not only with the Reagan administration, but he was breaking with his party and he really was neutralizing the partisan valence of the environmental issue.

Hana: Bush's EPA administrator, Bill Riley has been interviewed a couple of times this week about how he came to that job out of the I think as the world wildlife foundation. He's spoke a bit about, he described a man committed to this change to, that transition from Reagan and that change in direction and taking on this acid rain challenge. Do you think it was more than political? Is this something that you felt he was committed to?



- Joe: My sense is that he was committed to it, but the first thing that president Bush had to do was form a coalition within his own government because among his advisors, including, but not limited to Bill Riley was a spectrum of views that how aggressive president Bush and his administration should be about dealing with acid rain and dealing with a range of air pollution issues.
- Hana: What did he come into office with that background? How did he go about addressing this problem? How did he deal with those different factions in Congress and his own administration?
- Joe: Bush administration's effort that culminated in the cleaner act amendments of 1990 first came onto the radar screen, if you will, of the environmental defense fund where I worked during the transition in December. We were approached not by Bill Riley who may or may not have been even nominated yet, but by a couple of people on the transition team who were decidedly not environmentalist, but who were interested in using a new clean air bill to test out some regulatory innovations. What these folks pitched to EDF was something along the lines of the following. President elect Bush made a significant campaign promise to introduce a clean air act bill. We think that promise may have been decisive in swinging the electorate in his favor. Now he's got to deliver. We know there are going to be a lot of controversies around various pollution control initiatives.
- Joe: We know we have to build a coalition. We think that a way to expand our coalition is to not only do a full frontal assault on air pollution, but to use innovative instruments, innovative ideas, and bring people in on that path. You guys at EDF seem to be unusually open to thinking outside the box about how to do environmental policy. In fact, we noticed that EDF was involved in an exercise called project 88 which focused on maybe a dozen environmental policy proposals that were all based on using market-based instruments rather than technology-based standards known at the time as command and control.
- Joe: In fact, the lead staffer in putting that report together was a young economist at EDF named Robert Stavens, who is now one of the leading faculty members at the Kennedy School of Government. It was that Project 88 report, Rob Staven's work EDF's, willingness to break with the environmental community that put EDF on the radar screen of Bush's transition team.
- Hana: Did you work with the transition team to develop some proposals before he even got into office?
- Joe: Yes. You could argue that the very first words on paper that ultimately became the acid rain program in the 1990 amendments were created in the offices of the environmental defense fund. You could even argue that they were created on my computer.



Hana: It's this, you're very humble way that you put pen to paper on this issue...

Joe: Right and like all great efforts it was a team effort of a senior lawyer at EDF senior scientist at EDF and a senior economist EDF and it ended up that basically Dan Dudeck, who was the senior economist and I spent a lot of time in Washington with the president elect's transition team, the key members of which became part of the white house council of economic advisors in one case and the white house counsel's office in the other. With them we developed the idea of using what was then called marketable permits to reduce acid rain, rain pollutants.

Hana: What did this proposal look like coming out of, this is the proposal that the president put forth to Congress?

Joe: Yes, that's right.

Hana: What did it look like going into Congress and how did it change?

Joe: Well, that's really interesting because what the Bush administration did was send up an actually fully drafted bill. They had the executive branch, largely the EPA draft a multi title set of amendments to the clean air act that addressed, there was a title for acid rain. There was a title one revising the provisions that addressed Ozone smog and the other naaqs pollutants. There was a title of the bill that revised title two addressing automotive emissions. There was a title three which purported to overhaul and eventually did overhaul the way the EPA handled toxic air pollutants.

Joe: It was a comprehensive rewrite of the clean air act, which had been in existence for 19 years at that time. It had been enacted in 1970. It had been reauthorized in 1977 and like all dominant forms of human learning there'd been a lot of trial and error and the States and industry and environmental lawyers had observed a lot of things about the first 15 or 20 years of the way the clean air act was implemented and agreed largely that learning counseled significant changes across the board.

Joe: I'll even throw another title in there two others. In 1986 the Montreal protocol addressing stratospheric ozone depleting chemicals, chlorofluorocarbons was negotiated by the Reagan administration and ratified by the Senate, and so there was a title six to the 1990 amendments intended to implement the Montreal protocol. There was an even a title that completely overhauled the way individual source permits were issued. This was the full banquet of policy issues.

Hana: That's a little different than what we ended up with, which was a significant progression and change to the clean air act. But what you're describing is a massive rewrite.



- Joe: Yes. It was a massive rewrite and it was a massive rewrite. It was a massive rewrite of existing titles and the addition of, three major titles. The acid rain title, the stratospheric ozone depleting chemicals title and the permits title. That bill went up to Congress, I think in mid June of 1989 as a courtesy John Dingell, Democrat of Michigan, who was the chair of the energy and commerce committee, introduced it as a corresponding courtesy. Senator Challen Chafee, Republican of Rhode Island who was the ranking Republican member, introduced it in the Senate.
- Joe: Then we were off to the races and shortly thereafter is when I moved from EDF to be one of the staff attorneys on the Senate environment and public works committee. I got to follow my bill and just almost as an aside, it was a three branch of government experience for me because after doing six intense months of lobbying the executive branch between the transition and the time the bill was introduced, I then went to the Senate and was virtually the sole drafts person of title four and a couple of other provisions in the bill. I then spent a year at EPA leading one of the teams that drafted the proposed implementing regs. I then went back to EDF and discovered that the regs included a loophole so I brought a litigation in the DC circuit court of appeals challenging the loophole.
- Hana: Full circle.
- Joe: Full circle, exactly.
- Hana: What happened in the Senate with this bill in Congress?
- Joe: What happened in the Senate is that at least in terms of title four the bill that the Bush administration sent up was in pretty good shape. After the word went out from the white house to the EPA that they wanted to use some kind of trading in the acid rain title I spent an enormous amount of time hanging out in the offices of the Air and Radiation, the office of Air and Radiation in EPA who was responsible for drafting the bill, and I work with a lot of staff there and we thought through some, I think pretty key ideas in the course of that process.
- Joe: The proposal moved from being an emission rate trading bill to an emission budget bill. In other words, we moved from emission rates to tons and instead of trading in what were then called emission reduction credits, we moved to trading emissions allowances. Which was big change. That was one of the things that made the whole thing credible. Because once you translate from admission rates to tons, then you're talking about a budget, a cap on total commissions.
- Hana: Then facilities know what they have to deal with, they know what they need to work with.



- Joe: And the public knows that if you set say a 10 million ton budget for SO₂ you're going to get a reality in which no more than 10 million tons are emitted. Up until that point, emission rate-based standards left the total emissions loading in the atmosphere somewhat uncertain and emission rate credits were incredibly complex as a practical matter to define and quantify and then subject to transfer or trading.
- Hana: As you're working on this bill and refining the details, working with EPA, what is the coalition in the Senate that was supporting it and were there, did Bush have to step in to deal with his own party?
- Joe: Big time. The bill went up in June. The Senate had hearings in late in the fall. The Senate did one or two markups. I think at the subcommittee level and the full committee level and reported out a bill in December of 1989. Now the Senate environment public works committee on both sides was almost radically green. Some of the Republican members were to the left of some of the democratic members because back in those days the division around environmental issues or at least air pollution issues had more to do with what part of the country you came from and what energy that part of the country either mined or used than with party affiliation. I think it was widely recognized at the time that the Senate environment and public works committee bill came out pretty hard left and the bill came to the floor I think in February and we couldn't get agreement to proceed on anything.
- Joe: The Bush administration felt completely outflanked by what was in this bill. The Republicans were nowhere to be seen. The Democrats from coal States were even more nowhere to be seen. It was just a bunch of dark green senators from EPW sitting on the floor wondering how we were going to get started. Well, it just so happens that the leading Senate champion of acid rain control, George Mitchell, from Maine, was enjoying his first session as Senate majority leader and he got in touch with the white house and basically said, clean air act amendments. The clean air act amendments are the president's top domestic priority. If you guys don't get up here and help us, the president's top domestic priority is going down. What ensued was I think about 10 weeks of negotiation almost round the clock. In the majority of leaders conference room.
- Joe: You had almost the virtual equivalent of a triangular table. You'd have the green Democrats and green Republicans on one side you would have the Democrats and Republicans from fossil fuels States and heavy industrial States on a second side, and you'd have the administration combination of white house people in EPA people in the third side. That triad of negotiators worked through every title of the bill methodically, day after day. Various amendments would come to the floor brought by senators like Al Gore who were wanting to send messages. I won't say grandstanding, wanting to say messages about how different parts of the bill needed to be strengthened but once every single title was issued and these three groups agreed to it, they all went down to the floor in a unified phalanx.



Joe: We then went through a process of amendments being introduced and the phalanx would confer and say, well, was this amendment inside our deal or outside our deal? If it was inside the deal we take it, if it was outside the deal, we'd say it's outside of the deal and we would usually get those amendments voted down.

Hana: That's a pretty well-orchestrated-

Joe: It was an incredible two year exercise in governance and in policymaking with every element playing its part. It was an exercise in different parties using their potential veto power for leverage but not for obstruction. It really did come down to the fact that George Mitchell was right. This turned out to be, next to the Americans with Disabilities Act, George Bush's top domestic priority and ultimately the thing passed.

Hana: What came out of that? That process could not have ended up with a bill that looked exactly like what it started with.

Joe: There were many changes. A few things to observe. The notion of using emissions trading to reduce pollution was considered the time absolutely radical. It was incredibly controversial. The mainstream environmental community hated it. The mainstream environmental community, which continued to mistrust the Republicans and Bush used it as an illustration for why they should be mistrusted. It wasn't until in the process of putting the Bush bill together within the executive branch and then moving it to the Senate that the grand bargain was struck. This is what it was.

Joe: The Democrats and environmentalist would concede on the use of marketable permits, but the Bush administration and the Republicans who were promoting a marketable permit based approach on the grounds that it was a money saver, was a relative cost saving device would allow some of those costs to be dedicated to a greater increment of emissions reductions. The Democrats, George Mitchell, if you will, got a deeper cut in emissions of SO₂ than he might otherwise have gotten and he would get a complete cap on emissions once all those reductions were achieved and the Republicans would get this significant piece of regulatory innovation using a market for emissions reductions as a way of achieving emissions reductions.

Hana: That marketable approach has had a lasting impact. That's one of the legacies of this bill that we've seen in various ways in other legislation.

Joe: Absolutely. The reason that people who called themselves environmentalists notably my former colleagues at EDF and I is that we actually thought that getting the obligation of sources, emission sources changed from rates to tons was important. We thought that getting a cap was important. We thought that demonstrating to society, if I can put it in such grandiose terms that you could



accomplish all this stuff at relatively low cost was important and we also had our eyes on CO₂, believe it or not.

Joe: Climate change was an issue starting in the mid eighties for the mainstream environmental community and we thought that this was going to be a way to deal with CO₂ emissions and this would be a proof of concept exercise. By the time we got to October of 1990 when the conference report, the final versions of the bill were going to the house, the Senate floor for final debate and vote and by the way, the vote was something like in the house, 400 to 35 and equally overwhelming in the Senate. Every single member who spoke, made sure to put in his or her speech a reference to this innovative market-based system.

Joe: It was the aphrodisiac of all political aphrodisiacs. Everybody loved it and the acid rain implementation rules came out of the agency relatively seamlessly. In fact, they had been negotiated through a federal advisory committee act advisory committee. It was smooth sailing. The program turned out to be a dream to implement from the EPAs' perspective and it started to get imitators. Southern California imitated it and put together a NO_x program for smog. The Northeast States started to imitate it for summertime NO_x. The EPA itself under Clinton, used it for dealing with summertime NO_x.

Joe: It even proved to be the template for the Kyoto protocol, which for industrialized countries it was the international cap and trade system. The Bush administration, the George W. Bush administration, which was largely ambivalent, let's say about implementing the clean air act, went overboard in trying to use trading to deal with some problems. Some implementation issues or implementation programs and both California and the Northeast States used cap and trade as the core of their respective climate programs.

Joe: And Henry Waxman, who was a leading member of the house energy and commerce committee in 1989 who essentially attacked Bill Riley during a hearing for being far too weak on air pollution when Riley was trying to defend the Bush bill and expressed profound, if not rejectionist skepticism about emissions trading ended up using cap and trade as the template for the Waxman Markey climate bill. In fact, this has become such a commonplace design for policy programs that the Republican party, which is now largely resistant to all manner of environmental protection, pretty much if they haven't disowned George Herbert Walker Bush, they've disowned cap and trade. Whereas once it had been the basis of a bi-partisan inter regional entente in terms of environmental policy, it's now so common place that in our time it's polarizing.

Hana: While it may not be in the same place as it used to be, and we certainly are seeing that now, we can look back to this experience that you had and that long process you went through with the administration, with the different factions in Congress



and point to that specifically as what has changed dramatically our air quality in this country.

Joe: I think that's absolutely right. The clean air act amendments of 1990 really are, as a colleague of mine in the environmental protection agency once said, the greatest public health perpetual motion machine that America's ever devised because it's structured in a way so that it continually renews itself as science and technology advance. It demonstrated the use of this tool, marketable permits that can be used again and again by different jurisdictions to solve a range of a certain air pollution problem.

Joe: Air quality in this country has increased dramatically, I think about three or four years ago, the EPA did a study, a massive study that was actually mandated by the clean air act showing vast improvements, not only in air quality across the country, but in public health outcomes over a period of time when the economy measured by GDP grew more or less steadily and certainly dramatically. George Bush clearly believed in governance.

Joe: He believed in building coalitions because as I said, he had to do it within his own administration before he could even get a bill out the door, so to speak and he assembled a team of negotiators that went to the Hill and built complex coalitions both in the house and in the Senate. Then again when the house and the Senate, each of which had passed slightly different bills, had to go into legislative conference with each other. There are many facets to George H.W Bush's legacy but this is one that's pretty close to a clear cut positive one.

Hana: Joe, thank you for sharing your memories and reminding us that the important bipartisan actions that made those improvements possible.

Joe: Well, thank you.

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