

# **Reflections on Energy Law, the Role of Women, and Compliance Issues**

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It is a tremendous honor to be here today. First, I wish to thank the Institute for Energy Law and, in particular, Becky McGee and Dan McClure for inviting me to give this lecture. I only hope that I can convey a few ideas and observations that may be of use to you. I also wish to thank Kirkland and Ellis and Winstead for their support of this luncheon, and I think it's emblematic of the incredible generosity of spirit and graciousness of the Center for American and International Law, and the Institute for Energy Law, that they would support a luncheon honoring another practitioner from private practice, the world being what it is today. I'm deeply appreciative of their hospitality. So, thank you so much. And welcome to all of you, to this luncheon, we're in the second day of a magnificent program, and I've learned so much myself in these past two days, and over the past 30 years that I've been involved with the Institute and the Southwestern Legal Foundation. Of course, I want to thank David Winn and Tim West, who have been such good friends to me. We calculated that it has to have been at least 30 years that many of us have known each other in one capacity or another. I also want to thank my husband, John, and all my dear friends here.

After 35 years, I can say that the most simple, elegant and profound words in my lexicon are oil, gas and law. There are only three letters in each word, but they have formed the basis of most of my career, and that of most of the people in this room, who are centered in that arena. And, as President Obama has spoken so much lately about energy issues, and moved them to the top of the list of national and international issues he wishes to address, I recall from the not so distant past those images of the past 35 years with presidents come and gone . . . Presidents Nixon, Carter, Reagan, Bush, Ford, Clinton, and Bush. They all, at one point or another, in their presidencies emphasized the significance of energy - energy as a national security issue; energy as a supply issue; energy as a consumer issue; and, energy as an environmental issue. Energy has always been the overarching policy concern for our country and internationally.

In this vein, it also brought to mind the many wonderful judges, lawyers, thinkers, policymakers and public servants who immersed themselves in energy law and, de facto,

environmental issues over all these many decades. And many of them were associated with the development of this wonderful Institute for Energy Law.

At this outstanding opportunity to speak to you today, of the Deans of the Oil and Gas Practice . . . I see Judge Joe Morris, a close friend, who gave the first Dean's lecture. He set the bar so high when he spoke of the great academicians in oil and gas law over the years, of which there are many, and, thanks to the Institute, I have been able to know many of them, and the Board of Editors of the Oil and Gas Reporter . . . Gene Koontz and Charlie Galvin, and others, who have played such a central role in the development of modern oil and gas law, and have written the texts and tomes that define the field.

But today, I want to talk to you about energy policy and people, women in energy law and compliance with the law.

A bit of background: I grew up with my mother and grandparents in the West. My mother was always involved in energy issues, although never as a lawyer. She was the only child of two Irish immigrants, and, as a young widow, she always worked. She started with the USGS in Denver, and the Bureau of Reclamation, as an artist and a draftsman. She was then recruited to work at Hanford Nuclear Weapons Facility, and on to Los Alamos National Lab, as a weapons designer. She worked with the AEC in Casper, Wyoming, and in Denver as well as a geological draftsman. As an only child, I went everywhere with her. I sat under her drafting table soaking in energy, the notion of professional women, and more. I got to know a bit about electrical energy, weapons design, geology and engineering design. Later, I put all of the pieces together, but, it was always something that was woven into our life.

Ironically, my mother, in one of her more colorful phases, bought a motel in the middle of eastern Colorado, and I got to learn about rights of way, because the Red Dot Oil determined that they had a right of way across our motel property, and the next thing I knew, they were out there digging up the motel that we had just bought, which was an amusing experience, sort of. But, along this journey, I osmosed these experiences, and, when I finally got to the University of Colorado, at the ripe old age of 16, in Boulder, I took a lot of environmental courses. Environmental policy was just coming on to the scene. The National Environmental Policy Act was signed into law.

I was privileged to be part of those first years, in environmental issues, and had an awakening to them. I took geology courses, mainly "Rocks for Jocks," as we called it then, at the University of Colorado, and, a lot of other fun international and honors courses. I then went on to the University of Denver Law School and was blessed there with great professors, one of whom spoke to me of the Federal Power Commission for the first time. I at least had "heard the words" when I went to interview for a job with the FPC and that is when I got my big break.

I was offered a job in Washington, and it was related to the Arab oil embargo, Round One, in the early 70s. I went to Washington, thinking I would stay a year, because those gas lines had to go away and these energy problems would go away. I arrived at the FPC and I heard, within the first week on the job, "They're gonna' deregulate natural gas." I said, "I just moved here from Colorado. My husband, my mother and my daughter are moving out here. You're gonna' deregulate it? You mean we're gonna' have to turn around and go back?!" I thought I was headed back to Colorado in a year to practice real estate law in Denver on 17th Street, but never quite made it back.

That, of course, was just at the beginning of the epic tale of energy battles. Fate intervened, and the first week I was there before I had even received my bar results, I had dropped on my desk (I was sitting at the secretarial desk because, things being what they were, it was chaotic in government) an SEC S-1 registration statement describing the spinoff, by Pennzoil Company, of United Gas Pipeline. And, United Gas Pipeline had been the subject of what amounted to a corporate raid. It was a complex and amazing transaction and at that point, I first got to know the oil and gas bar. And, what a group they were! The first people I encountered were *unbelievable* lawyers. Many of them were from firms represented in this room today. Many of the people in this room practiced law with them. Let me just name a couple of them: Evans Attwell, a great lawyer, who represented Texas Eastern Pipeline in that proceeding; Clayton Orn, who was known to many of you from Anderson, Orn, Brown & Jones, former general counsel of Marathon Oil. (In private practice, he was the longest running practitioner in the Houston bar, 55 or 58 years, before he retired. I will return to him, because he is one of the key people who brought me to the table of this Foundation.); Will Perry and George Robertson of Butler Binion, proud members of the then Southwestern Legal Foundation family. They said, "You know, you've got to go see about the Southwestern Legal Foundation," which is how I came to give my first speech here in 1979, when I was Director of Enforcement trying to explain why 33 categories of natural gas prices were good for America, to a disbelieving audience. I think the venerable attendees were stunned to see a 30-year-old girl from Washington coming in and talking about criminal penalties. Through the Pennzoil spinoff case, I got to meet many other great people in the Institute: France McCoy, of course, and Joe Morris, and the brilliant, fun members of the Board of Editors of the Oil and Gas Reporter.

The Pennzoil case came to a successful conclusion. And, after a stint in private practice in which I represented the Public Service Commission of the State of New York, I met Richard Kruse, who was then with Texas Eastern Pipeline, during the gas shortage in 1976-77. The incredible excitement of oil and gas law and energy law took hold. It was the explicit physicality of it and the international qualities of it, a theme that I'll return to in a moment, that caught my imagination.

I was given the opportunity to organize the local distribution companies in New York, to import gas from Canada into New York. We did it through a variety of patchworks that led to the enactment of the Emergency Natural Gas Act of 1976-77. That law removed, for a short time, the barriers between inter- and intra state to enable gas to flow to the markets in which gas was needed. We brought Canadian gas in, and I got to experience the actual, physical thing that happened when we got the authorization. It was an emergency midnight authorization of an order I had to type myself, at the FPC. I had to walk the order around the various commissioners to get them to sign it. That night, US Customs went out on a bulldozer with the Tennessee Gas Pipeline engineer and turned the valve so that gas could flow into New York, and that Monday morning, 250,000 people went back to work. Ultimately, the gas that was taken under those circumstances was paid back in electric power from the Power Authority of the State of New York. And, it was just one of those great moments where you said, "I can do something that actually matters!" And that's why I knew that this was the practice for me. I never wanted to turn back and I never wanted to do real estate tax law back in Denver.

Over those years, the experiences that I had were so amazing, driven by the events that occurred in energy law and policy that a whole different world unfolded. Looking back, just thinking, first you have the gas price run up, post-NGPA enactment, then, a gas price

crash that turned the gas surplus into a “gas bubble” into the “gas sausage.” Then, an opening up of all the interstate pipelines, enabling gas to flow in ways it never had via open access, non-discriminatory transportation. Natural monopolies gave way to new markets. The computerization, the energy trading, the development of a contract on the NYMEX for natural gas futures also developed during that period. The energy business during this period was exciting and world-shaking. Those natural gas contracts pioneers ultimately caused the opening up of the electricity markets and paved the way for all of the incredible electric market developments.

To say it all was an easy ride would be, for those of you who lived through it, a fantasy. It was a very, very hard, but exhilarating, ride. And, it really proved that you must be strong to be in energy law, because there will be many ups and downs.

The pricing issues and the extreme volatility of the energy markets, as well as the international factors, beyond the control of even the most dedicated regulators, the most involved investors and the most astute analysts, humble us. There is a need to react quickly to all the factors and a need to be ahead of the curve. The practice is dynamic and not for the faint of heart.

During this timeframe, just think—we built the Trans Alaska pipeline. We’re still fighting about the Alaska natural gas pipeline. But it’s always a good political issue, isn’t it? We’ve had Three Mile Island, which really changed the whole world vis-à-vis the development of new nuclear power and the impact that event has had on the energy mix. For years, we were dependent on nuclear power, “too cheap to meter”, non-emitting, and still we’re dealing with “What is nuclear power?” “How does it mix?” “Where does it go, how much should there be, where should it be located?” and other questions are asked with all new major energy projects. We had the California energy crisis and the shortages of electricity in California. We had the decline and fall of Enron and the blackout of 2003. The Energy Policy Act of 1992 began to open up the electricity grid even more than the Public Utility Regulatory Policies Act had. We’ve been through *incredible* changes, challenges, and concomitant opportunities. The energy industry itself has grown massive, and we’ve seen the integration of the natural gas and the electricity industries. We know clearly that energy is the heart of our economy and the world’s. When things go bad in energy, they go bad across the board.

Let me turn now to the great women who have played a major role in the development of the dynamic field of energy law. Carol Dinkins, former Deputy Attorney General of the United States, partner at Vinson & Elkins, and a former law partner of mine could tell tales of the 70s and 80s in Washington and Houston, is here today. Karen Mathis, who is heading up the CEELI Institute in Prague and is the past president of the American Bar Association, is here. I see Kim Corley, Louise Glenn, Janice Hartrick, Becky McGee and Ann Elizabeth White. These are many wonderful women lawyers who have played a role in shaping energy law.

Just a few little vignettes to share, probably similar to what other fine lawyers experienced, and can look back on fondly, preferably with a little scotch in one’s hand. I recollect all of us in the 70s, the first time we each arrived in a hearing room and were asked by a distinguished judge, “So, where’s your court reporting equipment?” And our reply that “Well, your Honor, actually I am a lawyer, honestly.” This was before Dress for Success was written, so, heaven only knows what we were wearing; it may have thrown him off. Then there was taking a stand at some of the men’s clubs—I recall that it was very difficult for

women to go to the luncheon clubs, in Houston and around the country, at the time. My new Butler Binion partner, Tom Houghton, had assembled a group of male colleagues, and his tradition was to go to one of the clubs for breakfast. He invited me to introduce me to my new colleagues. When we entered the Grill Room, dead silence came over it. The maitre d' came over and whispered to Tom, "I'm sorry, you'll have to leave." Tom asked, "Well, why is that?" They said, "Well, there's a woman, Sir, you're not allowed to have women in this club." Tom refused to leave, saying "We won't leave 'til I have breakfast. I'm here with my partner and I'm not leaving." So, they cleared all the other people from the dining room, and there were just six of us around the table in the enormous Grill Room. A private room was arranged for the room full of disgruntled men. I was so proud to be with him on that day because I would have just left.

When I was FERC's Director of Enforcement I had come to the Houston Petroleum Club to deliver a dinner speech to a group of producers. Upon arrival, I asked, "Could I have a glass of white wine before we have dinner?" to the bartender. And he said, "I'm sorry, lady, we don't have wine." And, I said, "Well, do you have something like a gin and tonic . . .?" "No, no, we don't serve gin and tonic." I said, "Well, what do you serve?" He said, "We serve scotch or bourbon, lady. That's all we've ever served, and that's all we're ever gonna serve!"

So, what lessons have I taken from these experiences? First of all, it's always the age of energy. Its multifaceted aspects, its international qualities, the issues of national and international security and huge market impact make energy a central issue of every time. The regulation of the energy markets, and the complexity of the regulations, the environmental consequences of energy development and exploitation make energy a lawyers' paradise. There is no more exciting and challenging area of the law, from Boston to Beijing, Buenos Aires, Botswana and Brunei. You can always find a great conversation about oil and gas and energy law. No matter where you go on earth, it is a brotherhood and sisterhood; a platform for diverse people, of all backgrounds, from various ethnic groups, various parts of the world, various interests. Energy professionals function at the highest levels of their society and you will not have dull conversations about energy law and policy.

The rule of law in many ways has roots in energy. Larry Nichols, last night, from Devon, alluded to this. Oil and gas law underpinned development of the rule of law worldwide. Before it was a maxim that the rule of law should be developed, it was there; it came with the energy territory. It was an *incredible* gift to the legal world. I mentioned a Clayton Orn a moment ago. The background is that Clayton Orn was one of the first lawyers to go to Libya when the country opened up, and he met with King Idris with his client. It was a very different world, and Muammar El Quaddafi was off in the distance at the time of the meeting, but was soon to become a player. King Idris was to be deposed, but, when the oil company first arrived in Libya, one of the first things their lawyers did was to bring a library of oil and gas law texts. They set up libraries in these countries, so that there could be an understanding of the basic rules of capture, non waste, the basic oil and gas legal structure. And this imparting of wisdom became part of the oil and gas law history; the way that the oil and gas companies went into these countries was with true class.

It was not only to make a *fortune*, (and there were a lot of fortunes made, and a lot of risks taken) but to build a complex, worldwide industry. Fundamentally, there was a nobility of purpose to it as well. And, there was decency and a commitment as well. Were there mistakes? Of course. There were grotesque mistakes made in many places, but not all places. The oil industry brought a lot of opportunity to many people, in many ways. It

empowered people. It has continued to empower people throughout the world. And, another lesson learned: basically, energy and environment are conjoined twins. They are conjoined twins that don't get along well and that is something that is just a fact, a *fait accompli*, in the world in which we operate. The greenhouse gas issue really brings it home. We seek simple solutions, but we have far to go on that issue, and in coming up with solutions that address the problem without being destructive to the economy.

In that vein, I was in Fairhaven, Massachusetts, recently, which is next to New Bedford. Now, Fairhaven, Massachusetts, you would think, "Now what in the world would that have to do with oil and gas law?" Well, ironically, a huge amount. Fairhaven was the center of the whale oil industry. And let me tell you, when you look back and you think, "How bad can things be? How badly do you need energy?" There is nothing more brutal than whaling and nothing more dangerous than whaling. Yet, the way people lit their homes until the mid 19th century was with whale oil. It is astonishing to even imagine.

A boy born in Fairhaven named Henry Huddleston Rogers went from boiling whale oil as a young boy and rendering it (as distasteful a thought as that may be) to becoming one of the major executives in Standard Oil. He had a huge impact in the development of Standard Oil. He went into the Pennsylvania oil fields and set up the Wamsutta Oil Refinery and ultimately became one of the founders of Standard Oil. But, the reason you know about him in Fairhaven is that he donated, out of his own pocket, virtually all of the major buildings of the town. Fairhaven is one of the architectural gems of the late 19th and early 20th century. It has an exceptional high school, library and municipal hall, everything courtesy of Rogers. Interestingly enough, this complex man became great friends with Mark Twain. Twain's best friend, Ida Tarbell, went on to interview Rogers. Over the course of a year she wrote a series of articles for Harpers Magazine. They became the basis of all the investigations of Standard Oil, the railroads and all the relationships. The "trust busters" Standard Oil break up was often blamed on Rogers. But what is also interesting about Rogers, who was the 22nd wealthiest person in America, was his support for Booker T. Washington. Rogers was one of the great supporters of diversity, and equality for the races. He supported Mark Twain, when Mark Twain made many atrocious investment decisions. Rogers funded the college education of Helen Keller. He encapsulated in one person, really, the story of the oil industry. How many great and good things can be done even in a business subject to controversy and regulation, subject to scrutiny, investigation, criticism and politicization?

Well, in these troubled times, how shall the industry react under the incredible political pressure? The knee-jerk reaction of politics is to regulate everything. The sophisticated players among you can see it coming. There is a gathering storm of regulatory issues building up on the horizon. CFTC, SEC, EPA, FTC, FERC are all considering a number of steps that will impact the energy industry dramatically. Because there are new committee chairs on the Hill, and oversight committees, much more may be expected.

In compliance and enforcement, my experience teaches that the important thing about regulating, the first object of the exercise, is to have compliance with the law. And, when enforcement agencies seek that compliance, most of the time it works. Most of the time it's the *in terrorem* effect. When there is tough enforcement, it should be done fairly, judiciously, and, it should be a balance between singling out and making examples of certain players, versus assuring compliance. It is a tricky balance beam upon which enforcement entities tread.

What are the big issues ahead? Well, I think the biggest issue is integrating the worlds of oil, gas, coal and other traditional forms of energy with what is the new focus, the renewables. There is a vast gap to bridge these two worlds. We have a brilliant Secretary of Energy, Dr. Chu, a Nobel Prize winner. He is completely and utterly focused on the future, the smart grid, the green solution, we are trying to run the economy in between. Many new jobs are supposed to come from the green economy, yet we have so many jobs that are tied to our traditional energy economy, not just domestically, but internationally.

We need the greatest philosophers, thinkers and scientists of the time to help us get through this period of adjustment. I hope that we can find them, and not just go down one path, not dismissing the treasures we have that have proven to be successful already in our hands. The country will need to keep prosperous the endeavors and keep people at work in these industries. Recall that the automobile industry wouldn't be if it had not been for the oil and gas industry. There would not exist an airline industry. There would not be heat in many houses. The world would still be using wood or whale oil for basic heat, if it had not been for the natural gas industry.

The intellectual capital, the oil and gas business and the traders have to bring their sophisticated knowledge to bear in the structure of markets to encompass the new smart grid concept. How can you bring natural gas to play a key role to meld with the wind power and the solar power and the other sources of alternative energy? This is going to be one of the big challenges. Obviously, the wind doesn't blow 24/7. The sun doesn't shine 24/7. And natural gas storage, natural gas supply for generation, can be the partner in this arrangement. These two worlds can be brought together, but it is going to require foresight and the engineering capabilities. Another challenge is increased energy efficiency, squeezing more out of everything we do. Some of it sounds a bit "soft" for those of us that have been in the oil and gas business, but if you refer back to the efficiency gains that we made after the Energy Policy Act of 1978 and the run-up in energy prices, you realize that we saved an *enormous* amount of energy in the refineries and beyond in almost all aspects of the oil and gas business. There is more low-hanging fruit that can be captured. And that is something that we should look forward to, not resist.

Trying to design markets that integrate the green initiatives is a real challenge for federal and state regulators. We must be careful not to kill the petroleum industry goose that's been laying golden eggs for over a century. And there's a temptation to do that, to just move on, say "We're tired of the old ways," "We must eliminate greenhouse gas emissions," "These are the evil fuels, so let's move on to this, very clean and perfected green world." It is a very tough move to make.

To close, I am so proud to be practicing law with this wonderful group of people, to be with people who care about the world, who wish to contribute, who wish to move us to the next phase. They wish to save the planet; they wish to make jobs and money, to do well, to teach. God bless you. And, being in the energy business, you know, you can't make it more exciting than that. It has taken me to Africa, China, Russia, Mexico and Northern Ireland, where I saw my grandmother's homestead. It has taken me to just about every corner of the earth. And it could not have been better; it could not have been more exciting. There have been ups, there have been downs. But, all in all, it has been a magnificent experience. We work so hard collectively to reinforce the rule of law worldwide, including many initiatives now in the environmental arena, to enhance and expand that rule of law. Energy lawyers will play a significant role in that effort in the future and I hope to be part of that.

As leaders of the industrial world, the US oil and gas industry and yes, the lawyers who are part of it, have in many ways been the backbone of the spread of prosperity and democracy to much of the planet. There are mistakes, there are errors, overreaching. However, even with those missteps, in environmental and other matters, in the challenge of operating in sometimes a “Wild West atmosphere,” the net contribution to the human race has really been quite remarkable. The oil and gas industry has brought technology, prosperity, training, safety, environmental standards, employment, education, infrastructure and more. So let us please raise a toast to the oil and gas business and to its lawyers, past, present, and to come.