

## ***Festschrift in Honor of Professor Lesley McAllister\****

*On Friday, January 6, 2017, the Center for Progressive Reform hosted a Festschrift to honor the academic work of Professor Lesley McAllister at the University of California, Hastings School of Law. We are honored in this issue of *Environs* to reprint the remarks numerous academic scholars made about how Professor McAllister's work impacted their own scholarship and about how their personal connection with Professor McAllister impacted their lives.*

*After brief welcoming remarks from Robert Verchick† and Professor McAllister, current and former colleagues spoke about her work. Stephen Ferruolo‡ served as moderator for the celebration.*

*In addition to the remarks given that day, Richard Frank and Albert Lin, colleagues of Professor McAllister at the University of California Davis School of Law, have prepared written remarks discussing Professor McAllister's legacy and career.*

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\* Lesley McAllister was a teacher and scholar of environmental law, natural resources law, food law, energy law, and property law. Before joining the UC Davis law faculty in 2013, she held appointments as the Stanley Legro Chair of Environmental Law at the University of San Diego School of Law and the UC San Diego School of International Relations and Pacific Studies.

Professor McAllister was especially notable for her fierce and incisive intellect, unwavering integrity, and disarming humility. That unique combination made her a stellar academic, devoted to generating knowledge in service of the public good. Her academic writing focused on the role of law and regulation—in the U.S. and across the world—in addressing climate change and other environmental problems. Much of her scholarship focuses on innovative regulatory approaches, such as cap-and-trade systems, public-private governance, and citizen enforcement.

Lesley was a member scholar of the Center for Progressive Reform and served as a consultant to the Administrative Conference of the United States. She obtained a J.D. from Stanford Law School and both master's and Ph.D. from the Energy and Resources Group at UC Berkeley, where she studied Brazilian environmental law and legal institutions. As an undergraduate, she majored in civil engineering and public policy at Princeton University. She was an intrepid adventurer, and a devoted mother, daughter, sister, wife and friend.

† President of the Center for Progressive Reform and Gauthier-St. Martin Eminent Scholar and Chair in Environmental Law at Loyola New Orleans University.

‡ Dean of the University of San Diego School of Law.



*Lesley with Jodi Short, Orly Lobel, and Madhavi Sunder. January 6, 2017.*



*Lesley with Daniel Rodriguez. January 6, 2017.*

## In Memoriam: Lesley McAllister— Teacher, Scholar, Colleague & Role Model

*Richard Frank\* and Albert Lin†*

The King Hall community lost UC Davis School of Law Professor Lesley McAllister much too soon. As we continue to mourn Lesley's passing, we choose to simultaneously preserve her memory and enduring legacy. This special edition of *Environs* is a key part of that endeavor.

The authors of this introductory piece were privileged to be faculty colleagues of Lesley McAllister, the three of us serving collectively as King Hall's full-time environmental law faculty since Lesley's arrival at UC Davis in the summer of 2013. We are also proud and grateful to have been her friends over the following four years.

Lesley passed away in August 2017, following a long and courageous battle with cancer. In her all-too-short academic career, she demonstrated an impressive intellect, a prodigious work ethic and a passion for teaching and legal scholarship.

Lesley graduated *magna cum laude* with undergraduate degrees in civil engineering and public policy from Princeton University; received her law degree from Stanford University; and earned a Ph.D. from the Energy and Resources Group at UC Berkeley, where she studied Brazilian environmental law and legal institutions. In between her pursuit of these multiple degrees, Lesley served with distinction in the Peace Corps in Costa Rica.

After law school, Lesley worked as a law clerk for U.S. District Judge Fern M. Smith, and as an attorney for the U.S. Environmental Protection Agency and Earthjustice.

Lesley began her distinguished teaching and academic career with joint appointments at the University of San Diego (USD) School of Law and the UC San Diego School of International Relations and Pacific Studies. There her scholarship focused on innovative regulatory approaches (such as cap-and-trade regulation),<sup>1</sup> public-private governance,<sup>2</sup> Latin American environmental law,<sup>3</sup>

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\* Professor of Environmental Practice, UC Davis School of Law.

† Professor of Law, UC Davis School of Law.

<sup>1</sup> See, e.g., Lesley K. McAllister, *Putting Persuasion Back in the Equation: Compliance in Cap and Trade Programs*, 24 PACE ENVTL. L. REV. 299 (2007).

<sup>2</sup> See, e.g., Lesley K. McAllister, *Co-Regulation in Mexican Environmental Law*, 32 UTAH ENVTL. L. REV. 181 (2012).

and citizen enforcement of environmental laws in the U.S. and abroad.<sup>4</sup> During her tenure at the USD School of Law, Lesley served as both a Fulbright Scholar at the University of Granada Law School in Spain and as a Visiting Professor at the Sorbonne Law School in France. Lesley also helped to create USD's Annual Climate and Energy Law Symposium (which has since been named after her) and the *San Diego Journal of Climate and Energy Law*.

Lesley joined the UC Davis law school faculty in 2013. During her brief time with us, she taught courses in Property Law, Food & Agricultural Law, Comparative Environmental Law, Public Land Law and Climate Change Law & Policy. Of all her academic work at UC Davis, Lesley's time in the classroom—teaching and learning from her students—was her single greatest professional delight.

Lesley was also a prodigious legal scholar and author over her distinguished academic career. She published numerous books and articles on such topics as comparative environmental enforcement practices around the globe,<sup>5</sup> private environmental regulation,<sup>6</sup> and food safety.<sup>7</sup> Additionally, Lesley served as a member scholar of the Center for Progressive Reform and as a consultant to the Administrative Conference of the United States.

As active and dedicated an educator she was, Lesley poured at least as much passion into her family life. She was joyfully married to Andrew McAllister, a renowned expert in energy policy and a member of the California Energy Commission. Lesley and Andrew are the devoted parents of two wonderful children, Nathan and Erin.

Confronted with a diagnosis of terminal metastatic cancer, Lesley could have been forgiven had she decided to resign her faculty position in order to pursue medical care and enjoy what time she had left. But that was not Lesley's style. Instead, she continued to teach—even in the face of near-constant pain and fatigue. She was determined to persevere with her life because she felt she owed it to her family—and especially her children—to remain a vital part of their lives for as long as was humanly possible.

One indicator of Lesley's extraordinary courage in the face of indescribable adversity is the fact that she consented to a most revelatory interview with *The*

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<sup>3</sup> See *id.*; LESLEY K. McALLISTER, MAKING LAW MATTER: ENVIRONMENTAL PROTECTION AND LEGAL INSTITUTIONS IN BRAZIL (2008).

<sup>4</sup> See, e.g., Lesley K. McAllister, *Regulation by Third-Party Verification*, 53 B.C. L. REV. 1 (2012) [hereinafter McAllister, *Third-Party Verification*]; Lesley K. McAllister, *Harnessing Private Regulation*, 3 MICH. J. ENVTL. & ADMIN. L. 291 (2014) [hereinafter McAllister, *Harnessing Private Regulation*].

<sup>5</sup> See, e.g., Lesley K. McAllister, Benjamin van Rooij & Robert A. Kagan, *Reorienting Regulation: Enforcement in Industrializing Countries*, 32 L. & POL'Y 1 (2010).

<sup>6</sup> See, e.g., McAllister, *Harnessing Private Regulation*, *supra* note 4.

<sup>7</sup> See Timothy D. Lytton & Lesley K. McAllister, *Oversight in Private Food Safety Auditing: Addressing Auditor Conflict of Interest*, 2014 WIS. L. REV. 289 (2014).

*Princeton Alumni Weekly* as she neared the end of her life.<sup>8</sup> Indeed, she initiated the process: “You may be interested in my story,” she wrote the *Weekly* editors, “and if so, I could be interested in sharing it.” In the moving article that followed, Lesley shared the fact that in major part due to her illness, she had become a strong and vocal proponent of California’s End of Life Option Act, landmark legislation that permits California residents facing a terminal illness to obtain a lethal dose of sedatives to end their own lives. (Although Lesley ultimately did not take advantage of that now-legal option, she felt most strongly that it should be available to others in her position). And she mused in the same article that “I want to give my children an example of a ‘good death.’” Over the nearly four years between her original diagnosis and her passing—far longer than her doctors had predicted she would survive—Lesley did just that. She understood that death is an immutable part of life and that the most honorable and compassionate approach one can take is to prepare for the world without us in it and yet still work for the ongoing well-being of those who will remain—and when the time comes asking them, lovingly, to let us go.

Particularly illustrative and indicative of Lesley’s courage in the face of incurable and debilitating disease was how she spent the last three weeks of her life last summer: on a family road trip. They drove from Davis to Seattle and, after a few days exploring that city, embarked on a ten-day Alaska cruise with her nuclear and extended family, indulging her lifelong passion for the natural environment. Upon disembarkation back in Seattle, Lesley, Andrew, and the kids hopped in the car and dashed off to a friend’s Oregon farm to view the next morning’s solar eclipse, among lifelong friends gathered there. A day later, incredibly, she was back at King Hall at the beginning of a new law school semester to meet with law students enrolled in her Climate Change Law & Policy course. A few days after that, alas, she was gone.

In January 2017, Lesley’s academic colleagues at UC Davis, from around the United States and worldwide had gathered in San Francisco for a *Festschrift*. (*Festschrift* is a 19<sup>th</sup> century word of German derivation defined as a volume of writings by different authors or an analogous gathering presented as a tribute to a scholar.) Many *Festschriften* are convened after the scholar’s passing, as a memorial to his or her intellectual legacy. However, this *Festschrift* was special because it was convened while Lesley was still with us and able to enjoy the event with her family and professional colleagues (including the authors of this article and many other King Hall faculty colleagues). Academic colleagues from throughout the United States and around the globe attended the *Festschrift*. That special evening, they spoke lovingly and thoughtfully about Lesley’s stellar academic career, her brilliant research and incisive scholarship.

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<sup>8</sup> Mark F. Bernstein, *Lesley’s Story: An Alumna Facing Terminal Cancer Considers Her End-of-Life Options*, PRINCETON ALUMNI WKLY. (Sept. 14, 2016), <https://paw.princeton.edu/article/lesleys-story>.

Shortly after Lesley's passing, we met with King Hall administrators and the student editors of *Environs* to explore how we collectively could further celebrate Lesley's academic life and legacy. We decided to reach out to the many celebrants who spoke glowingly and movingly at the *Festschrift* about their professional collaborations with Lesley and their affection for her. Specifically, we invited them to memorialize their oral tributes in the form of a written *Festschrift*, so that their reflections could be shared with a larger audience. Happily, all of the *Festschrift* speakers agreed to do so. This special edition of *Environs* is the result.

In the remarks that follow, Madhavi Sunder and Orly Lobel each give introductory remarks about their own personal experience working with Lesley as both a friend and a colleague. Following these remarks, William Boyd speaks about Lesley's influential scholarship on cap-and-trade, emphasizing her commitment to critically evaluating these market-based mechanisms based on data and real-world case studies. Benjamin van Rooij then discusses his collaboration with Lesley evaluating environmental law regulatory frameworks in developing countries. Next, Luis Roberto Proença considers Lesley's efforts to study and improve Brazilian environmental law enforcement practices. Finally, Jodi Short addresses Lesley's scholarship on private citizen enforcement and the roles of third parties in environmental regulation. The *Festschrift* concludes with remarks from Daniel Rodriguez and Robert Kagan, both of whom reminisce about their long friendship with Lesley and reflect on her personal and academic journey.

We wish to express our gratitude to the *Environs* editors and staff for taking the laboring oar in making possible these written tributes to our beloved, fallen faculty colleague. We similarly hope and trust that you will find the tributes that follow to be as moving and inspirational as do we.

Happy reading.

## Introductory Remarks

*Madhavi Sunder\**

This is truly an incredible turnout for a woman we adore and admire. Lesley McAllister is the epitome of grace and courage. Lesley, I know you must be overwhelmed seeing the impressive group that has assembled in this room today, people that have been your friends, colleagues, and mentors for decades. Thank you all for being here. I am honored to help introduce this symposium, celebrating the scholarship of my brilliant colleague and friend at the UC Davis School of Law, Lesley McAllister. Some of you who are here tonight have known and admired Lesley for many years, longer than I have had the pleasure and privilege of knowing Lesley. You have known her as a renowned environmental law scholar and a beloved teacher at the University of San Diego, where Lesley held the Stanley Legro Chair in Environmental Law. She also held an appointment at the School of International Relations and Pacific Studies at the University of San Diego.

Those of us at UC Davis have only had the privilege of getting to know Lesley just in the past few years. She joined our faculty in July of 2013. I am very grateful to Sid and the Center for Progressive Reform for organizing and hosting this event, where we have this wonderful opportunity to share our deep admiration and respect for a truly incredible woman, scholar, teacher, and colleague. I feel privileged to know someone of Lesley's intellectual and personal merit—the author of two books and dozens of articles and book chapters on a wide range of environmental law topics. From climate change to enforcement of environmental laws in the developing world, Lesley has had an impeccable and absolutely admirable academic career. Earning every conceivable degree, from an impressive cadre of academic institutions, I truly feel for her children, whom I know well. After graduating with a degree in Civil Engineering and Public Policy from Princeton, and a stint in the Peace Corps in Costa Rica, where she could deploy her ability to speak fluent Spanish, she then earned a law degree from Stanford. That is where I stopped.

But Lesley followed this up with a Ph.D. from the University of California. She is a true Renaissance woman. She is an engineer, a lawyer, and a doctor.

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\* Dean Sunder is a leading scholar of law and culture. She was named a Carnegie Scholar in 2006 and has been a Visiting Professor of Law at the Yale Law School, the University of Chicago Law School, Georgetown University Law Center and Cornell Law School. Her work traverses numerous legal fields, from intellectual property to human rights law and the First Amendment. Professor Sunder has published articles in the *Yale Law Journal*, the *Stanford Law Review*, the *California Law Review*, the *Texas Law Review*, and *Law and Contemporary Problems*, among others. Her book, *From Goods to a Good Life: Intellectual Property and Global Justice*, was published by Yale University Press in 2012.

She published her first monograph, *Making Law Matter: Environmental Protection and Legal Institutions in Brazil*<sup>9</sup> with Stanford University Press in 2008 around a decade ago—and she was barely out of diapers.

For this book, Lesley took advantage of her fluency in yet another language, Portuguese, to study a novel institution in Brazil, which began successfully enforcing citizens' rights to a clean environment. The ever-committed scholar, environmental activist and, let us admit it, overachiever, Lesley took advantage of a period of stable health this past semester to do further research in Brazil. And she has begun writing the sequel to this book. Lesley's expertise and passion in environmental law are incredibly broad, ranging from natural resources law,<sup>10</sup> to food law,<sup>11</sup> agricultural law,<sup>12</sup> energy law,<sup>13</sup> and property law.<sup>14</sup> Her capstone achievement, thus far, is her monograph, *Making Law Matter*.<sup>15</sup> The book was reviewed widely and favorably, including in the *Harvard Law Review*.<sup>16</sup> While most studies in environmental law enforcement are focused on industrialized nations, Lesley recognized early on that environmental issues are often global in nature and has thus studied environmental law and legal institutions in other places such as Brazil and in the developing world in particular.

Her focus on citizen enforcement by the Brazilian Ministério Público, which refashioned itself in the 1980s into a powerful defender of citizen rights in environmental protection but also disability rights, consumer protection, and anti-corruption, helped all of us to understand environmental law as a social movement. Ever-evolving and innovating, more recently Lesley's teaching and scholarship has turned to other hot topics that make headlines, from food safety regulations<sup>17</sup> to agricultural law.<sup>18</sup> In fact, last summer, when she was fighting debilitating pancreatitis, Lesley nonetheless steadfastly sought to create our law school's first food and agricultural law class in many years.

Through sheer will and her ability to work harder than anyone else, Lesley brought this highly desired class to our campus and taught over 30 students in the subject this past term. Thank you, Lesley, for bringing that to UC Davis

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<sup>9</sup> MCALLISTER, *supra* note 3.

<sup>10</sup> See, e.g., Lesley K. McAllister, *Sustainable Consumption Governance in the Amazon*, 38 ENVTL. L. REP. NEWS & ANALYSIS 10873 (2008).

<sup>11</sup> See Lytton & McAllister, *supra* note 7.

<sup>12</sup> See Lesley K. McAllister, *Implementing the National Bioengineered Food Disclosure Standard*, 13 J. FOOD L. & POL'Y 134 (2017).

<sup>13</sup> See Lesley K. McAllister, *Adaptive Mitigation in the Electric Power Sector*, 2011 B.Y.U. L. REV. 2115 (2011).

<sup>14</sup> For years, Lesley taught Property Law to first-year law students and Public Land Law to second and third-year students at UC Davis.

<sup>15</sup> MCALLISTER, *supra* note 3.

<sup>16</sup> *Recent Publications*, 122 HARV. L. REV. 1046, 1048 (2009).

<sup>17</sup> See Lytton & McAllister, *supra* note 7.

<sup>18</sup> See McAllister, *supra* note 12.



where, I am embarrassed to say, we have not had agricultural law taught in many years. Lesley has always been ahead of her time in identifying cutting edge issues in environmental law and bringing them to her students. Before coming to UC Davis, she initiated the nation's first student law review on global warming.

As Associate Dean, I have seen firsthand Lesley's dedication to her students above all. Between grueling treatments and surgeries, she has steadfastly taught her first year students in property and her advanced students in a variety of environmental law topics. A teacher and an advocate always, Lesley has been forthright about her illness—even sharing her experiences with her classmates from Princeton in a cover story in the Princeton Alumni magazine,<sup>19</sup> advocating at the California State Legislature for right to die legislation,<sup>20</sup> and emphasizing the right to die with dignity and on one's own terms, while never minimizing the pain of having to make such a choice. I am also very lucky to know Lesley as a mother, because our oldest children are classmates and good friends. Over the past three years, I have seen Lesley front and center at school events, talent shows, soccer games, robotics competitions, and open houses. She has even come out to school board meetings.

Can you tell that I am in awe of Lesley? If all this were not enough, she is also an incredibly supportive colleague. She comes to every talk and law school event without fail and I am truly moved tonight to see our institution showing its love and support for Lesley in turn. Tonight, we are here to recognize a champion among us, who inspires us every day with her wisdom and courage. Lesley, we are truly honored to be among your peers and friends, and again, I'm so grateful to have this opportunity to share with you a little bit of how much you and your work truly mean to us. Thank you.

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<sup>19</sup> Bernstein, *supra* note 8.

<sup>20</sup> *Id.*

## Introductory Remarks

*Orly Lobel\**

When celebrating the life and career of our dear friend and colleague Lesley, it is so easy to find, on all facets, things to say. For me it has been a challenge to figure out how to pack it all in a short talk. It is a wonderful event, and I want to say personally, that for me, Lesley's friendship has shaped my career path from the beginning. Lesley and I started teaching at exactly the same time. We were the two people that were hired at University of San Diego as baby professors. Newbies. (apropos babies. Erin would not remember this, but her baby shower was in our house. The following year, Lesley hosted my daughter's baby shower. We had the joy of throwing each other these happy events.) Lesley has been a trusted friend and such a generous colleague. I just cannot think about my career and about everything I believe about academia and teaching and scholarship, choosing your research projects and leading your institution, without Lesley's contribution and influence on my career. I cannot overstate how important it was to have that friendship from the beginning.

I want to say a little bit about all of these facets of academia, of scholarship, of how Lesley approaches research and writing and teaching, and also how she approaches life and institutional leadership. In all of these aspects of university life, she simply inspires me. She is a hero. A few things about her scholarship. First of all, I admire the way that Lesley chooses her projects, how deliberate are her choices and how they are driven by passion, not only for the research for the field that she loves, but most importantly a passion for making a difference in the world. It is not a coincidence that her first book (and she was the first among us juniors to actually publish a book, and she inspired in that way too) is called *Making Law Matter*.<sup>21</sup> I think that's what Lesley cares about the most, making the writing matter and making law and legal scholarship make a

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\* Orly Lobel is the Don Weckstein Professor of Law at the University of San Diego and received her doctoral and law degrees from Harvard University. She received her first degree in law from Tel-Aviv University and clerked on the Israeli Supreme Court. She is a prolific speaker, commentator and scholar who travels the world with an impact on policy and industry. Her best-selling book *You Don't Own Me: How Mattel v. MGA Entertainment Exposed Barbie's Dark Side* (Norton 2017) has been nationally and internationally acclaimed and received rave reviews from the *Wall Street Journal*, the *Financial Times*, the *New Yorker*, NPR, *Modern Law*, *Times Higher Education*, *Times Literary Supplement*, the *Washington Blade*, and more. Her book *Talent Wants to Be Free: Why We Should Learn to Love Leaks, Raids and Free Riding* (Yale University Press 2013), is the winner of several prestigious awards, including Gold Medal Axiom Best Business Books 2014, Gold Medal Independent Publisher's Award 2014, the 2015 Gold Medal of Next Generation Indie Books and Winner of the International Book Award. She is the recipient of many grants and awards for her research including a Fulbright scholarship, a Robert Wood Johnson Foundation Grant, the ABA research grant, Netspar grant, and the Thorne Award for outstanding legal scholarship.

<sup>21</sup> MCALLISTER, *supra* note 3.

difference in the world.

Lesley just loves the environment. She is passionate about the outdoors, and from the beginning I think we all admired how balanced her work life was. She works harder than anybody, as Madhavi said. She also has always, along with Nathan, Erin and Andrew, gone on adventures in the outdoors. She loves the outdoors, whether it is hiking or backpacking or biking, or traveling to other countries. And we use this expression too often, but here it is simply true. What she wants is to make the world a better place, a safer place, a healthier place. That is why she writes on environmental law and on climate change. By doing that she also makes a difference and an impact in broader fields. I think it is quite rare to find that synergy between one's work in the office and one's passions outside of the office.

The other part of her research, and how inspiring it is, is the rigor in which she approaches each project. She is devoted to interdisciplinarity, and she uses her Ph.D./J.D. combo and her ability to be so versatile, including doing research in Portuguese and Spanish, and rigorously exploring comparative law.

As this event approached, many of my colleagues at the University of San Diego sent me some notes about how they have been inspired by Lesley's work. They all emphasized how her work is so careful and deliberate and deep. That was the repeated theme. While I work in a different field, in employment and labor law and innovation policy, my own work has benefited so much from Lesley's wonderful articles on public and private regulation, governance, playing with different strategies about compliance, diversifying ways of enforcement, and thinking about collaboration and alliances as part of the regulatory process. Because she has gone so deep in her field and because of her rigorous data collection, she has made a huge impact across many different fields, administrative law, regulatory process, legislation, and comparative processes.

Beyond her scholarship and speaking not only of myself, but on behalf of many of our colleagues at the University of San Diego in this wonderful event, I want to also mention what an amazing role Lesley played in institution building and in leadership at the University of San Diego. She came in as a tenure track junior faculty and carried this huge weight of single handedly building our environmental and energy programs, which were almost nonexistent at the time. It was an incredibly time-consuming leadership role. She played an invaluable role in EPIC, our Energy Policy Initiatives Center, including planning the animal symposium that EPIC is known for. One of my senior colleagues wrote this about Lesley. He says, "I was amazed to see how Lesley could get anyone who is anyone to appear for each of these animal conferences. She was rather like Johnny Carson in his prime. Everyone wanted to be on her show."

She was also the driving force behind our one-of-a-kind *San Diego Journal of Climate and Energy Law*, and she was continuously the faculty supervisor to our

environmental law students. Another colleague writes, “Her students adored her. She not only informed them and taught them skills for life or long-lasting, impressive careers, but she influenced and inspired them in ways that are really rare. She has been incredibly generous with her time, thoughts, and energies with both students and her colleagues.” Lesley, we miss you every day in San Diego.

Personally, I cannot tell you the number of times that I have sat at a faculty meeting or a faculty workshop, and I look around the room and think if Lesley were here, if she was still in San Diego, we could share thoughts and we could brainstorm our bad ideas and move things forward in a faster way. Of course, our loss is Davis’ gain, and today we are all celebrating Lesley’s influential work. So, thank you, thank you Lesley for everything.

## Climate Change & Cap and Trade

*William Boyd\**

Before I get to Lesley's contributions to climate change law and policy and her important work on cap-and-trade, I want to give you a couple of quick anecdotes about Lesley.

My first memory of Lesley: It was the fall of 1995. She was Lesley Barnhorn at the time, just starting graduate school at the Energy Resources Group (ERG) at UC Berkeley. I had been there a couple of years, and I was the teaching assistant (TA) for an upper division undergraduate course that we offered, Energy in Society. We taught that class in conjunction with the required graduate course, Interdisciplinary Energy Analysis, that all new graduate students took. We shared lectures with the graduate students and the undergraduates, and then the teaching assistants would have discussion sections with the undergraduates, where they would work on problem sets and dig deeper on the material. There are a lot of people from ERG here in the room tonight, too, and I want to acknowledge them and what a wonderful place ERG is, and I know Lesley shares that sentiment.

In any event, we invited the graduate students to come to the undergraduate sections if they wanted to, but it was mainly for the undergraduates. Now, of course, Lesley, the incredibly hard working, diligent person that she is, decided she would show up at section, and sat pretty much right there [pointing to the front of the room]. This was my first TA experience, and within about five minutes, this Princeton-trained engineer, who had just come out of the Peace Corps, was literally running circles around me in front of the undergraduates. She was doing it in a very kind and gentle way, so she didn't reveal me to be a total fraud. But from then on, I knew, and she knew, that she should have been up there teaching the section. Of course, she didn't come back to section for the rest of the semester. Based on that very first encounter with her, it was very clear that she is a very serious woman with a remarkable and ferocious intellect.

Another short anecdote, and then I'll get on to business. This was winter of 1997. She had just started law school. I think it was her second semester of law school, because she was taking Environmental Law with Buzz Thompson at Stanford. I am sure she was also working two or three jobs and commuting from Berkeley. Lesley is the only person I know who figured out a way to pay for

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\* William Boyd is Professor of Law and John H. Schultz Energy Law Fellow at the University of Colorado Law School. He is also Director of the Laboratory for Energy & Environmental Policy innovation (LEEP) and a fellow of the Renewable and Sustainable Energy Institute (RASEI), a joint institute between the National Renewable Energy Laboratory and the University of Colorado, Boulder. Professor Boyd received his J.D. from Stanford Law School and his Ph.D. from the Energy & Resources Group at UC Berkeley, where he was a classmate of Lesley McAllister's.

Stanford law school without taking on any debt at all. I don't know how she did that. I wish I had paid more attention.

We all went on a back-country ski trip: my wife and I, Lesley, and our dear friend Scott Prudham, who is now at the University of Toronto, and who sends his love and best wishes to this gathering. Scott, the good Canadian that he is, had figured out a way to get access to an A-frame cabin out in the middle of one of the National Forests near South Lake Tahoe. My wife and I, as good South Carolinians, volunteered to sleep in the tent all weekend. But it snowed three feet and we spent the entire weekend beating snow off the tent and begging for access to the cabin. It didn't really work out.

It was an arduous ski in to the cabin and, as expected, Lesley was skiing circles around us on the way in. She got to the cabin a good hour ahead of the rest of us. When we finally show up, huffing and puffing, what was she doing? She was reading her environmental law case book. First of all, this was the mid-1990s. Her casebook weighed at least 10 pounds. Not like one of these thin casebooks that we have today. And she read for the whole weekend. It impressed upon me just how incredibly devoted she is, and what a mission she is on. And man, are we lucky that she turned her skills and talents to environmental law.

I asked Lesley earlier this week how she first came to study cap and trade. She published her first articles on the subject in 2007,<sup>22</sup> just as she was finishing up her Brazil book,<sup>23</sup> and working on various comparative law projects. It is not obvious that cap and trade would have been the topic that she would turn to. Why cap and trade? Her answer: She was skeptical. She wanted to understand how cap and trade really worked, to dig into the details and the mechanics of actual cap and trade programs. The literature, she said, and this is a direct quote, "seemed uncritically celebratory." And she was exactly right. She turned her critical eye to cap and trade, blazing a trail for all of us as she unpacked the real-life histories of various cap and trade programs.

Her early work focused on the Acid Rain Program and RECLAIM<sup>24</sup> and concerned questions of enforcement compliance,<sup>25</sup> data collection and management,<sup>26</sup> the changing relationship between the regulator and the regulated,<sup>27</sup> and the different roles beyond that of banker played by regulatory agencies.<sup>28</sup> Going back and reading a lot of her work, I am struck by the

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<sup>22</sup> See, e.g., McAllister, *supra* note 1.

<sup>23</sup> McALLISTER, *supra* note 3.

<sup>24</sup> See Lesley K. McAllister, *Enforcing Cap-and-Trade: A Tale of Two Programs*, 2 SAN DIEGO J. CLIMATE & ENERGY L. 1 (2010).

<sup>25</sup> See McAllister, *supra* note 1.

<sup>26</sup> See Lesley K. McAllister, *The Enforcement Challenge of Cap-and-Trade Regulation*, 40 ENVTL. L. 1195 (2010).

<sup>27</sup> See McAllister, *supra* note 1, at 307-14.

<sup>28</sup> See Lesley K. McAllister, *Beyond Playing "Banker": The Role of the Regulatory Agency in*

incredible amount of research, and the detail she gets into, of how these programs really work.

Her more recent work has explored what she aptly labels the “over allocation problem” that seems to plague virtually every cap and trade program.<sup>29</sup> In the process, she has pointed out how little attention has been given to the fundamental question of how caps are actually set. One would think that people would have paid attention to that. I think Lesley pointed out that we were not paying sufficient attention to that, and she offers important recommendations for how to adjust caps in the face of over allocation. It would have been good if some of the cap and trade designers from the early programs had had a chance to learn from her.

In all of this, she showed us how hard it is to run these programs well, how much administration and regulation it takes, how one size clearly does not fit all, and how crucial it is to get into the guts of how these programs work. Her commitment to investigating the concrete mechanics of actual cap and trade programs, as they were operating in the world, was an important antidote to the tendency to trot out abstract models and arguments regarding the superiority of cap and trade to other traditional forms of regulation or other policy instruments. Of course, she has written about other aspects of climate change litigation, new forms of collaboration and governance and energy. She co-authored, with Hari Osofsky, the new dean of Penn State Law School, one of the leading casebooks in the field of climate change and policy,<sup>30</sup> a field that, at least until last November, was a growing field, and still probably in the long run is growing. But it is her work on cap-and-trade that I find most compelling and influential for the field and for my own research.

Part of this stems from her methodological commitments. She combines the analytical skills and attention to detail of a good lawyer with a sensitivity to institutions and an appreciation for the concrete that comes, I think, from her interdisciplinary training as an environmental social scientist who has spent serious time doing fieldwork. I think that marks a real difference, in some ways, from many other people in environmental law. She is also a master of the comparative case study approach, using detailed investigations and comparisons of two or three cases at a time to draw out analytical insights, to illustrate common problems, and to make recommendations for reform. In all of this, I think she takes law and society, broadly understood, to a new level. Always maintaining her critical sensibility, but always grounded in a deep commitment to solving real world problems.

I also hear echoes in her work of some of the more empirically-minded legal

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*Emissions Trading*, 59 ADMIN. L. REV. 269, 270 (2007).

<sup>29</sup> See Lesley K. McAllister, *The Overallocation Problem in Cap-and-Trade: Moving Toward Stringency*, 34 COLUM. J. ENVTL. L. 395 (2009).

<sup>30</sup> LESLEY K. MCALLISTER & HARI M. OSOFSKY, CLIMATE CHANGE LAW AND POLICY (2012).

realists and early 20th century institutional economics. By that I mean, she takes the world as she finds it. She focuses on the concrete, on the mechanics of real-life institutions, but she doesn't assume that anything will work out as designed, or as abstract theoretical models suggest. She gets into the guts of policy instruments as they work in practice and tries to make them better.

Here is another way to think about this, and these are some early half-shaped ideas for a project that I briefly discussed with Lesley this spring when she was in Denver. These ideas are inspired by her work on cap-and-trade. Cap-and-trade is a great example of what two geographers, Jamie Peck and Nik Theodore, call fast policy.<sup>31</sup> What is fast policy? Policy ideas or instruments that emerge in a particular legal and institutional context, and then get disembodied and travel rapidly around the world. These ideas are embraced by and adopted in other jurisdictions or other domains. Peck and Theodore use the examples of conditional cash transfers and participatory budgeting from Mexico and Brazil, and show how these have travelled all over the world, and are being used in various ways in many different countries. This idea of fast policy, then, is a way of thinking about policy diffusion in the context of contemporary globalization, and it pushes back against the tendency to think of policy instruments simply as tools, recognizing that these instruments have histories, that every policy instrument has a past public life, an official and an unofficial history, if you will, and that this history matters if we want to understand how a particular policy instrument works, or fails to work, in a specific place at a specific time.

We tend to think of policy instruments in largely functional and surprisingly static terms. We have our standard tool kit or portfolio of policy models and instruments that are available to address the problem at issue in the particular legal and political context in which we operate. There is a general common-sense notion that good policies rise to the top, prove their worth, and then diffuse from their initial sites of experimentation and development to sites of emulation. This concept of policy diffusion has been a standard model in the literature on state policy innovation and in basic understandings of American federalism since the 1960s.

But that perspective is at best incomplete, and in some cases just wrong. And I think Lesley's work, as much as anyone's, helps to illustrate this. Her work reminds us that we are missing important opportunities for learning and insight if we don't step back and think critically about the dynamics of policy innovation and emulation as an object of study in its own right, recognizing that popular policy models and instruments are always in motion, always being actively produced and reproduced, and mutating as they are inserted into or reworked in new sites of experimentation and development.

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<sup>31</sup> JAMIE PECK & NIK THEODORE, *FAST POLICY: EXPERIMENTAL STATECRAFT AT THE THRESHOLDS OF NEOLIBERALISM* (2015).



We know that cap-and-trade has now been adopted as the policy instrument of choice for reducing greenhouse gases around the world, from South Korea to California to Kazakhstan. By the end of 2015 there were seventeen distinct programs involving more than forty different jurisdictions at multiple levels of governance. Many more are in the process of considering developing emissions trading programs. By 2017, an estimated seventeen percent of world greenhouse gas emissions will be covered by cap and trade programs, so this really has become, in some ways, the policy instrument of choice for reducing greenhouse gas emissions.

I certainly do not mean to suggest that it is the only game in town. Obviously, there are many other things going on. But in no small part, I think that the success of cap-and-trade reflects, as Lesley said, the uncritical, celebratory stance that we sometimes take toward it, and the narratives that have been built up around it. There is, of course, a whole infrastructure around this that creates and sustains the conditions for fast policy in any context. Networks of policy experts, entrepreneurs, consultants, advocates operating at multiple scales, foundations, and other large institutions such as the World Bank play a very important role in pushing particular policies. I think foundations, in particular, need to be thinking more about fast policy (and the Ford Foundation has funded some important work on fast policy to attempt to better understand these dynamics.) All of these processes, actors, and institutions come together in particular ways to provide the conditions that allow these ideas, or these tools, to really develop in a specific context. They then decontextualize these ideas and tools and make them mobile, so they may travel around the world.

Coming back to what Lesley has been doing now for a decade: if we follow the policies, we find that they rarely have a single point of origin, that their parentage is typically much more complex than the standard narratives suggest, and that the narratives about origins are sometimes critical to the success and the mobility of a particular policy. As we follow the policies and we think about policy mobility, we should be skeptical of claims growing out of the older diffusion literature that suggests that policies move in one direction from sites of experimentation to sites of emulation. And that the best or the superior policies, the ones that work, are the ones that travel.

Policies, as we know, are complex social artifacts or technologies. They have to be produced, marketed, and sold, and they mutate and change as they migrate from place to place. This means we need more detailed, careful, and critical case studies of particular policies, thicker descriptions of how particular policies are developed and how they migrate. This is what Lesley does in so well in her work on cap-and-trade.

We all have a general sense of the history of cap-and-trade and how it fits within a broader narrative of the move to markets in environmental law. But we do not have anything close to a serious history of cap and trade, and how it has

migrated and is migrating around the world as the instrument of choice to deal with climate change. We have pieces of that. And I think we have pieces of it because of a number of people in this room, most importantly Lesley.

There is much history that needs to be told if this is going to truly become the dominant policy instrument that we use. And I say this as someone who has great hopes for cap-and-trade. I am not trying to disparage it. My point is just that cap-and-trade is traveling all over the world, and that we need a critical mass of case studies to understand the design issues, the problems, the challenges with the programs that exist. I think it would be hard to conclude that it is traveling because of an unambiguous record of success. We are clearly learning from each iteration, but I think it is fair to say that it is traveling, partly in spite of its early problems, and based on limited experience to date.

None of this is intended to say that cap and trade is the wrong policy instrument for greenhouse gases, or that there are obviously better approaches waiting in the wings. I think the point is to avoid posing the normative question about the best or optimal policy instrument *ex ante*. It is more important to take it up instead as an empirical question. This is what Lesley's work illustrates. What she shows me and all of us with her work on cap-and-trade is why it is so important to slow it all down and to examine it in detail with a critical eye. She forces us to recognize that it is a mistake to see policy instruments as widgets that can be dropped into particular contexts and made to work as they have worked in prior contexts.

Lesley also shows us how critical it is to understand the nature and limits of institutional capacity. Fast policy may create demands that overwhelm the capacity of regulatory agencies. What looks great in California or New York, of course, may not be feasible in other jurisdictions, even if you can get the politics lined up. Of course, she also reminds us that there will be lots of contingencies and surprises along the way, and that we should assume, at the outset of the design stage, that most policies will not work as intended and that many will fail. Her work cautions us to think about provisions that allow for flexible adjustment and revision along the way. That is exactly the take-home message of her path-breaking work on over-allocation.

I could go on and on. But let me just stop and say, thank you, Lesley, for helping me and so many of us to see cap-and-trade as it exists in the world, warts and all. Thank you for helping us to slow down and follow these policies as they become instantiated in real programs and real places, and to avoid being "uncritically celebratory." And thank you most of all for showing all of us how to combine rigorous academic research with the urgent need to keep on keeping on with a progressive environmental agenda. Thank you.

## **Regulation in Developing Countries and Lessons for the Developed World**

*Benjamin van Rooij\**

First of all, I wanted to thank everybody for coming here and I wanted to thank Lesley, especially. I think this type of gathering we have is so important. We so rarely have the opportunity to celebrate someone's achievements, someone's brilliance, someone's empathy, and someone's family together. Also, I want to thank all the organizers. I am deeply humbled and honored to be here. Maybe it is also a little bit weird that I am here. First of all, I am not objective and have been asked to talk about Lesley's work as a co-author. The second weird thing is, even though we are co-authors, it took a long while before I actually met Lesley. This is the second time we ever met in person. So, I wanted to tell the story of our collaboration.

Today I want to talk about Lesley's brilliance and vision. In the world of environmental law and regulation in the U.S., Lesley was one of the first to focus on a developing country. She was path-breaking to recognize that major pollution problems were increasingly coming from emerging markets and that scholars in the U.S. should start to study these, well before this became more common over the last decade or so.

Lesley was very early recognizing this as a problem at a time where we are now all seeing it as a problem. And there are two arguments I want to make about that. First of all, countries such as Brazil are very large polluters; not only for climate change and greenhouse gas emissions, but also other kinds of pollution, which are equally impactful. And these countries are grappling with balancing these two interests. On one hand, are you going to put money and resources into forest protection, which might aid in worsening climate change. Are you still going to work on some of the other types of water pollution which may not directly contribute to climate change? How are you going to balance that with limited financial and regulatory capacity?

Second, and this is maybe more critical, maybe we are all developing countries right now. A lot of what Lesley had been writing at the time about Brazil, and I was finding in China bears some resemblance to where the U.S. is now heading to. We are probably going to see an administration and an EPA that has limited independence, with more political interference that has limited capacity because the budget gets cut. That is nothing new to scholars like Lesley

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and I, who have seen very similar issues in Brazil and China. Maybe we are going to see more corruptive capture and corrosive influences. The good news is that Lesley's work teaches us lessons about how to deal with such negative regulatory influences.

In sum, I want to argue that the time has come that regulatory scholars take developing countries or emerging economies, or however we want to define them, seriously. We must do so because the scale of their regulatory problems and the amount of people these affect matter because of their own problems, and of course, the many people that live there. Most people in the world do not live in what I call "weird" countries. These are Western, Educated, Industrial, Rich, and have credit. Most of the world does not live in those countries. Most of the world lives in Brazil, China, India, and Indonesia. These are heavily polluted places where there are real people with real lives who really matter, and there is real nature and real ecology, which is much more important to our global environment than some of the nature that we have in the north.

Lesley saw some of the worst pollution in the world coming from developing countries and started to focus on Brazil. And of course, her work has been crucial. And I think one thing she has, maybe more than I do, is hope and realism. I have maybe too much realism—or maybe negativity—and less hope. This is what shaped our collaboration and made me better than I was.

I should mention how the first collaboration started. I first got to know her through Professor Bob Kagan. In 2006, a day after I defended my Ph.D. thesis, Professor Kagan was gracious enough to be in the committee, and we had a meeting in The Hague. We sat down, and he asked what was next. I had written my Ph.D. thesis on environmental law enforcement in China, showing how bleak it was. And I said to him, "I want to study and build the field of environmental regulation in developing countries." He said, "Oh, you should talk with Lesley McAllister." And that is how it started.

We tried to—and these are my own words, I do not think Lesley would ever be arrogant enough to say this—build a budding field of environmental regulation and enforcement, especially in developing countries.

Originally, we had thought we were going to end up with a lot of papers from India, some from China, Brazil, and most likely several other Latin American countries. However, after much effort, we found we could not find a single Indian paper. We were both so frustrated. India has such a big environmental problem and such interesting ways of dealing with it, with the supreme court and all. We could not find anything. We got a nice paper on Egypt and one on Uganda, but both were not a good fit to the empirical work on pollution regulation we had in mind. It was frustrating for me; I do not know how it felt to her. But we had China and Brazil, and then some Indonesia, and then as we edited with those papers, we realized that these three countries actually provided

good synergy. So, we ended up editing a special edition of *Law & Policy*.<sup>32</sup> We were lucky enough to get seven papers in total, edited, reviewed, revised and accepted.<sup>33</sup>

We wrote an introduction to the special edition, for the first time writing together.<sup>34</sup> Our conclusions were not too optimistic. Rereading these conclusions now, it seems they have some relevance not just for emerging markets.

I think the first point is not yet true here, and probably will never be true, but it is the most fundamental. There was, in many of these countries, a vicious circle where we had widespread noncompliance with environmental law and weak law enforcement. As so many companies regularly broke the rules, law enforcement became very hard, and as law enforcement was so hard, deterrence was low, and more violations could continue. In this context it is especially hard for any law enforcement intervention to help increase compliance. All of this created a social and market norm, normalizing the deviance of violating environmental law and being unable to organize successful enforcement.

Meanwhile, enforcement work was structurally undermined, not just with the immense workload with regular violations, but also because of a capture prone governance context, with weak rule of law, close relationships between industry and regulators and weak professional ethics and instances of corruption.<sup>35</sup>

And then there was of course the issue of lack of capacity as a third reason enforcement was so hard and structural improvements to challenging. Administrative enforcement agencies that were operating in the three countries that we worked on were understaffed, underfunded, and also politically influenced by a government that had very close ties to the industry. There was a weak separation between government and market. Starting to sound a little bit familiar?

Then there was a limited and weak civil society where the government had complete control—Brazil less so, China stronger so, and Indonesia a little bit in between. It was a weak space for civil society to function as a third type of

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<sup>32</sup> See McAllister et al., *supra* note 5.

<sup>33</sup> *Id.*; Benjamin van Rooij & Carlos Wing-Hung Lo, *Fragile Convergence: Understanding Variation in the Enforcement of China's Industrial Pollution Law*, 32 L. & POL'Y 14 (2010); Adriaan Bedner, *Consequences of Decentralization: Environmental Impact Assessment and Water Pollution Control in Indonesia*, 32 L. & POL'Y 38 (2010); Lesley K. McAllister, *Dimensions of Enforcement Style: Factoring in Regulatory Autonomy and Capacity*, 32 L. & POL'Y 61 (2010); Rachel E. Stern, *On the Frontlines: Making Decisions in Chinese Civil Environmental Lawsuits*, 32 L. & POL'Y 79 (2010); Bernardo Mueller, *The Fiscal Imperative and the Role of Public Prosecutors in Brazilian Environmental Policy*, 32 L. & POL'Y 104 (2010); Benjamin van Rooij, *Greening Industry Without Enforcement? An Assessment of the World Bank's Pollution Regulation Model for Developing Countries*, 32 L. & POL'Y 127 (2010); John McCarthy & Zahari Zen, *Regulating the Oil Palm Boom: Assessing the Effectiveness of Environmental Governance Approaches to Agro-industrial Pollution in Indonesia*, 32 L. & POL'Y 153 (2010).

<sup>34</sup> McAllister et al., *supra* note 5.

<sup>35</sup> *Id.* at 2.

regulator.

Lesley's own paper to this special edition provided an important contribution to the study of regulatory enforcement.<sup>36</sup> The paper re-operationalized the idea of enforcement styles.

The idea of enforcement styles is that there are different ways in which administrative regulators can enforce the law. And Lesley, in a prior paper, had reviewed the literature. What we have seen a lot in the literature was a dichotomy, or two axes. There was this level of formalism—how much are you going by the book? Are you very formal and following rules as an enforcement agent or not? And the other one was the amount of coercion. You could be, let us say, very rule-bound but still very coercive, or you could be what I call “Dirty Harry,” where you are very strong, very punitive, but you are not following any rules. Or you could be very weak, but doing so by the rules being very weak, or otherwise not following any rules.

What Lesley did was add two core dimensions to that and her real pressurization of enforcement styles. The first one was how much capacity you have in your enforcement, which means how active you are.<sup>37</sup> How much are you going to go out there? How active are you going to be in your enforcement work? For developing countries, this is vital. It is not just whether you are going by the book or not, or whether you are coercive or not. No, it is really whether you are going out there enough. We know from the broader chronological literature and white-collar crime literature that the certainty of punishment matters much more than the severity of punishment.<sup>38</sup>

The second dimension was, how independent you are when you are making your decisions. Are you influenced and shaped from the outside or not? And these I think, are vital extra benchmarks to look at how environmental law gets enforced, and also for the people in practice that are doing enforcement work to program the way they do their work. I think these are vital ideas that have been picked up in the literature; we have now seen several papers that have developed the same idea. The same idea of seeing it as dimensions with multiple criteria. And we have seen others going to add some dimensions, but the basic thinking in the literature has really followed Lesley's work.

Lesley's biggest contribution to the field of environmental regulation in emerging markets is of course her book, *Making Law Matter*.<sup>39</sup> In this book she discusses the Ministério Público in Brazil. And I wanted to highlight several things about the book. First of all, generally the story is, where before the Ministério Público became strongly involved, administrative regulators were not

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<sup>36</sup> McAllister, *supra* note 33.

<sup>37</sup> *See id*; *See* McAllister et al., *supra* note 5, at 4–5.

<sup>38</sup> *See, e.g.*, Mark A.R. Kleiman & Kelsey R. Hollander, *Reducing Crime by Shrinking the Prison Headcount*, 9 OHIO ST. J. CRIM. L. 89 (2011).

<sup>39</sup> MCALLISTER, *supra* note 3.

doing their job very well for all the reasons that I just stated. Then as Brazil democratized, and there was a legal reform and there was a constitutional change and several legislative changes, an opening came for the Ministério Público to use a formal civil action and civil litigation against pollution and they became a very strong regulator.

This example offers so much hope. For example, when I went to China at the end of the 2000s, people actually talked to me about this. They said, “Have you heard about Brazil?” In China, people knew about this, and I became interested in it myself to see whether this story was just Brazilian. Consequently, I started to do a kind of collaboration without collaboration. I started to do a paper where I compared what was happening together with a colleague of mine in Sichuan province who studied the Chinese civil prosecutors to look at whether this could happen in China. There were several similarities. First of all, China had a sort of similar prosecutorial structure, which is kind of a weird structure, originally French, where the prosecutor does not do just the criminal work, but also the civil work, and has a broader public interest function to oversee overall justice in society.

I wanted to know whether you could have this happening without a broader political reform. In Brazil we had democratization; we had the broader legislative reform. China had the legislative reform. By 2008 there were changes in China’s water pollution prevention control law, and later in China’s environmental protection law and the civil and procedural law. We saw that prosecutors now got standing to sue polluting companies. I looked at cases because, at the time, I only had to have cases before this reform. I thought well, all the public interest cases in China, nearly 98% of them at the time, came from prosecutors. I thought, “Wow, that’s nice,” there weren’t that many but maybe this was an early Brazilian story. Then I looked at the pattern, and I found a really weird pattern. I found that mostly, the very lowest level of prosecutors went after these cases rather than at the provincial or national level.

Second, they went after private companies and smaller companies that are not very powerful, politically speaking, when you would expect them to go after is big state companies where nobody else dares to go after. That is where we would need them. That is more so what I think happened in Brazil, where the prosecutors went after them with impunity. They went after cases where there were citizens who were victims, who had standing themselves, who might have been willing and able to sue themselves. Then they went after cases where they collaborated with the local environmental authorities, the administrative authorities. They could have also used their administrative functions to just shut down or fine these companies. The weirdest thing was, each time you have this local prosecutor, they went after one case and then they stopped.

I interviewed some people who knew more about this, people in both a higher level in prosecutorial offices, as well as scholars who worked with them, and

they said that at the time there was a bonus for innovation. Prosecutors would get a bonus on their administrative record if they did something new. What was new about these prosecutions in China was that they were going against existing civil procedural law. Chinese prosecutors had no standing on the civil procedural law, but because they are so powerful, they could push their way into the court and get standing. The ironic thing was, as the law was changed, the incentive for these prosecutions was gone because it was no longer innovative. It was allowed.

Anyway, long story short, I think the case of Brazilian prosecutors that Lesley has so brilliantly described, has several broader lessons. First of all, to look at prosecutors as environmental regulators, as potential environmental regulators, we in the environmental law field tend not to look at it that much. If we look at it only from looking at criminal sections—which for instance in Australia, looks at them more as a broader regulatory agent—that is a possibility that we might use. Second, as a more theoretical lesson, is the political science view and a political science background that comes so clearly through her book regarding how constitutional law changes. How do politics and democratization and regime type affect the way environmental law gets regulated? I think her work offers so much there. I think regime type should be something we study so much more because we no longer have an environmental law field that only looks at democracies. Even democracies are no longer what they used to be. I think we need to look at that and we need to look at what regime type of power means.

After finishing her work on Brazil, Lesley turned to study Mexico, where she had done prior work. Her new research here showed the potential of market institutions.<sup>40</sup> In Mexico she studied an audit program as a form of co-regulation, where factories have to hire a private auditor to do oversight and compliance.

She showed on the one hand that the program enabled Mexican federal regulators to expand their jurisdiction. Their jurisdiction was kind of limited, but with factories coming voluntarily into this program or semi-voluntarily, they now came more strongly under the jurisdiction of the federal regulators. She also said that, “Look, if factories themselves become involved in their own regulation, they learn.” They learn better about what their pollution is doing and also different ways in which they can clean up, which is different if you have a more adversarial system where they are just trying to defend themselves against regulators. At the same time, she also discusses the limits of the program. She discusses the reliability of the measures and also the meaning of the measures that were used to say, “Wow, these programs really worked well.” The summit said, “Yes, they really work well.” But Lesley’s work showed some realism

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<sup>40</sup> See McAllister, *supra* note 2.



about this.

After I first heard her present this new work, I asked her whether she wanted to collaborate again.<sup>41</sup> I was asked to do a paper on environmental regulation in developing countries for an edited volume and I started thinking about it and I said, “I cannot do that without Lesley.” I was not sure she would be interested, as her other research was important work on Cap-and-Trade and climate change. Luckily, she said yes. And she brought in both the Mexican and the Brazilian case, and together we looked also at Chinese cases and Indonesian cases. We made this broader comparison. I think the end conclusion, just reading it back, shows so much her combination of hope and realism, which I think is so important in her work and such a lesson for all of us.

She showed in that work so clearly that yes, we can have innovations, even in very tough conditions. All these countries had major problems in the environment, and structural obstacles to successful pollution regulation and enforcement, yet we were able to show that innovation and amelioration is possible such as in the case of enforcement campaigns in China, the role of prosecutors in Brazil and market instruments in Mexico. With this broader comparison we were able to show that there is hope even when the structural challenges seem insurmountable.

To Lesley, I want to say that you have given me true inspiration never to give up hope! It has been such a tremendous joy to work with you. To think we did all that, and this was only the second time we met face to face.

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<sup>41</sup> See Lesley K. McAllister & Benjamin van Rooij, *Environmental Challenges in Middle-Income Countries: A Comparison of Enforcement in Brazil, China, Mexico, and Indonesia*, in LAW AND DEVELOPMENT OF MIDDLE-INCOME COUNTRIES: AVOIDING THE MIDDLE-INCOME TRAP 288 (Randall Peerenboom & Tom Ginsburg, eds., 2013).

## Improving Brazilian Environmental Law Enforcement

*Luis Roberto Proença\**

Good evening. First of all, I would like to thank you for giving me this opportunity to give some words about the relevance of Professor Lesley McAllister's work to environmental law enforcement in Brazil. I apologize for having to read what I would like to tell you; my English doesn't allow me just to make a speech.

My name is Luis Roberto Proença, and I am a Public Prosecutor who has been working for the São Paulo State Ministério Público for 27 years. The Ministério Público is a different version of the U.S. Attorney General's Office ("AGO"). For those who are not familiar with this subject, Brazil has a Civil Law system, and the prosecutors are hired through an official exam or contest for a life-long career. We, the public prosecutors, have the same rights and guarantees as the judges do, and our AGO received from our Constitution in 1988 a clear and solid guarantee of independence from the other branches of the government.

Our Constitution also provided the AGO with powers to litigate in the public interest, on issues such as consumer defense, children's rights, health rights, education rights and environmental defense. With this mandate, the AGO has created some specialized departments, one of them being the Environmental Enforcement Department of the City of São Paulo, where I have been working for the last 16 years.

In the 80s and 90s, some new laws were enacted, giving powers to the prosecutors to investigate and file lawsuits for defending the environment. With those powers, the AGO has become a major actor in environmental law

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enforcement in Brazil. Actually, some time ago, the AGO was responsible for filling more than 90% of the environmental defense lawsuits in our country. So, I think that having that information in mind, Professor Lesley McAllister decided to come to Brazil about 15 years ago, and we were introduced; she, being a scholar doing her Ph.D. at UC Berkeley and I, as the Coordinator of the São Paulo City AGO's Environmental Department.

At that time, she asked me for an internship at the AGO in order to do her research about the role of the Brazilian AGO in enforcing environmental law. In that way, we had the privilege of having Professor McAllister in our office for 4 to 5 months. I can remember the tremendous job she did during that time in Brazil! I could see Professor McAllister making many appointments for interviews, dozens of them (maybe a hundred).

I also remember once when she asked me, as a good American scholar, for our data, the data about our investigations and our lawsuits. She was interested in our statistics. I was really ashamed, but I had to tell her, "I'm sorry, Lesley, but we have no statistics at all." "No problem," she said, "I can do it!" So, she spent many weeks opening cabinets, drawers, archives, files and more files, reading reports and counting numbers of lawsuits and investigations. I can tell you that those were the first statistics I saw in my job, and I was ashamed by the fact that we did not have our own statistics. But Lesley not only conducted those interviews, collected that data, and produced the statistics she needed, she also concluded her dissertation, got her Ph.D. at Berkeley and has become the very productive and admired Professor of environmental law we know.

Well, more than 12 years after she received her Ph.D. degree, I took a look again at her dissertation and I was astonished about her findings and about how those findings are sound and valid still today. Her description about the Brazilian AGO's structure, powers, and difficulties in the environmental defense area is precise. Her discussion on the AGO's relationship with our environmental administrative agency, with the judiciary, and with the environmental advocacy groups and society is accurate. Her collected data are meticulous, and, best of all, her conclusions about how to improve our environmental law enforcement, were and are until now very useful and accurate.

She, for instance, has prescribed that the Brazilian AGO, the Ministério Público:

- (1) should develop mechanisms that encourage the consistent handling of cases, establishing greater cooperation between prosecutors themselves and with administrative agencies' officials;
- (2) should devote more attention to measuring the impact and evaluating the effectiveness of its environmental enforcement work; and
- (3) should enhance its public accountability, by publicizing the institution's effectiveness.

As a last lesson, she concluded that “the question for the Brazilian Ministério Público is how to preserve the institutional and functional independence that has served the institution in terms of promoting rule of law while ensuring that prosecutors themselves are accountable.”<sup>42</sup> I personally fully agree with those prescriptions and conclusion.

The present question is how far we have advanced in that prescribed path in the last 12 years. I have to tell you that the bad thing is that we continue to have problems in collecting and analyzing our data, to better measure the AGO’s work effectiveness. The good thing is that Lesley decided to update her research. She came back to Brazil last October and did new interviews and collected new data. So, we are sure that in the future we will get the answer to that very important question.

Thank you, Professor Lesley McAllister, for using your capacities and skills to help my country, Brazil, find a better way of defending our common environment. Our world as we know it is suffering, and our generational task is to do our best to save it. Thank you all.

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<sup>42</sup> MCALLISTER, *supra* note 3, at 192.

## Private Regulation and Third-Party Auditing

Jodi Short\*

You may all be surprised to learn, as I was, that Lesley does not consider herself an administrative lawyer. Her Davis biography lists her as a scholar of environmental law, natural resources law, food law, energy law, and property law. It is not for lack of detail that administrative law is missing! I found it interesting, and all the more impressive, that in pursuing her core interests, Lesley has managed to make major contributions to the fields of administrative law and regulatory design more generally. Lesley has literally defined the field of regulation by third party verification.<sup>43</sup> For those of you who are not interested in such esoteric topics, this is the use by government regulators of private third-party auditors to verify compliance by regulated entities with regulatory standards. Lesley did this by mapping the many and varied uses of third party verification by regulatory agencies.<sup>44</sup> Her work provides by far the most complete and nuanced picture available of this practice. Lesley speaks across a range of different regulatory domains, from climate change to food and product safety,<sup>45</sup> to telecommunications,<sup>46</sup> to securities law.<sup>47</sup> She documents in detail how third-party verification works in each of these domains and by doing this, she identifies a common logic to all of these regimes that helps us understand third party verification as a coherent administrative enforcement practice.

Her work is not just descriptive. Lesley has been both an advocate for, and a critic of, regulation by third party verification, explaining why and when its use

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<sup>43</sup> See, e.g., McAllister, *Third-Party Verification*, *supra* note 4; McAllister, *supra* note 2; McAllister, *Harnessing Private Regulation*, *supra* note 4.

<sup>44</sup> See, e.g., McAllister, *Third-Party Verification*, *supra* note 4; McAllister, *Harnessing Private Regulation*, *supra* note 4.

<sup>45</sup> See McAllister, *Third-Party Verification*, *supra* note 4; Lytton & McAllister, *supra* note 7.

<sup>46</sup> See McAllister, *Harnessing Private Regulation*, *supra* note 4, at 353–57.

<sup>47</sup> See McAllister, *Third-Party Verification*, *supra* note 4, at 22, 37–39.

is justified.<sup>48</sup> She has, most importantly, identified the conditions that are necessary to make this practice justifiable as an enforcement tool.

In addition to the substantive contributions that Lesley has made with this line of research, there are three things that stand out about this work to me, and that I want to highlight here, because they represent not only her contributions to the field, but they reflect more broadly on Lesley as a scholar, as a colleague, and as a person. The first is her empirical rigor. Lesley's painstaking documentation of these programs has provided the basis for grounded argument about these types of regulatory strategies and has helped move the debate out of the realm of ideology and into the realm of fact.

Second, Lesley has approached these issues with an immense amount of intellectual curiosity. I think perhaps the more appropriate characterization would be intellectual generosity or intellectual courage. What I mean by this is that Lesley was willing to take seriously intellectual positions that many of her peers dismissed. Even as she inhabited an intellectual and political community inclined to scorn forms of self-regulation like private auditing as neo-liberal nonsense, Lesley asked questions like, "Does it work? How can it work? When does it work? Where does it work?" This is a difficult stance to occupy, but a potentially very generative intellectual stance, and one that has inspired me to try and stake out that terrain in my own work.

As many of you know, Lesley's intellectual generosity extends well beyond the ideas that she grapples with in any one paper or project. Her generosity as a colleague has been truly formative to me. Lesley was my first conference buddy, someone that I saw no more than once a year at Law and Society Association annual meetings, but who I could not wait to find when I got there. She is someone who I knew I could always talk to at the cocktail parties, or who would invite me to sit with her at research network dinners. She is someone who would listen with interest as I would tell her about the ideas and issues that I was struggling with in my own research, and somebody who I always learned from. I always came away from even brief encounters with Lesley inspired by the new ideas our conversations generated. This meant the world to me as a junior scholar, and I can only hope to give to my colleagues a fraction of what Lesley has given to me throughout my career.

Finally, circling back to Lesley's work on third party verification, her work in this area exemplifies her commitment to connecting academic research and ideas to people who can really use them. A little over a year ago I was at a conference in Washington D.C. that brought together academics and officials from administrative agencies to discuss enforcement and inspection best practices. I gave a presentation about research on inspection. My talk discussed the state of knowledge in this area, nothing really radical. I focused on what we know from

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<sup>48</sup> *See id.*

well-established academic research about how inspection practices influence regulated entities' compliance with law. I was approached afterwards by several people from the Environmental Protection Agency (EPA) who were very interested in the findings I had presented. They said, "This is really interesting. We didn't know that there was established research supporting this or that fact. That kind of research would be really useful for us in developing and promulgating and supporting our rules. It would be great if you could memorialize this somehow."

This struck me as odd, because I thought, "Well, this is very well known, right? Everybody in the field knows all of this stuff." But to the people from the EPA, what I had presented was news to them, and they thought it could help them do their jobs. So, I began engaging with the EPA folks about how I could deliver something to them that would help them achieve their goals. And they said, "Have you ever read Lesley McAllister's piece that she wrote for the ACUS<sup>49</sup> on the third-party verification program?" And I said, "Yes, of course I have." And they all piped up, "You know, if only all scholars wrote like Lesley McAllister writes, then we would be in a much better position here at the EPA."

And so, I agreed to try to write something like Lesley McAllister would write it. And that undertaking taught me an invaluable professional lesson. It is not about just knowing what the literature says and producing research that can be embedded in the literature to produce novel academic insights. It is also, perhaps more so, about communicating the knowledge gained in ways that actually are meaningful to and resonant with people who can use it.

I want to take a moment to broaden this out a little bit and connect this up with some larger, more personal themes. Over the last few years through her battle with cancer, Lesley's impulse has been to connect with people, rather than to cower and hide; to communicate her struggles in ways that are relatable and meaningful to the broad community of people who care about her. This has been an incredibly beautiful and powerful personal lesson about what it means to be human. While I will always be grateful for the academic paths that Lesley blazed for me, in the end, it is her profound openness and connectedness that will continue to awe and inspire me. Lesley, thank you for all you've taught me, but thank you most for this.

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<sup>49</sup> Administrative Conference of the United States.

## Concluding Remarks

*Daniel B. Rodriguez\**

In this large group of friends and colleagues from Lesley's former school and current school, I am part of a small fraternity of just a few folks who had the pleasure of being her dean. Kevin Johnson and Stephen Ferruolo and Kevin Cole, who is not here but sends his best, are part of that group. We first met a dozen years ago, which seems like a lifetime ago, and only yesterday. I consider Lesley's recruitment to the University of San Diego one of the great prides and prizes of my time there. Little known fact, it was after the meeting that we considered, and enthusiastically recommended, an offer to Lesley that I walked out of the room and then announced to the faculty that I was resigning as dean. I would like to do some revisionist history and say, "My work was done!" and have a mic dropping moment, but that would probably stretch the truth a little bit. What it did suggest is that, to my great chagrin, I neither had the opportunity to serve formally as Leslie's dean, and, because I left San Diego not too long afterwards, I never had the great opportunity to work with her as a "civilian" colleague. So, I had to find solace in being a great fan of her research and being a great friend over the years.

The result of Lesley's hiring at San Diego was the culmination of a search that went on for quite a number of years, to hire a first-rate person in environmental law. That might seem, in and of itself, unremarkable. Given the salience and the importance of the field throughout the country, it was a source of some chagrin, and even frustration, that we took so long to hire in that area. But perhaps it is not surprising, and here I'm speaking in a room full of folks who do environmental law.

Environmental law is such a peculiar field on a number of dimensions. It is this strange amalgam of diverse thinking, this admixture of science, politics, and

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Dean Rodriguez's principal academic work is in the areas of administrative law, local government law, statutory interpretation, federal and state constitutional law and the law-business-technology interface. Rodriguez was the 2014 President of the Association of American Law Schools (AALS) and is currently serving as a council member of the American Law Institute, on the governing council of the American Bar Association Center on Innovation, on the Board of Directors of the American Bar Foundation, and as an advisor to ROSS Intelligence, Inc.



ideology. It brings out the best in legal scholarship, as many of you here in the room, including Lesley, have been part of, but it also brings up occasional controversy about whether there is really a THERE there. So, it took a while, and it was time well spent because of our ability to recruit Lesley. The skills and the background, the credentials, and all the extraordinary accomplishments that have been mentioned, should be acknowledged. They were key component parts. They were necessary, but not sufficient conditions, at least from my perspective, and I think from my colleagues' perspectives at San Diego, in our enthusiastic recruitment of Lesley. There were things that were more ineluctable but fundamental, and I think from the vantage point of those of us on law faculties, whether as faculty members or as deans, are absolutely vital and important. One has to do with imagination and creativity. That is hard to measure and cannot be measured by credentials, no matter how impressive, as is the case in Lesley. And the other is collegiality.

When I think of Lesley's great imagination, I'm struck by a story that probably most of you have heard, but it is often said about genius, and the story is often told about Wayne Gretzky. They say, "Well, why was Wayne Gretzky such a tremendous hockey player?" And the answer: "It's because he did not skate to where the puck was, he skated to where the puck was going to be." And choosing the topics, and the development of a body of research, we just knew that Lesley, based on not only her own accomplishments and projects, but also the kinds of questions that she would look to solve, the problems that she would address, and the kind of methodologies that she would bring to bear on her work, would bring the kind of imagination and creativity that would shine. This was true whether that environment was the University of San Diego, the University of California at Davis, or the institution that she also played a very important role in and ought not to be neglected, the School of International Affairs and Pacific Studies at the University of California at San Diego, which she was a very significant asset for a number of years.

Collegiality, also ineluctable, is not typically going to be part of the criteria for appointment of an entry-level faculty member. Yet these skills are truly important. They include affability, strong-willed nature, collaboration and pure integrity. But it was quite relevant when law schools, particularly UC Davis, asked me, as I'm sure they asked others, what kind of colleague Lesley would be. I was able to say with confidence, without exception and without reluctance, simply reinforcing what other folks had said, and reiterating what her colleagues at UC Davis have experienced.

One of the peculiar aspects of working in a law faculty, and building a great law faculty, is the fact that unlike other aspects of other kinds of institutions, you do not start from scratch. If you want to build a great sports team or baseball team, you allow yourself the possibility that you really need to start over. And then you build, not only the best team based on the folks who are the best at

their individual positions, but folks who mesh and meld together in a way that make the team greater than the sum of its parts. If you build a great symphony orchestra, you aspire to hire the folks that are the best at their particular instruments, but there's something quite profound and important about their ability to work together. I say this with trepidation in the times that we are in, but the same is true of a presidential administration or gubernatorial administration. Folks begin by presenting their resignation on the President Elect's desk, and the idea is to build an administration not only of great individual leaders, but to also build a team.

What does this all have to do with law faculties? Well, we hire and recruit on an incremental basis. We hire people of great skill, and we hope that they will contribute to the institution, not only by being a great individual faculty member, a great teacher and a scholar, but also that they will truly make the whole better than the sum of their parts. They will help weed the institution. Orly talked about in her remarks, about something I completely agree with—the ability to act as a colleague and a leader from a junior aspect of one's career, which is quite remarkable.

Lesley was a part of a number of several extraordinary organizations. One is the University of California, what seems a very large number of campuses, and her work on behalf of University of California at Davis, the University of California at San Diego, obviously her work in connection with the University of California at Berkeley, but beyond that. The University of San Diego, Center for Progressive Reform, all the extraordinary institutions can say, I think without any hesitation, she has made those institutions better. She has contributed not only as an important leader but has enhanced the well-being and the work of those extraordinary associations. As a fan and an admirer, I thank her.

## Concluding Remarks

*Robert A. Kagan\**

It is truly an honor to be here. I am so glad that I learned about this *Festschrift*, Lesley, and you invited me to come. I want to tell you what someone once told me about being the subject of a *Festschrift* gathering: “For the first part of it, hearing all the praise, you feel a little squirmy and you think, ‘This is really over the top, I don’t actually deserve this.’ But as it moves along, you start to think, ‘Well, I am getting used to it.’ But by the time you get to the end, you think, ‘I guess I must really deserve this.’” Lesley, if you are not there yet, that is because the event is not yet over. It’s a little uncomfortable, but you do have to accept the praise!

I want to say a few words about what my relationship with Lesley McAllister has meant to me. I need to start way back. Once upon a time, in 1969, deep in the last century, after 6 or 7 years practicing law and working in a manufacturing business, I went back to school to get a Ph.D. in socio-legal studies. From the start, I was interested in governmental regulation. To me, the advent of the activist regulatory state had been one of the most important developments in modern legal systems. Yet I learned that regulatory processes had not received much attention from sociologists and political scientists. I thought it was ripe for empirical exploration—particularly about how officials actually applied and enforced regulations in particular cases, how they were affected by political pressures and constraints, how they interacted with regulated entities, and how all that affected regulatory outcomes.

But now to my point in telling you all this. In my almost 40 years of teaching at Berkeley, and supervising I do not know how many Ph.D. dissertations, I *never* had a political science student, or a Ph.D. student in Berkeley’s Jurisprudence and Social Policy program, whose dissertation was about regulatory enforcement or compliance, with two exceptions—two Ph.D. students from Japan who studied regulatory enforcement there.

So you might imagine how pleased I was in the Fall of 1999, when a young woman named Lesley Barnhorn, a Ph.D. student in Berkeley’s Energy and

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Natural Resources program, showed up in my seminar on legal institutions and told me she wanted to study environmental law enforcement in Brazil. And you might imagine how special it was for me that she turned out to be a wonderful scholar and a wonderful person. I also felt very gratified when some years later Lesley began collaborating with Benjamin van Rooij, whom I also had had the pleasure of advising on his Ph.D. dissertation on regulatory enforcement and compliance in China. I *kvelled* like a parent whose children turned out to be close friends after they have grown up.

You have heard a lot about Lesley's career, looking back from today at how much she has accomplished. I want to go back in time and tell you how Lesley's career looked to me in foresight. Earlier this week, I found the first letter of recommendation I ever wrote for Lesley—a letter to the EPA Star Fellowship program, in November 1999. I would like to present a couple of paragraphs from it, because they reveal my first impressions of her. Anticipating how her still rather open-ended prospectus might be criticized, I wrote:

Because it is novel research, Lesley's prospectus necessarily is couched somewhat generally. The choice of particular regulatory laws to be studied (e.g. industrial air pollution, treatment of municipal sewage, etc.) must be postponed until the end of the first phase of the field research, in which she determines what data sources are available. This will entail exploratory, qualitative research, identifying and interviewing knowledgeable informants in government, business, environmental groups, and universities. . . . The important thing is that [she] is going into this process with a solid understanding of the existing literature, of the . . . variables that have proved to be significant in studies [of regulatory implementation] in other countries, and hence of the important questions to be asked.

This kind of research demands a supple mind and a quick intelligence. Lesley seems to have those traits in abundance. Her academic record, in demanding programs in law and environmental studies at Stanford and Berkeley, has been superb. She has a modest, appealing manner, lots of experience in field work in Latin America, a solid knowledge of law and of environmental issues, and a kind of quiet toughness. One reason that there has been little field research on environmental regulation and its implementation in developing countries is that very few scholars have this combination of skills, knowledge, and drive. So Ms. Barnhorn deserves to be encouraged and supported in her project, for the field of environmental studies and administration will undoubtedly benefit from her research, the completion of her Ph.D., and her subsequent career.

Thank you, Lesley, for making sure I actually was right! We all now know that Lesley's Ph.D. dissertation and book, *Making Law Matter*,<sup>50</sup> turned out to be superb, path-breaking works.

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<sup>50</sup> MCALLISTER, *supra* note 3.

Finally, let me quote one more letter of recommendation, written several years later, since it refers to both the difficulty and the *magnitude* of Lesley's achievement:

Lesley. . . went far beyond the approach of most legal scholars. She studied and described not merely the court cases brought by [Brazil's Ministério Público (MP)] but also its day to day operations and caseload, its enforcement practices, how it responded to complaints, and its interactions with politicians, environmental agencies and regulated businesses. . . . [S]he worked wonders in gaining access to the inner workings of the Ministry *and* of the environmental agencies [that the MP interacts with] in three Brazilian states. . . . While tracing the MP's very significant contributions, Lesley also brought a skeptical eye to the process, noting the. . . counterproductive consequences of entrusting environmental law enforcement to lawyers trained in the legalistic traditions of criminal law rather than the problem-solving traditions of good regulatory agencies.

That letter of recommendation also contained another prediction. I wrote that in addition to her scholarly merits, "Lesley will be a very fine, well-liked colleague and teacher. She is unassuming, modest, responsible, and likeable. And within her pleasant manner is a strong person, motivated to excel, full of intellectual curiosity, and dedicated to making an important contribution to the world." Thanks again, Lesley, for validating what I wrote.

But that letter, I now realize, needs an amendment and an addition. First, I would like to change "well-liked" colleague and teacher to "beloved." Second, in addition to mentioning Lesley's "quiet toughness" and her academic virtues, I think it is important to stress Lesley's personal warmth, her capacity for love, her *joie de vivre*, and her courage—all of which have kept her and her lovely family strong in this period of stress and foreboding. Thank you.

## **Final Thoughts**

*Lesley McAllister*

I attended the annual meeting for the Center for Progressive Reform (CPR) today. And of course, you can all guess the tenor of the meeting. These are the most activist and progressive environmental and health and safety scholars we have around the country. We are all extremely scared, but I am trying to be hopeful. With all the talent in this room and the institutions that I know and love, I just have to be hopeful. I have to hope that we marshal all the knowledge that we have, particularly from previous epochs and eras of non-progressive regulation.

We talked in our meeting today about how people seem to think regulation is such a bad thing. People loathe it. But the name of our organization when it was founded was the Center for Progressive Regulation, right? And then it was changed to “Reform” to sound easier on the ears.

I believe in regulation. And I really am hopeful that we can have a space in our governance that cares about truth and fact, that cares about the benefits we can have through policy development. So, thank you so much to CPR. I want to thank the staff of CPR, Catherine Jones and Matt Shudtz and other staff. There are five or six staff at our organization, and there are over forty or fifty-member scholars, ten of which serve on the board of directors. They are all devoted to really bringing the perspectives and the knowledge of the Environmental Law Academy out to the broader society, and I hope all the success in the world. And I hope to be part of it.

Then just a final thank you to the sponsoring institutions, particularly the two law schools that I have had the privilege to teach at and be part of. Thank you for all of your gifts to me today and in the past twenty years more or less. Thank you.

I hope you all have a wonderful year and a nice evening. Thank you so much.