

BUILDING CREDIBILITY: LESSONS FROM THE LEADERSHIP OF WILLIAM RUCKELSHAUS

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SUMMARY

The recent passing of William D. Ruckelshaus has recalled and re-invited comparisons between the Trump and Nixon presidencies. Although Ruckelshaus might be most widely remembered for the “Saturday Night Massacre,” a review of his career in the Nixon and Reagan Administrations demonstrates a through-line of sound administration and independent regulatory leadership, at times in contrast to or in spite of his political environment. This Article explores the course of Ruckelshaus’ career in environmental regulation, focusing on his two terms as Administrator of EPA, in order to better understand the ways in which administrative and regulatory agencies gain, squander, and restore the most basic currency of government: credibility. Drawing from a number of unpublished primary materials, it finds that regulatory programs independent of presidential pressure are necessary to legitimate and credible executive government, and argues that this independence is lacking in the centralized power structure of the current Administration.

As the initial impeachment hearings for President Donald J. Trump boiled over, a hero who once emerged nearly 50 years ago from an all-too-similar presidential scandal passed away peacefully in his home.¹ William Ruckelshaus, known as Bill to his friends, became cemented in American history in the aftermath of Watergate. In many circles, Ruckelshaus’ actions and integrity while an assistant attorney general define his reputation; for example, he was memorialized in the headlines announcing his passing as “Ruckelshaus, Who Defied Nixon and Quit,” or “William D. Ruckelshaus, Who Refused to Join in Nixon’s ‘Saturday Night Massacre.’”²

Due in large part to the stellar reputation Ruckelshaus had cultivated, he had come to the U.S. Department of Justice (DOJ) after a short term as interim director of the Federal Bureau of Investigation (FBI). The previous director was forced to step down following the revelation that the bureau had interfered in the Watergate investigations by destroying relevant evidence.³ President Richard Nixon, in an attempt to thwart the independent investigator, Archibald Cox, ordered Cox’s firing.⁴ Both Elliot Richardson, then-attorney general, and Ruckelshaus refused to carry out the order.⁵ In what became known as the Saturday Night Massacre, both Richardson and Ruckelshaus resigned or were fired,⁶ and third-in-command Robert Bork was left to carry out the job.⁷ This resulted in a

Authors’ Note: The original histories found in this Article are the product of nearly eight years of original research. The primary and secondary sources Daniels has worked to assemble tell a larger story of the birth of environmental law than can be found in this Article, and are the subject of a book project. Co-author Follett worked as the leader of the research team that has helped organize primary historical sources. Daniels also thanks the many research assistants who have helped labor to organize and transcribe the original research materials.

1. Associated Press, *William Ruckelshaus, Who Defied Nixon at Height of Watergate, Dies at 87*, NBC NEWS, Nov. 27, 2019.
2. *Id.*; Robert D. McFadden, *William Ruckelshaus, Who Quit in “Saturday Night Massacre,” Dies at 87*, N.Y. TIMES, Nov. 27, 2019; Timothy R. Smith, *William D. Ruckelshaus, Who Refused to Join in Nixon’s “Saturday Night Massacre,” Dies at 87*, WASH. POST, Nov. 27, 2019.

3. J. BROOKS FLIPPEN, *NIXON AND THE ENVIRONMENT* 198 (2000) (“Ruckelshaus’s independence had frequently annoyed his superiors, but Nixon recognized that it was exactly this trait that made his [U.S. Environmental Protection Agency] administrator so popular. His stellar reputation, especially among the growing number of administration foes, offered an opportunity for political advantage.”); FRED EMERY, *WATERGATE: THE CORRUPTION OF AMERICAN POLITICS AND THE FALL OF RICHARD NIXON* 397-99 (1995) (discussing how Ruckelshaus’ reputation as “Mr. Clean” made him Nixon’s choice for some of the more controversial roles he was asked to play during Watergate); McFadden, *supra* note 2.
4. STANLEY I. KUTLER, *ABUSE OF POWER: THE NEW NIXON TAPES* 638-39 (1997); STANLEY I. KUTLER, *THE WARS OF WATERGATE* 406-11 (1990).
5. *Id.*
6. Interview by Brian Lamb with William and Jill Ruckelshaus (Jan. 4, 2005), available at <https://www.c-span.org/video/transcript/?id=8614>.
7. *Id.*

political firestorm that did not relent until Nixon abruptly resigned from the White House in disgrace.⁸

Ruckelshaus' reputation for standing against Nixon during Watergate is, of course, well-earned. But Watergate was not the only time Ruckelshaus demonstrated his commitment to moral government and fixed principles, and it certainly is not the only thing for which he ought to be remembered. Indeed, he built a long and diverse career on a reputation of credibility and independence that began long before he entered DOJ. In fact, Ruckelshaus may be best memorialized for his work in first crafting, and later salvaging, the U.S. Environmental Protection Agency (EPA), which is now rounding into its 50th year. It was these achievements in the field of environmental protection, for example, that President Barack Obama recognized when he honored Ruckelshaus with the Presidential Medal of Freedom.⁹

As with any new agency, EPA could very well have amounted to little or nothing. Instead, Ruckelshaus built an enduring and deeply impactful agency, managing to transform broad public support for the environment into meaningful and credible government programs. While much damage has been done to EPA over the past decades (including the past few years in particular), its survival alone is a testament to his work.

Ruckelshaus' defining characteristics, those that allowed him to stand against improper directives at DOJ and pull together EPA *ex nihilo*, were his untouchable credibility and independent integrity.¹⁰ In other words, and borrowing from his own statements,¹¹ Ruckelshaus was able to create a relationship of trust both between parts of government and between the government and the public. Many of the world's most important institutions today are suffering or failing because they are losing or have already lost public credibility. In what sometimes seems to be a post-truth era

in Washington,¹² credibility is something our nation's government needs immensely.

In this Article, we explore how Ruckelshaus cultivated credibility by recounting key decisions and periods of his career, and reflect on how his successes—often won in the face of skepticism or antagonism—might instruct those heading important institutions to begin to restore lost public trust. We examine key situations where Ruckelshaus' ability to garner credibility were put to the test, and demonstrate the role of proper leadership in building durable institutions.¹³

In Part I, we look at Ruckelshaus' founding of the massively successful EPA: in the course of his Odyssean tenure, he deftly maneuvered in the constrained political space created for him and managed to catapult EPA into popularity, establish himself as a fair dealer, and realize strong congressional environmental intentions. In Part II, we examine his second stint as Administrator at EPA during a time when the Agency was drowning in corruption and controversy. Finally, we conclude by considering the lessons to be taken from Ruckelshaus' leadership, and consider how internalizing these principles might contribute to restoring or shoring up the credibility of important institutions in the world Ruckelshaus left behind.

I. Tenure as First Administrator of EPA, 1970-1973

By the time President Nixon created EPA in late 1970,¹⁴ the environment had taken a prominent seat in Washington politics.¹⁵ Although a few years earlier ecology and pollution were relegated to small academic and activist niches,¹⁶ 1969 and 1970 represented a watershed moment of fixed public attention and concern. In 1969, the National Environmental Policy Act (NEPA)¹⁷ articulated a national envi-

8. For a more detailed discussion of the reaction to and legal effects of the incident, see generally Constance O'Keefe & Peter Safirstein, *Fallen Angels, Separation of Powers, and the Saturday Night Massacre: An Examination of the Practical, Constitutional, and Political Tensions in the Special Prosecutor Provisions of the Ethics in Government Act*, 49 BROOK. L. REV. 113, 118 (1982); RICHARD NIXON, RN: THE MEMOIRS OF RICHARD NIXON 932-36 (1978) (discussing what he viewed as the "ferocious . . . almost hysterical" public response to the Saturday Night Massacre—something he did not expect).

9. President Barack Obama, Remarks at Medal of Freedom Ceremony (Nov. 24, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/11/24/remarks-president-medal-freedom-ceremony>.

10. Ruckelshaus' public honor and integrity created stakes for his regulatory decisions and gave him something to put at stake; just as Thomas C. Schelling recognizes the significance of "nation's honor, obligation, and diplomatic reputation" in creating credible commitments, the honor and reputation of a regulatory leader determines the credibility of his or her agency. Brigham Daniels, *When Agencies Go Nuclear: A Game Theoretic Approach to the Biggest Sticks in an Agency's Arsenal*, 80 GEO. WASH. L. REV. 442, 483-84 (2012); THOMAS C. SCHELLING, ARMS AND INFLUENCE 49 (2d ed. 2008).

11. Interview by Brian Lamb, *supra* note 6:
[T]he problem is trust. I think that free societies only function well when there's a bedrock of trust among the people and their basic institutions. And we have had a steady erosion of trust in government, in particular . . . You need trust that our basic institutions are going to do the right thing or we don't function very well. And my only response to it is we've got to get more people involved in trying to solve these problems themselves.

12. John Corner, *Fake News, Post-Truth, and Media-Political Change*, 39 MEDIA CULTURE & SOC'Y 1100 (2017); Silvio Waisbord, *Truth Is What Happens to News: On Journalism, Fake News, and Post-Truth*, 19 JOURNALISM STUD. 1 (2018); Garry Kasparov, *I Lived in the Post-Truth Soviet World and I Hear Its Echoes in Trump's America*, CNN, Dec. 5, 2019, <https://www.cnn.com/2019/12/04/opinions/kasparov-trump-america-post-truth-world/index.html>.

13. We also incorporate throughout this Article the research of Schelling concerning the creation of credible threats and commitments, which illuminates and contextualizes our discussion of Ruckelshaus within a broader discussion of regulatory credibility. See SCHELLING, *supra* note 10. For more discussion of Schelling's work and its relevance to regulatory credibility, see Daniels, *supra* note 10.

14. The law at the time allowed him to reorganize the federal bureaucracy unless the U.S. Congress affirmatively voted against his proposed reorganizations. Reorganization Plan No. 3 of 1970, 35 Fed. Reg. 15623 (Oct. 6, 1970).

15. See Brigham Daniels et al., *The Making of the Clean Air Act*, 71 HASTINGS L.J. (forthcoming 2020) (Part I explores rising political pressure for action on the environment during this period, focusing on 1969-1970, the popularization of the ecology issue in general, and the coming-to-be of the Clean Air Act in particular).

16. *Id.*; see also Joel K. Goldstein, *Edmund S. Muskie: The Environmental Leader and Champion*, 67 ME. L. REV. 226, 227 (2015); Robert Gottlieb, *The Next Environmentalism: How Movements Respond to the Changes That Elections Bring—From Nixon to Obama*, 14(2) ENVTL. HIST. 298, 301 (2009); FLIPPEN, *supra* note 3, at 19-20.

17. National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. §§4321-4370h, ELR STAT. NEPA §§2-209).

ronmental ethic informed by principles of ecology,¹⁸ created mechanisms for review of federal actions,¹⁹ and established in the Executive Office of the President a Council on Environmental Quality to advise executive decisionmaking.²⁰

The year 1970 saw unprecedented new antipollution law in the form of the sweeping new iteration of the Clean Air Act (CAA)²¹ and the Water Quality Improvement Act²²—a harbinger for the revolutionary Clean Water Act (CWA) Amendments that would come two years later.²³ Each of these structural and regulatory innovations was largely a reflection of the same social phenomenon—both the U.S. Congress and the Administration were eager to demonstrate to an increasingly skeptical (even radicalizing) population that the federal government could improve their quality of life.²⁴ Public support for the issue was broad²⁵ and actors from across the political spectrum sought to collect credit,²⁶ but the task of actually satisfying the demands of the voter base seemed daunting.

In light of broad public skepticism, particularly about the credentials of a Republican administration,²⁷ the odds were against Ruckelshaus when he assumed the position of EPA's first Administrator. Getting the job in the first place seemed like a long shot: from the beginning, he was an underdog—his name was not always on the list of candidates, and other contenders, like Russell Train and George H.W. Bush, occupied the White House's considerations.²⁸ Men who had already turned down the position once before were recommended by the responsible Domes-

tic Policy Counsel for a second chance, even before Ruckelshaus' first.²⁹

Not only would Ruckelshaus have to win over a cynical public and antagonistic state governments, formerly the seat of environmental control,³⁰ he would be forced to do so at times against the wishes of the president and in spite of strong conservative pressure from within the Administration, which was seen by many as not serious enough about pollution³¹ or “too close” to industry interests.³² The president was not personally concerned with environmental issues,³³ but he and his advisors saw Ruckelshaus as the “answer” to his most outstanding political challenger at the time, Sen. Edmund Muskie (D-Me.).³⁴ Thus, Ruckelshaus was placed in a tenuous position between the conservative White House, an expectant public, and a liberal Congress.

As one news outlet noted at his appointment:

[N]o matter how strong the agency is on paper, an aggressive man on top means everything. The pressure on Mr. Ruckelshaus will be immense—from politicians who are committed only rhetorically to anti-pollution [and] from businesses which ask for “more time” . . . The anti-pollution movement must now go beyond promises and speeches.³⁵

Or similarly, in Ruckelshaus' own words, “there is nothing more useless than an unused law.”³⁶ Ruckelshaus was the right man for the job, however, as he had already planted the seeds for a reputation as an able enforcer of environmental law in his home state, something Prof. William Andreen has noted: “A Harvard-educated lawyer and a rising political star from Indiana, Ruckelshaus had done enforcement work on air and water pollution matters for the Indiana Board of Health and had developed a reputation for being a tough enforcer.”³⁷

18. See generally Sam Kalen, *Ecology Comes of Age: NEPA's Lost Mandate*, 21 DUKE ENVTL. L. & POL'Y F. 113 (2010).

19. National Environmental Policy Act of 1969 §102, 42 U.S.C. §4332.

20. *Id.*

21. Clean Air Act Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676 (codified as amended at 42 U.S.C. §§7401-7671q, ELR STAT. CAA §§101-618).

22. Water Quality Improvement Act of 1970, Pub. L. No. 91-224, 84 Stat. 91 (amending the Federal Water Pollution Control Act).

23. Federal Water Pollution Control Act Amendments (FWPCA) of 1972, Pub. L. No. 92-500, 86 Stat. 816 (codified as amended at 33 U.S.C. §§1251-1387, ELR STAT. FWPCA §§101-607).

24. See HOUSE CONSIDERATION OF THE REPORT OF THE CONFERENCE COMMITTEE, at 7 (Dec. 18, 1970), reprinted in 1 COMM. ON PUB. WORKS, LEGISLATIVE HISTORY OF THE CLEAN AIR ACT AMENDMENTS, 1970, at 117 (1974); S. REP. NO. 91-296, at 1-4 (1969); 115 CONG. REC. 19008 (1969).

25. RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 53 (2004); *Poll Finds Americans Less Concerned About the Environment Now Than When Earth Day Began*, HUFFINGTON POST, Apr. 22, 2013; Memorandum from John C. Whitaker, Domestic Policy Counsel, to President Richard Nixon (June 29, 1970) (on file with authors as Nixon 2-70) (includes polling data from Benham poll). See also Daniels et al., *supra* note 15 (discussing polling in Part I).

26. LAZARUS, *supra* note 25, at 76 (referring to the Clean Air Act as a “struggle between Nixon and Muskie”); David Vogel, *A Big Agenda*, 11 WILSON Q. 51, 57-58 (1987) (discussing the “bidding war” that resulted in the Clean Air Act); Daniels et al., *supra* note 15 (Part I discusses this era of credit-taking).

27. Casey Bukro, *Life Line*, CHI. TRIB., Dec. 20, 1970; Memorandum from William Ruckelshaus, EPA Administrator, to President Richard M. Nixon (Sept. 19, 1972) (on file with authors as Nixon 4-11).

28. Memorandum from John C. Whitaker, Domestic Policy Counsel, to John D. Ehrlichman, Counsel to the President (Sept. 8, 1970) (on file with authors as Nixon 1-161) (George Bush is called by John Whitaker a “capable loser,” but is “tainted with oil.” As a “pro” for putting Train, chair of the Council on Environmental Quality, over EPA as well, Whitaker writes “the President would only have to deal with one ‘Mr. Environment.’”).

29. See Memorandum from John C. Whitaker, Domestic Policy Counsel, to John D. Ehrlichman, Counsel to the President (Oct. 14, 1970) (on file with authors as Nixon 1-139, Nixon 2-45).

30. JOEL A. MINTZ, *ENFORCEMENT AT THE EPA: HIGH STAKES AND HARD CHOICES* 24 (2012).

31. Bukro, *supra* note 27.

32. Memorandum from William Ruckelshaus, EPA Administrator, to President Richard M. Nixon (Sept. 19, 1972) (on file with authors as Nixon 4-11).

33. RUSSELL TRAIN, *POLITICS, POLLUTION, AND PANDAS: AN ENVIRONMENTAL MEMOIR* xi, 79 (2003); RICHARD REEVES, *PRESIDENT NIXON: ALONE IN THE WHITE HOUSE* 261 (2001).

34. Bukro, *supra* note 27. For more discussion of Muskie's role in forcing Nixon's hand on the environment, or in the environmental movement generally, see Daniels et al., *supra* note 15 (discussing Muskie's presidential aspirations and Nixon's environmental response, particularly in the case of the Clean Air Act); Leon Billings, *Why Muskie Mattered*, 13 ENVTL. F. 23 (1996) (discussing Muskie's role as father of the environmental movement and in the creation of EPA); Robert F. Blomquist, *To Stir Up Public Interest: Edmund S. Muskie and the U.S. Senate Special Subcommittee's Water Pollution Investigations and Legislative Activities, 1963-66—A Case Study in Early Congressional Environmental Policy Development*, 22 COLUM. J. ENVTL. L. 1113 (1997) (explaining Muskie's activity in the early environmental legal movement); DAVID NEVEN, *MUSKIE OF MAINE* 184 (1972).

35. *New Environmental Job*, CHRISTIAN SCI. MONITOR, Dec. 4, 1970 (reprint of a *Washington Post* syndicated article).

36. William Ruckelshaus, Speech at the National Press Club (Dec. 16, 1971) (on file with authors as EPA 1-12).

37. William L. Andreen, *The Evolution of Water Pollution Control in the United States—State, Local, and Federal Efforts, 1789-1972: Part II*, 22 STAN. ENVTL. L. J. 215, 256 (2003). See also LAZARUS, *supra* note 25, at 76 (stat-

The first crowd with whom Ruckelshaus would need to find favor was the U.S. Senate itself, particularly the committee that would be tasked with overseeing his work during the confirmation process. Ruckelshaus was “closely examined” in two days of testimony³⁸ by the Public Works Committee, the same one responsible for air and water pollution legislation and headed up by the ever-skeptical Muskie.³⁹ Ultimately, he was confirmed by a voice vote in the Senate after favorable commendation by the reputable committee chair Jennings Randolph, who reported that Ruckelshaus “made an excellent impression on all the members of the committee” and possessed “unusual acumen.”⁴⁰

At his swearing-in, Ruckelshaus immediately began to show that he could be aggressive and enforce the law independently of political pressure—he created an air of “no nonsense.”⁴¹ “We see [EPA’s] primary responsibility as enforcement . . . And we are going after the polluters,”⁴² Ruckelshaus eagerly claimed, despite the White House’s specific and consistent instructions that Nixon did not want Ruckelshaus to beat up industry.⁴³ “Of course, industry is one of the problems,” Ruckelshaus continued, and when asked the question of “which polluters are you going after first,” he presented a broad goal: “We are going after all of them, in the air, and in the water.”⁴⁴

Only a week into EPA’s existence, he offered even stronger language in official press releases and speeches: “The actions I have taken today and similar actions I will take in the future may shock some. They may anger others. In my opinion it is far better that we shock and anger today than that our children inherit an unlivable world

ing that in Indiana, Ruckelshaus developed “strong credentials as a vigorous enforcer of environmental protection requirements”); FLIPPEN, *supra* note 3, at 88 (noting he “had worked closely with the Indiana Board of Health for years, playing a critical role in that state’s air and water pollution enforcement”).

38. *Ruckelshaus Is Confirmed as Pollution-Agency Chief*, WASH. BUREAU SUN, Dec. 3, 1970.

39. TRAIN, *supra* note 33, at 159 (Senator Muskie, however, was not left totally satisfied; Ruckelshaus was held to high standards of scrutiny during his tenure but, as his successor in EPA noted, was ultimately respected in Congress).

40. *Ruckelshaus Is Confirmed as Pollution-Agency Chief*, *supra* note 38.

41. *New Chief of Pollution Group Maps Drive to Clean Air*, CHI. TRIB., Nov. 22, 1970.

42. Press Release, Office of the White House Press Secretary, Press Conference of William D. Ruckelshaus and Russell E. Train (Nov. 6, 1970) (on file with authors as Nixon 1-9).

43. FLIPPEN, *supra* note 3, at 142 (“When Ruckelshaus, in one speech, bemoaned ‘greedy corporations’ harming the environment, Nixon ordered a reprimand. ‘EPA shouldn’t demagogue like this.’”); Memorandum from John C. Whitaker, Domestic Policy Counsel, to the President’s Record (Nov. 3, 1971) (on file with authors as Nixon 2-95) (Nixon met for two minutes with Ruckelshaus about the Environmental Merit Awards, and joked that he should have a “be kind to industry week” due to flack Nixon jets from Ruckelshaus’ toughness on industry:

As Bill left, you [Nixon] joked with him: “Bill, you are a fine, strong man in an impossible job. By the way, do you think you could have a ‘be kind to industry week?’” You were referring to all the flack you get from industry on Ruckelshaus being too zealous in getting industry to stop pollution.

Nixon White House Tapes, Tape 255-33 (June 9, 1971) (available at the Nixon Presidential Library and on file with authors) (indicating that Nixon does not want Ruckelshaus to “demagogue against business”).

44. Press Release, Office of the White House Press Secretary, *supra* note 42.

tomorrow,⁴⁵ and, as he later announced, “some [industry people] respond in magnificent fashion . . . Others—well, others respond only to the pole axe.”⁴⁶ Importantly, this is not the language of the president, but of Ruckelshaus himself, reflecting the urgent mandate provided by Congress in the era’s environmental legislation.

This messaging set the groundwork for the Agency’s independence, which was crucial to Ruckelshaus’ and EPA’s perceived nonpolitical and impartial third-party credibility,⁴⁷ and which made the White House “a bit nervous”⁴⁸ at least. Ultimately, the price of nervousness bought public buy-in and served the Administration’s interests of putting well-regarded fair dealers in leadership. Although the conservative faction of the White House would at times complain about Ruckelshaus’ inaccessibility to industry and “heavy-handed” or “belligerent” rhetoric,⁴⁹ Ruckelshaus’ posturing made the difference in winning over environmental interests in the public and thought leaders in the Senate or elsewhere.

Although he lacked managerial education or leadership training per se, Ruckelshaus remembers being excited and energized by the opportunity presented to him.⁵⁰ Investigating early compliance with the Clean Air Act and the dusted-off 19th century’s Refuse Act⁵¹ (used as a water pollution enforcement stopgap),⁵² EPA created a federal pres-

45. Press Release, William Ruckelshaus, EPA Administrator (Dec. 10, 1970) (on file with authors as EPA 1-3). Choosing big targets and making a media splash was one of the ways Ruckelshaus was key to his early strategy to gain political credibility. See William D. Ruckelshaus, *Environmental Protection: A Brief History of the Environmental Movement in America and the Implications Abroad*, 15 ENVTL. L. 455, 458-59, 461 (1985) (“As the first EPA Administrator, I felt if we went after the polluters diligently and established confidence in agency enforcement . . . we would see a much greater public understanding of the nature of the problems . . .”); Joel A. Mintz, *Agencies, Congress, and Regulatory Enforcement: A Review of EPA’s Hazardous Waste Enforcement Effort, 1970-1987*, 18 ENVTL. L. 683, 691 (1988) (“To convey a tough enforcement message to industrial and municipal sources of pollution, the Agency directed many of its initial efforts against large national corporations and big cities. Administrator Ruckelshaus announced the EPA’s initial enforcement actions, which received extensive media coverage.”); Richard N.L. Andrews, *The EPA at 40: An Historical Perspective*, 21 DUKE ENVTL. L. & POL’Y F. 223, 230 (2011) (“EPA’s first administrator, William Ruckelshaus, was an aggressive Republican prosecutor determined to establish EPA’s credibility and political independence as a regulatory agency that would be faithful to its statutory mandates and to public expectations for standard-setting and enforcement, and not subservient to White House and business politics.”).

46. Ruckelshaus, *supra* note 36.

47. Daniels, *supra* note 10, at 482-83 (discussing the value and potential in creating regulatory credibility of delegating power to a committed third party, citing also Schelling. That EPA was committed to environmental protection, and that Ruckelshaus was in turn committed to EPA, of course, are crucial.).

48. TRAIN, *supra* note 33, at 159.

49. Memorandum from Charles W. Colson, White House Counsel, to John D. Ehrlichman, Counsel to the President (Feb. 17, 1971) (on file with authors as Nixon 1-10).

50. Interview by Brigham Daniels with William Ruckelshaus in Seattle, Wash. (May 24, 2011) (transcript on file with authors).

51. Rivers and Harbors Appropriations Act of 1886, ch. 929, §3, 24 Stat. 310, 329. Use of the Act began again at the Council of Environmental Quality’s recommendation following an Executive Order from Nixon. FLIPPEN, *supra* note 3, at 114.

52. Ruckelshaus, *supra* note 36 (“This [Refuse Act’s division of administrative authority between several agencies of government, which ‘defines all laws of sound management’] is not because of our desire—it’s because of the law. In short, the permit system is cumbersome and incomplete.”).

ence⁵³ for pollution regulation that he likened to a sort of “gorilla in the closet,”⁵⁴ while still striving to respect the authority of the states.⁵⁵ Creating a national regulatory presence with “federal backing” had even been a mission of Ruckelshaus’ since he worked at the Indiana Attorney General’s Office not long after graduating from Harvard Law School.⁵⁶

Capitalizing on this growing presence of Ruckelshaus on the national stage, John Ehrlichman, one of Nixon’s closest advisors, tried to convince the president that Ruckelshaus’ image and potential remained at least in part untapped as a means to control and gain influence on the issue of the environment: “Ruckelshaus is better known to the nation now than Muskie is . . . we’ve got to figure out a way to get our arm around Ruckelshaus.”⁵⁷ Nixon agreed, believing Ruckelshaus to be a “man of cabinet stature.”⁵⁸

In fact, Nixon’s strategists in the White House at the time became increasingly concerned that Ruckelshaus was perceived as so independent and decisive that he was stripping credit from the president himself; as Domestic Policy Counsel John C. Whitaker warned the president, “the liberal-dominated press, which is inherently suspicious of you, is enthralled by the vocal minority of environmental activists who seek to whipsaw the Administration by saying that the . . . things that have been accomplished . . . are the product of . . . Ruckelshaus and Train”⁵⁹; and the White House had to exert constant pressure to keep Ruckelshaus from moving, in its view, “too far out.”⁶⁰

Most importantly, Ruckelshaus managed to sustain this positive reputation in the face of extreme risk: two decisions in particular—his near-absolute ban of the pesticide dichlorodiphenyltrichloroethane (DDT) and his decision to force automakers to adopt drastic new pollution control technologies by refusing to extend an important deadline—demonstrate Ruckelshaus’ intrinsic character and the attributes of independent leadership missing in sycophantic governmental institutions increasingly widespread in today’s Washington.⁶¹

Ruckelshaus’ dictum prohibiting the use of DDT, in fact, was particularly memorable to Nixon in the later years of his own life. Of the three times Nixon’s memoir refers to Ruckelshaus, only once does it refer to his environmental record, when Nixon laments Ruckelshaus’

“panicky position” taken in the summer of 1972 to ban the pesticide.⁶² In reality, Nixon, lobbied by Norman Borlaug himself,⁶³ had always pushed Ruckelshaus, if even privately, against any decision on DDT that might disrupt or be disliked by industry.

When the president received word of Ruckelshaus’ proposed ban, he became angry and considered ordering Ruckelshaus not to make it.⁶⁴ “Everybody has gone absolutely stark raving mad about this [DDT], and by God we’re going to stop it,” Nixon confided in private as he considered ways to “stop it” and “develop a scheme” to balance Ruckelshaus.⁶⁵ Rather than wait and hope for the best from an uneasy president, Ruckelshaus proactively contacted then-Attorney General John Mitchell, and the two held an informal meeting on a Lafayette Square park bench. Ruckelshaus “outlined the merits of his proposed decision and urged that Nixon not inject himself into such a regulatory decision,” because to do so would create massive political exposure and represent “awful” precedent.⁶⁶

Far from “panicky,” Ruckelshaus’ decision was well informed by a growing scientific consensus concerning the threat DDT posed to public health and welfare.⁶⁷ Nixon, however, even after Ruckelshaus banned DDT, remained extremely skeptical of the science but, much to his credit and in a moment of true character, refrained from intervening in this case.⁶⁸ The “awful” precedent Ruckelshaus feared would be spared for now.

Although Nixon made particular note of the DDT edict in his memoir, however, it might pale in comparison to the exceptionally high-risk decision Ruckelshaus was faced with during this same period—the extension or non-extension of a critical deadline created by the 1970 Clean Air Act requiring 90% emissions reduction from automobiles of hydrocarbons and carbon monoxide by 1975.⁶⁹ This deadline was, by some accounts, arbitrary and threatened to disrupt or “destroy” American automakers,⁷⁰ thus representing a kind of “regulatory nuke.”⁷¹

53. LAZARUS, *supra* note 25, at 91-94; see also Daniels et al., *supra* note 15 (Parts II.B and IV.A discussing the federalization of environmental law enforcement).

54. Interview by Brigham Daniels, *supra* note 50.

55. *Ruckelshaus Is Confirmed as Pollution-Agency Chief*, *supra* note 38.

56. *New Chief of Pollution Group Maps Drive to Clean Air*, *supra* note 41.

57. Nixon White House Tapes, Tape 255-33 (June 9, 1971) (available at the Nixon Presidential Library and on file with authors).

58. Nixon White House Tapes, Tape 172-9 (June 9, 1972) (available at the Nixon Presidential Library and on file with authors).

59. Memorandum from John C. Whitaker, Domestic Policy Counsel, to President Richard M. Nixon (Dec. 1, 1971) (on file with authors as Nixon 1-14).

60. Memorandum from John C. Whitaker, Domestic Policy Counsel, to President Richard M. Nixon (Aug. 20, 1971) (on file with authors as Nixon 2-80).

61. This history is discussed in more detail in Brigham Daniels, *Agency as Principal*, 48 GA. L. REV. 335, 385-87 (2014). Because Ruckelshaus and EPA had a “clean slate” of regulatory decisions, they lacked a history of non-enforcement that might otherwise threaten regulatory credibility or credible commitment; see Daniels, *supra* note 10, at 484-85.

62. NIXON, *supra* note 8, at 624.

63. Nixon White House Tapes, Tape 503 (May 21, 1971) (available at the Nixon Presidential Library and on file with authors as Nixon Online row 20, 140-41).

64. TRAIN, *supra* note 33, at 165.

65. Nixon White House Tapes, Tape 503 (May 21, 1971) (available at the Nixon Presidential Library and on file with authors as Nixon Online row 20, 140-41).

66. *Id.* at 165.

67. Consolidated DDT Hearings: Opinion and Order of the Administrator, 37 Fed. Reg. 13369 (July 7, 1972). See also William Boyd, *Genealogies of Risk: Searching for Safety, 1930s-1970s*, 39 ECOLOGY L.Q. 895, 953 (2012).

68. TRAIN, *supra* note 33, at 165.

69. Clean Air Act Amendments of 1970, Pub. L. No. 91-604, §6(a), 84 Stat. 1676, 1690 (codified as amended at 42 U.S.C. §7521). For a more complete discussion of this decision, see Daniels et al., *supra* note 15 (Part IV.A).

70. See TRAIN, *supra* note 33, at 167; Memorandum from John C. Whitaker, Domestic Policy Counsel, to President Richard Nixon (Sept. 21, 1970) (on file with authors as Nixon 1-27); Memorandum from Thomas C. Mann, President, Automobile Manufacturers Association, to the White House (Sept. 17, 1970) (on file with authors as Nixon 1-196); Memorandum from John C. Whitaker, Domestic Policy Counsel, to John Ehrlichman, Counsel to the President, et al. (Oct. 21, 1970) (on file with authors as Nixon 1-25). Nixon White House Tapes, Tape 420-11 (Mar. 16, 1973) (available at the Nixon Presidential Library and on file with authors) (Nixon explains he is concerned that Ruckelshaus through the deadline extension decision is “destroying the industry”).

71. See generally Daniels, *supra* note 10.

As the auto industry pushed during administrative hearings to make their case that such a reduction in emissions was infeasible, however, Ruckelshaus remained unswayed: “If [the automobile manufacturer] is convinced that I am wrong as apparently he is, and that the technology is not available, and that the evidence in this record indicates is not available, he has the option of going to Court and trying to prove that.”⁷² Although retrospect allows modern viewers to laud Ruckelshaus from a safe distance, this decision could by all means have carried significant deleterious effects on the American economy and way of life without manifesting meaningful environmental gains. Further, the high point of the environmental movement had passed,⁷³ and Ruckelshaus needed continued buy-in from the public and Administration alike, while non-extension carried risk of alienating tired factions. By this point, as well, Nixon was gearing up to fight back against the environmental kick and its leaders, including Ruckelshaus, whom he felt needed to be reined in.⁷⁴

Demonstrating Ruckelshaus’ pristine public image, Nixon did not retaliate after either critical decision; instead, he tried to leverage Ruckelshaus’ positive image and sway him into making public statements favoring ostensibly anti-environmental positions, for example, in opposition to the Clean Water Act.⁷⁵ Ruckelshaus did not relent and become the face of a contrarian Administration, however. He insisted that he would “rather resign than contravene the law or abjure my oath of office” by caving to pressure “from the top.”⁷⁶ But again, instead of demoting Ruckelshaus or taking him out of the limelight, Nixon attempted to glean some of the popular admiration of Ruckelshaus’ record by bolstering his profile and putting him in an even more prominent position at the FBI.⁷⁷ This, the president hoped, would legitimize an increasingly troubled law enforcement branch of the Administration, as well as its findings relating to the president’s conduct—a strange but positive mutualistic relationship of public contradiction and reputation-building.

Ruckelshaus’ tenure at both the FBI and DOJ was relatively brief—the first due to more movement to bring Ruckelshaus’ steadying hand to a tenuous criminal investigation, and the latter due to Ruckelshaus’ refusal to comply with unethical demands from the president.⁷⁸ A critical element of what would prove to be his integrity in the face of

power, Ruckelshaus recalls having made certain decisions and drawn certain lines in the sand long before he was asked to cross them⁷⁹—in other words, he bound himself to the mast before ever hearing the sirens’ song⁸⁰—a sort of Ulysses pact that seems absent, perhaps even difficult to imagine, in so many aspects in today’s public institutions.

II. Return to EPA, 1983-1985

As mentioned above, by the time Ruckelshaus was lifted out of EPA in 1973, the “honeymoon period” of the environment had passed.⁸¹ By the election of Ronald Reagan, however, the divorce of American government from environmentalism itself was all but settled.⁸² In his 1981 inaugural address, Reagan expressed concerns about the freedom of free market operations, which he believed were threatened by regulatory programs of the federal government, including those concerning the environment.⁸³ Famously, Reagan said that “government is not the solution to our problem; government is the problem.”⁸⁴

As he laid the foundations for his Administration and got to work reshaping the executive, Reagan moved ahead on deregulation and attempted to deconstruct EPA’s programs. In many ways working to effectively tear down the EPA that Ruckelshaus and subsequent Administrators had built a decade earlier, Reagan pioneered the now-perfected fox-for-every-henhouse model⁸⁵ of administrative appointments—bringing someone in who would purposefully try to at least hamstring, if not unwind, the agency they have been charged to govern (or who would otherwise be woefully unqualified).⁸⁶

Federal environmental programs were a focal point of this strategy. James Watt was Reagan’s man for the U.S. Department of the Interior (DOI), and the person he would charge with knocking over EPA was Watt’s protégé,⁸⁷ Anne Gorsuch Burford, who had also served in

72. Memorandum from Lynn Townsend, Chairman, Chrysler, to Richard Fairbanks, Associate Director for Natural Resources, President’s Domestic Council (undated) (on file with authors as Nixon 1-76) (the memo is entitled Public Policy Effect of Ruckelshaus Decision Not to Grant One-Year Extension to 1975 Emission Requirements).

73. See Daniels et al., *supra* note 15 (Part IV discussing collapsing administrative support for the issue and rising pushback).

74. Memorandum from John C. Whitaker, Domestic Policy Counsel, to John D. Ehrlichman, Counsel to the President (Sept. 1, 1971) (on file with authors as Nixon 2-82).

75. Memorandum from John C. Whitaker, Domestic Policy Counsel, to John D. Ehrlichman, Counsel to the President (Oct. 2, 1971) (on file with authors as Nixon 4-58).

76. William Ruckelshaus, Speech at American University Conference on Business-Government Relations (Apr. 3, 1972) (on file with authors as Nixon 5-350).

77. See *supra* note 3.

78. See *supra* notes 3-8 and accompanying text.

79. Susan Brenneman, *Watergate’s Saturday Night Massacre Gets More Interesting With Age*, L.A. TIMES, Oct. 18, 2013 (“You owe a duty of loyalty to the president that transcends most other duties,” Ruckelshaus told a gathering of former U.S. attorneys in 2009. But “there are lines. . . . In this case, the line was bright and the decision was simple.”).

80. See HOMER, THE ODYSSEY (Robert Fitzgerald trans., Anchor Books 1963) (book 12).

81. Edmund S. Muskie, *Report on S. Subcomm. on Air and Water Pollution Activity*, 92d Cong. (1972) (on file with authors as Muskie 3-7) (“It is clear from both the oversight hearings and the resistance encountered with respect to new laws—particularly the President’s veto of new water pollution control legislation—that the environmental honeymoon has long since passed.”).

82. TRAIN, *supra* note 33, at 261 (in Russell Train’s polite terms, “The era of the Reagan Administration was not the best of times for a Republican environmentalist.”).

83. Michael E. Kraft & Norman J. Vig, *Environmental Policy in the Reagan Presidency*, 99 POL. SCI. Q. 415, 422 (1984); Lettie McSpadden Wenner, *The Reagan Era in Environmental Regulation*, in CONFLICT RESOLUTION AND PUBLIC POLICY 41, 41-43 (Miriam K. Mills ed., Praeger 1990).

84. President Ronald Reagan, Speech at the Inauguration of the President of the United States of America (Jan. 20, 1981), available at <https://www.reagan-foundation.org/media/128614/inaguration.pdf>.

85. See Madeline June Kass, *Presidentially Appointed Environmental Agency Saboteurs*, 87 UMKC L. REV. 697, 700 & 707 (2019) (stating “Anne Gorsuch Burford epitomized the loyalist environmental agency saboteur,” which she defines as “appointees who seek to delay, weaken, reverse, and otherwise sabotage the EPA’s ability to carry out its statutory missions”).

86. *Id.*

87. TRAIN, *supra* note 33, at 263.

the U.S. House of Representatives as a decidedly right-wing legislator with a strong record of pushing against environmental protection.⁸⁸ Reportedly, in Burford's interview to head the Agency, Reagan's transition team asked her if she were willing "to bring the EPA to its knees."⁸⁹ Although she managed confirmation, Burford's appointment created considerable controversy, particularly among congressional Democrats, who were wary and cognizant of what such an appointment might mean to the environmental programs that had emerged over the course of the past decade.⁹⁰

Reflecting on Burford's appointment and tenure years later, less than a decade before his passing, Ruckelshaus remembered that this early skepticism about Burford would be justified. Considering her performance and the general deregulatory tactics of the Reagan Administration, he said:

She was a terrible person to put in charge of that agency. It was part of a pattern that the Reagan Administration had gotten into quite early. In one way or another, a number of agencies had come into disregard by them. The way they would deal with it was to appoint someone entirely unsuited to the job in charge of it. This is the worst thing you can do. As far as I'm concerned, if you have some question about whether some agency is valuable for the country, you better put someone in charge of it who really knows what they're doing or then you and everybody else is in real trouble. The truth is [Reagan] was worried about regulation, that is what Reagan said, but there were more regulations coming out of EPA during his administration than virtually any other one. Because it had become discredited—the public's respect for the agency and its willingness to take appropriate steps, all of these regulations got forced by lawsuits and other kinds of government actions. Most of these scandals, whether it's Watergate or other scandals I've been close to when I was in Washington, the situation is not quite as bad up close to it as it is often portrayed in the press. This situation was the opposite. It was worse. What these appointees had done in EPA was just unbelievable.⁹¹

Burford and her appointees racked up a sizeable list of missteps, managing to all but discredit themselves, and EPA as a whole, by calling for steep cuts to EPA's budget (particularly for enforcement),⁹² pushing out and isolat-

ing droves of career employees and purportedly keeping a political enemies blacklist of Agency employees,⁹³ and undermining Agency morale.⁹⁴ Most of all, she is remembered for at least quasi-criminal corruption, particularly in her oversight of large sums of money (approximately \$1.6 billion) meant to clean up toxic waste sites.⁹⁵

Burford stepped down and characterized the period as one of "controversy and confusion,"⁹⁶ and later said of the era that her EPA was "so bogged down in the fight with Congress over the doctrine of executive privilege, that the agency itself seemed hardly to be functioning."⁹⁷ The legal liability related to mismanagement of government funds (as one political appointee ended up spending time in prison for lying to Congress about these problems)⁹⁸ piled on top of other political controversies, and resulted in the ousting of a dozen top aides at EPA as well, although Burford herself escaped prosecution.⁹⁹

What was clear at Burford's departure is that whoever Reagan chose to put the Agency back on track would take the job under the microscope of a rightly skeptical public and Congress,¹⁰⁰ a situation much more acute than what

88. LAZARUS, *supra* note 25, at 101; Patricia Sullivan, *Anne Gorsuch Burford, 62, Dies; Reagan EPA Director*, WASH. POST, July 22, 2004 ("She was elected to the Colorado legislature in 1976 and became known as one of the 'House Crazies,' conservative lawmakers intent on permanently changing government."); Douglas Martin, *Anne Gorsuch Burford, 62, Reagan E.P.A. Chief, Dies*, N.Y. TIMES, July 22, 2004:

In 1976, she was elected to the first of two terms in the Colorado House of Representatives, where she was a member of a group that called itself the Crazies for its members' passionate devotion to states' rights and opposition to federal energy and environmental policies. She was named outstanding freshman legislator and worked on legislation concerning hazardous wastes and vehicle emissions.

89. LAZARUS, *supra* note 25, at 101.

90. *Id.* at 101-02.

91. Interview by Brigham Daniels, *supra* note 50.

92. LAZARUS, *supra* note 25, at 101-02.

93. *E.P.A. Dispute: Chief Leaves, Issues Remain*, N.Y. TIMES, Mar. 13, 1983; Thomas R. Reid, *Much on "Sleaze" Lists Isn't Traditional Government Corruption*, WASH. POST, May 30, 1984, at A2; *Burford Resignation Improves EPA Office Morale, Enforcement*, WALL ST. J., July 28, 1983.

94. *Obituaries; Anne Burford, 62; Embattled EPA Chief for President Reagan*, L.A. TIMES, July 22, 2004, at B10 ("William Ruckelshaus, the first head of the EPA in the Nixon administration, was brought in to replace Burford and quickly restored the agency's shattered morale."); Dale Russakoff & Mary Thornton, *For Ruckelshaus, EPA Job Is More Than Filling Vacant Offices*, WASH. POST, Mar. 27, 1983, at A5 ("These officials say it has been hobbled by two years of deep budget cuts, administration resistance to regulation, a relaxation of enforcement efforts, elimination of research activities that provided the basis for regulation, plunging staff morale and an exodus of career professionals.")

95. Lou Cannon, *EPA Administrator Resigns; Ruckelshaus Says "The Ship Is Righted"*, WASH. POST, Nov. 29, 1984, at A1.

96. *Texts of Mrs. Burford's Letter of Resignation and the President's Acceptance*, N.Y. TIMES, Mar. 10, 1983, at B12; *Obituaries; Anne Burford, 62; Embattled EPA Chief for President Reagan*, *supra* note 94.

97. *Views From the Former Administrators*, 11 EPA J. 12 (1985), available at <https://web.archive.org/web/20020620020957/http://www.epa.gov/history/topics/epa/15e.htm>.

98. LAZARUS, *supra* note 25, at 102; DEVRA DAVIS, *WHEN SMOKE RAN LIKE WATER: TALES OF ENVIRONMENTAL DECEPTION AND THE BATTLE AGAINST POLLUTION* 130 (2002); William Kronholm, *Ruckelshaus Expected to Be Confirmed After Sharp Questioning*, ASSOCIATED PRESS, Mar. 21, 1983; Frank Ackerman et al., *Applying Cost-Benefit to Past Decisions: Was Environmental Protection Ever a Good Idea?*, 57 ADMIN. L. REV. 155, 169 (2005).

99. William Kronholm, *Ruckelshaus Pledges No Hit Lists, Sweetheart Deals at "Crippled" EPA*, ASSOCIATED PRESS, May 4, 1983; McFadden, *supra* note 2.

100. See also Nicholas R. Parrillo, *The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power*, 131 HARV. L. REV. 685, 791 (2018) ("President Reagan, under pressure, sought to control the damage by selecting as her replacement the centrist William Ruckelshaus, who was respected by all sides and could restore EPA credibility."); David W. Case, *The EPA's Environmental Stewardship Initiative: Attempting to Revitalize a Floundering Regulatory Reform Agenda*, 50 EMORY L.J. 1, 23 (2001) ("Public outcry and congressional reaction forced Reagan to reappoint William Ruckelshaus, the EPA's first administrator, with the mission to restore legitimacy, integrity, and competence to the floundering agency."); Ackerman et al., *supra* note 98, at 169:

Just weeks after Gorsuch resigned, EPA's first Administrator, William Ruckelshaus, returned to the agency in its time of need. One of his stated aims was to restore rigorous analysis and to displace the political forces that had recently dominated the agency's actions. Alvin Alm, his deputy, later recalled that at the time the agency was "really in need of some help," and that the agency's new leaders needed to "create confidence that we were getting work done."

Andrews, *supra* note 45, at 237 ("Reagan found it necessary to persuade

Ruckelshaus faced in 1970. Ruckelshaus understood this: when Reagan offered him the job, Ruckelshaus responded with concern about EPA and told Reagan EPA “is dealing with things that go very, very deep in the American psyche,” and that the heart of the challenge was trust: how could the American people trust the government given how it had mishandled oversight of toxic wastes?¹⁰¹

In the press conference during which Reagan announced Ruckelshaus’ nomination, the president pointed to the returning Administrator’s unparalleled credentials and ability to “set things right.” Ruckelshaus, in turn, told the press that he and Reagan had a “mutual trust,” and that he would find people of “competence and integrity” to help him.¹⁰² In testimony during his confirmation hearings, Ruckelshaus tried to assure Congress of his seriousness in enforcing the law. He said, “[T]he environmental laws of this country were passed by Congress and were meant to be taken seriously by the administering authorities . . . We will enforce the law of this country. We will be firm, and we will be fair.”¹⁰³

While Ruckelshaus won over a Democratic-majority Congress, he could not quell the skepticism aimed at the Reagan Administration as a whole. Although he praised Ruckelshaus himself, Rep. Elliott H. Levitas (D-Ga.), chair of a subcommittee investigating EPA, expressed concern about whether his return would have any practical effect, saying:

Mr. Ruckelshaus is no more the solution to the problem than Mrs. Burford was the problem . . . What commitment did he get in terms of resources? What about the replacement of the hundreds of dedicated career professionals who were either forced out or quit in disgust? It took a decade to build up that corps of dedicated, committed career people.¹⁰⁴

As Ruckelshaus was sworn in following a unanimous confirmation vote,¹⁰⁵ Reagan leaned into the Administrator’s positive reputation by referring to him as “Mr. Clean.”¹⁰⁶ Through the press, Ruckelshaus pledged to Reagan, the American people, and Congress that “I will never break your trust.”¹⁰⁷ In response, Reagan pledged that Ruckelshaus would be given the resources he needed to manage EPA.¹⁰⁸

Turning things around proved difficult, even though Ruckelshaus took quickly to doing so. Morale at EPA improved almost immediately—on his first day back in office, more than a thousand EPA employees applauded

him—a few carrying a banner that read, “How do you spell relief? RUCKELSHAUS.”¹⁰⁹ He spoke of managing EPA with “iron integrity,” and “administer[ing] and enforc[ing] the laws as they’re written by Congress.”¹¹⁰ One of the only lines of Ruckelshaus’ speech that failed to garner applause was his profession to what seemed a deeply skeptical crowd that President Reagan was “committed to doing the job we have been assigned by Congress and to giving us adequate resources to do it.”¹¹¹ Despite all his assertions to the contrary, given what EPA staff had seen during the Burford period, some staff remained skeptical of Ruckelshaus’ resolve to restore EPA’s enforcement ethic.¹¹²

Ruckelshaus dismissed many holdover appointees from the Burford period the day after an initial meeting,¹¹³ and directed his efforts toward creating a more transparent agency in hopes of disinfecting corruption and restoring public trust: “In order to regain public trust and confidence, we are going to have to operate in a much more open fashion,” he said. “I think the whole agency is going to have to operate in a fishbowl.”¹¹⁴ He also said there had been an “abuse of process” in the administration of the environmental laws and that the Agency had lost the trust of the American people, only to be restored through such transparency and openness.¹¹⁵

Ruckelshaus’ second tenure at EPA was, in the end, relatively short, arguably just long enough to steady the ship. In the year and a half that he was there, however, he made important progress in rescuing the mired Agency. He brought back to EPA a leadership team and leadership style that rehabilitated morale and began to restore its reputation with Congress and the American public. Ruckelshaus also had made some modest headway in increasing EPA’s budget for enforcement training and staff travel,¹¹⁶ and worked hard to reconnect the best available science to EPA’s decisionmaking.¹¹⁷

Perhaps most significantly, Ruckelshaus made great headway in restoring the Agency’s culture of dedicated environmental enforcement rather than political infighting for the president. Based on extensive original research, Prof. Joel Mintz tells the story of how Ruckelshaus changed

109. Dale Russakoff, *Ruckelshaus Given an Emotional Welcome by 1,000 Employees of Embattled EPA*, WASH. POST, Mar. 23, 1983, at A3.

110. *Id.*

111. *Id.*

112. Mintz, *supra* note 45, at 745 (“It was widely viewed, however, as an indication that EPA’s new top management was less than serious in its commitment to reinvigorate the enforcement campaign.”).

113. Peter Grier, *EPA Chief Departs in Good Repute, Leaving Big Jobs for Successor*, CHRISTIAN SCI. MONITOR, Dec. 3, 1984, at 3 (discussing a dozen political appointees Ruckelshaus replaced).

114. Philip Shabecoff, *Ruckelshaus Gives Pledge to Enforce Environmental Laws*, N.Y. TIMES, May 5, 1983, at A1. *See also* Mintz, *supra* note 45, at 744.

115. Philip Shabecoff, *Ruckelshaus Gives Pledge to Enforce Environmental Laws*, N.Y. TIMES, May 5, 1983, at A1. *See also* Daniel J. Fiorino, *Streams of Environmental Innovation: Four Decades of EPA Policy Reform*, 44 ENVTL. L. 723, 740-41 (2014) (“The resignations in 1983 of the initial Reagan administration appointees at EPA led to the return of William Ruckelshaus, the agency’s first and then fourth administrator, whose goal was to restore EPA’s credibility and effectiveness.”).

116. Mintz, *supra* note 45, at 744.

117. Fiorino, *supra* note 115, at 756 (“Once William Ruckelshaus returned to EPA for his second tour as Administrator in 1983, he saw a need to take EPA away from the political arena and move it to a more empirical, scientific ground.”).

William Ruckelshaus, EPA’s first administrator, to return to EPA as administrator to restore its morale and public credibility.”).

101. Lou Cannon & David Hoffman, *President Names Ruckelshaus to Administer EPA*, WASH. POST, Mar. 22, 1983, at A1.

102. Martin Cruttsinger, *Ruckelshaus, Old Hand at Political Tangles, Named EPA Administrator*, ASSOCIATED PRESS, Mar. 21, 1983.

103. *Nomination of William D. Ruckelshaus: Hearings Before the Senate Committee on the Environment and Public Works*, 98th Cong. 191 (1983).

104. Kronholm, *supra* note 98; Kronholm, *supra* note 99.

105. Maureen Santit, ASSOCIATED PRESS, May 18, 1983 (no headline in original).

106. *Id.*

107. *Id.*

108. *Id.*

the tide on enforcement and pushed for more strict law enforcement this way:

Concerned with the Agency's lack of progress in restoring its enforcement efforts, Ruckelshaus decided to dramatize his preference for an effective enforcement program. He chose as his forum an EPA "National Compliance and Enforcement Conference" in January 1984. Before a large audience of nearly all of the Agency's top and mid-level managers with responsibilities in the enforcement field, the Administrator announced, "I am nervous about what I perceive to be an apparent lack of action and serious commitment to ensuring that these [environmental] laws and regulations are enforced . . . what I was concerned about, frankly, in coming back here was that we had a bunch of tigers in the tank, and the minute we took the lid off the tank and said, 'Go get them,' the problem might well be an overreaction—that we might start treating people unfairly, just to show everybody how tough we are. Well I think we opened the tank all right. But on the basis of what I see here the last few months, there may be more pussycats in the tank than tigers." This speech, delivered with passion and followed by sustained applause, had a catalytic effect. EPA's enforcement staffers had finally received the clear signal that many of them had sought . . . That signal was reinforced in the months that followed.¹¹⁸

Shortly after Reagan was re-elected, and much to the dismay of even his critics,¹¹⁹ Ruckelshaus announced he would step down as Administrator of EPA.¹²⁰ In doing so, he claimed EPA "is righted and is now steering a steady course."¹²¹

Different stories are told about Ruckelshaus' decision to step down, and perhaps the most accurate retelling incorporates details from many. One of these stories focuses on the great personal sacrifice that Ruckelshaus undertook to leave the private sector and return to EPA. According to one recent tribute, "Ruckelshaus' wife, Jill, likened his return to a 'self-inflicted Heimlich maneuver,' but Ruckelshaus said he accepted the job because he thought he could right the ship, help staff refocus on their work and reestablish the EPA's credibility."¹²²

A second story line focuses on the possibility of the period that, despite Reagan's assurances to the contrary, the executive may have cut EPA's budget in the coming years after Reagan's re-election in an attempt or to slow, if

not altogether stall, environmental protection.¹²³ Still others speculated that he was ready for a new challenge, perhaps in the private sector or perhaps in Washington State politics.¹²⁴ In any case, Ruckelshaus stepped down shortly after the new year in 1985 and was succeeded by one of his hand-picked advisors, Lee Thomas, whom Ruckelshaus had tasked with one of the most difficult jobs that Ruckelshaus himself faced—bringing EPA's Superfund program out of the political quagmire caused by Burford.

III. Conclusion

The world is in great need of the things that made Ruckelshaus who he was. Parallels between the Nixon and Trump presidencies are not hard to draw, and to do so has become a common way of grappling with today's American federal government and Administration.¹²⁵ There is, however, no appropriate analogue for William Ruckelshaus to be found in the current Administration or EPA. Perhaps most of all, we find ourselves in great need of the sort of credibility that Ruckelshaus cultivated throughout his life, and in EPA especially.

The landscape of American government has shifted in such a way that the "lessons learned" from Ruckelshaus' leadership about creating credibility and trust in government, once truisms, have re-emerged as critical and distant principles: the need for transparent government and simple honesty, robust independence of regulatory agencies,

123. McFadden, *supra* note 2; Andy Pasztor, *Ruckelshaus Quits EPA Amid Disputes With White House on Budget Cuts, Policy*, WALL ST. J., Nov. 29, 1984.

124. Cannon, *supra* note 95 ("In Washington state, Republicans have long considered Ruckelshaus a prime prospect to run for the governorship or a Senate seat.")

125. Mark Feldstein, *Trump's War on the Media Carries Chilling Echoes of Nixon*, WASH. POST, June 16, 2016; Jeffrey Frank, *Trump, Inspired by Nixon?*, NEW YORKER, July 20, 2016; Trevor Timm, *Trump/Nixon: The Parallels Are Startling*, GUARDIAN, July 21, 2016; Barry Yeoman, *From Nixon to Trump: The Parallels Between 1968 and 2016*, INDYWEEK, Nov. 16, 2016; David Kaiser, *You Can Compare President Trump to Richard Nixon, but Times Have Changed*, TIME, Mar. 9, 2017; Derek Cholet, *4 Reasons Trump Is Worse for America Than Nixon*, FOREIGN POL'Y, Mar. 10, 2017; Colbert King, *Russia Is Trump's Watergate, Will He React Like Nixon?*, WASH. POST, Mar. 17, 2017; David Greenberg, *Trump Is Mirroring Nixon's Final Days*, WASH. POST, May 10, 2017; Ray Locker, *Donald Trump, Richard Nixon, and Watergate: What's the Same and What's Different?*, USA TODAY, May 10, 2017; Dara Lind, *The Inadvertent Parallels Between Trump and Nixon Are Getting a Bit Ridiculous*, VOX, May 19, 2017; Susan Glasser, *Don't Compare Trump to Nixon. It's Unfair to Nixon*, POLITICO, July 17, 2017; Carlos Maza, *The Big Problem With Comparing Nixon to Trump*, VOX, May 14, 2018; Andrew Gawthorpe, *Remember Nixon. US Spy Agencies Are Vital to Bringing Down Trump*, GUARDIAN, July 18, 2018; Harry Enten, *Poll: Trump Is as Strongly Disliked Now as Nixon Was Before He Resigned*, CNN, Aug. 12, 2018; Michael Konciewicz, *Trump Is Acting Like Nixon. Now We Need Others to Channel the Heroes of Watergate*, WASH. POST, Aug. 25, 2018; Tess Bonn, *Historian: Trump Comparisons Aren't Fair to Nixon*, HILL, Aug. 28, 2018; Calvin Woodward & Nancy Benac, *President Trump's Trouble Similar to Richard Nixon, Watergate*, DENV. POST, Sept. 7, 2018; Elizabeth Drew, *How Trump Is Worse Than Nixon*, N.Y. TIMES, Nov. 15, 2018; Marc A. Thiessen, *We Survived Nixon. We'll Survive Trump*, DES MOINES REG., Nov. 8, 2018; *Comparing the Trump Impeachment Probe to Nixon's*, CBS NEWS, Nov. 11, 2019; Michael Conway, *Trump's Public Attacks on the "Enemies of the People" Echo Nixon's Private Press War—Except Worse*, NBC NEWS, Nov. 20, 2018; Doina Chiacu, *In Trump-Nixon Impeachment Comparison, Pelosi Raises Specter of Resignation*, REUTERS, Nov. 17, 2019; Shirish V. Date, *Trump May Be "So Much Worse" Than Nixon but Republicans Don't Seem to Care*, HUFFINGTON POST, Dec. 11, 2019; Eugene Robinson, *Nixon Was Bad. Trump Is Much Worse*, WASH. POST, Dec. 16, 2019.

118. *Id.* at 745-46. See also William L. Andreen, *Beyond Words of Exhortation: The Congressional Prescription for Vigorous Federal Enforcement of the Clean Water Act*, 55 GEO. WASH. L. REV. 202, 207 (1987).

119. Philip Shabecoff, *E.P.A.; Apres Ruckelshaus le Deluge?*, N.Y. TIMES, Dec. 3, 1984 ("Without paradox, spokesmen for groups that had been his severest critics expressed dismay and anxiety over Mr. Ruckelshaus's impending departure . . . he was the best Administrator they could hope for while Mr. Reagan was in the White House."), <https://www.nytimes.com/1984/12/03/us/epa-apres-ruckelshaus-le-deluge.html>.

120. Cannon, *supra* note 95.

121. *Id.*

122. Associated Press, *Indy Native Ruckelshaus, Who Defied Nixon in Watergate Firing, Dies*, INDIANAPOLIS BUS. J., Nov. 27, 2019, <https://www.ijb.com/articles/indy-native-ruckelshaus-who-defied-nixon-in-watergate-firing-dies>.

decentralized administrative decisionmaking, and critical dialectic (rather than sycophancy) among those in the inner orbits of power.

This point was not lost on Ruckelshaus before his passing. He wrote an op-ed as he was entering into the last year of his life, commenting on the actions of President Trump and his response to the Mueller investigation that is in many ways applicable to a broad range of issues in Washington. It reads in part, “The vehemence and irresponsibility of the rhetoric attacking the Mueller investigation tear at the very structure of our governance. Men who have sworn to use and protect our institutions of justice are steadily weakening them.”¹²⁶

Ruckelshaus argued for a basic alternative: “We need leaders who tell the truth. This is not now happening.”¹²⁷ In the modern era, messaging about norms and values of government have down-shifted and been simplified—rather than discussing lofty ideals and fine points of philosophical interest, we seem forced to revert to the basic point that leaders must tell the truth at least more often than they lie,¹²⁸ and should feel comfortable operating in a “fishbowl” rather than refusing to play ball with legally grounded investigations and oversight.¹²⁹

Similarly, we have come into desperate need of leaders who are willing to select the best-suited leaders for administrative and other appointments, even at the risk of sacrificing momentum on particular agendas or political initiatives as a necessary trade off for credibility. Reflecting on his first appointment to EPA, Ruckelshaus recognized the admirability of these sorts of concessions:

[Nixon] created EPA for much the same reason Reagan invited me to return to the agency in 1983: because of public outrage about what was happening to the environment. Not because Nixon shared that concern, but because he didn't have any choice. People have often said, isn't that a terrible motive! But that's the way democracy is supposed to work. The president feels he's got to respond to something the American people feel is very important or he's going to get into political trouble.¹³⁰

This key point of creating credibility speaks to a more basic concept of administrative government: rather than demand absolute loyalty to the president's programs and use the agencies as a vehicle to fight for “executive privilege,”¹³¹ the chief executive is obligated to faithfully

oversee enactment of the laws of Congress, and this necessarily entails creating independent agencies and decentralizing power or authority to truly interested, adequately experienced, and personally engaged administrators.¹³² In other words, establishing and maintaining regulatory credibility requires a strong sense of individual and agency independence—it does presidents and leaders well to surround themselves with those who have the wherewithal to disagree with them in public and private. It also does leaders well to avoid micromanaging what is best left to area specialists.

More and more, this basic principle captured by Ruckelshaus' decisions at EPA and DOJ is slandered or relabeled as the operation of a so-called deep state.¹³³ If independent agencies operating (as their category title might naturally lead one to expect) independently truly does represent some sort of dark conspiracy against the American people, we find ourselves in an incomprehensibly severe mare's nest. It is unreasonable, however, to insist that delegated governance is a symptom of any such conspiracy.

Similarly, both within agencies and embedded throughout decisionmaking processes, scientists and other experts need to be granted requisite space as well as adequate deference to ensure that administrative and regulatory decisions reflect the best available science,¹³⁴ at times allowing presidential agendas to take the backseat. Although the modern EPA seeks to isolate itself from the best available science and independent academics,¹³⁵ it is hard to imagine how this is at all possible, given that the Agency's core mission of protecting the environment requires policymakers to understand the basic science of the natural world and our relationship to it.¹³⁶ Imagine a modern

126. William D. Ruckelshaus, *Only One Other President Has Ever Acted This Desperate*, WASH. POST, Aug. 6, 2018.

127. *Id.* See also William Ruckelshaus, *Risk in a Free Society*, 14 ELR 10190 (May 1994) (“In a democracy a public agency that is not trusted . . . might as well close its doors.”).

128. See Glenn Kessler, *President Trump Has Made 15,413 False or Misleading Claims Over 1,055 Days*, WASH. POST, Dec. 16, 2019.

129. JERROLD NADLER, IMPEACHMENT OF DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES, H.R. REP. NO. 116-346, at 2, 138-54 (2019).

130. U.S. EPA, ORAL HISTORY INTERVIEW-1: WILLIAM D. RUCKELSHAUS 11 (1993) (EPA 202-K-92-0003), available at <https://nepis.epa.gov/Exe/ZipPDF.cgi?Dockey=40000BTR.PDF>.

131. See *supra* note 97 and accompanying text. For a response to Burford's point, we might refer generally to the masterwork RAOUL BERGER, EXECUTIVE PRIVILEGE: A CONSTITUTIONAL MYTH (1974).

132. It is completely consistent with Ruckelshaus' outlook that he had criticized Administrator Scott Pruitt for “not support[ing] what the agency has been trying to do for 40 years” and for trying to “dismantle—not improve or reform—the regulatory system for protecting public health and the environment.” Rachel Leven, “Do the Opposite Thing You Did 18 Months Ago”: EPA Staffers on the Agency in the Trump Era, VOX, Nov. 10, 2017, <http://www.vox.com/energy-and-environment/2017/11/9/16619988/scott-pruitt-epa-dysfunction-staff>.

133. For discussion of Trump's imagined “deep state,” see Jon D. Michaels, *The American Deep State*, 93 NOTRE DAME L. REV. 1653 (2018); Jon D. Michaels, *Trump and the Deep State: The Government Strikes Back*, 96 FOREIGN AFF. 52 (2017); James Goldgeier & Elizabeth N. Saunders, *The Unconstrained Presidency: Checks and Balances Eroded Long Before Trump*, 97 FOREIGN AFF. 144 (2018). Additionally, defending civil servants and independent administrative functioning, see Heidi Kitrosser, *Accountability in the Deep State*, 65 UCLA L. REV. 1532 (2018).

134. See William D. Ruckelshaus, *Science, Risk, and Public Policy*, 221 SCIENCE 1026, 1027-28 (1983) (“Risk assessment at EPA must be based only on scientific evidence and scientific consensus.”).

135. For an example, see *Climate Advocacy Group Sues U.S. EPA for “Purge” of Scientists*, REUTERS, Jan. 23, 2018, <https://www.reuters.com/article/us-usa-epa-scientists/climate-advocacy-group-sues-u-s-epa-for-purge-of-scientists-idUSKBN1FC2XT>.

136. See generally Robert W. Adler, *Coevolution of Law and Science: A Clean Water Act Case Study*, 44 COLUM. J. ENVTL. L. 1, 1 (2019) (“It would hardly require saying that science is integral to environmental law, except that the integrity of science and its relationship to government regulation is currently under attack.”); Robert L. Glicksman & Mathew R. Batzel, *Science, Politics, Law, and the Arc of the Clean Water Act: The Role of Assumptions in the Adoption of a Pollution Control Landmark*, 32 WASH. U. J.L. & POL'Y 99 (2010); Carol M. Rose, *Environmental Law Grows Up (More or Less), and What Science Can Do to Help*, 9 LEWIS & CLARK L. REV. 273 (2005); Cary Coglianese & Gary E. Marchant, *Shifting Sands: The Limits of Science in Setting Risk Standards*, 152 U. PA. L. REV. 1255 (2004); Oliver A. Houck,

leadership at EPA that could respond to risks posed by modern pesticides¹³⁷ like Ruckelshaus responded to DDT. Leaders and presidents ought to have the sense to understand the language and conclusions of scientific bodies, as well, and distinguish between empirical imperatives and “fake news” or “hoaxes.”

In turn, in order to retain and perpetuate a sense of consistency and credibility, appointees and others near positions of power need the basic character and conviction to speak truth to power, even when their access to leadership is constrained or may stand to be threatened when they are forced (to use a cliché) to stand alone.¹³⁸ This requires, again borrowing from Homer, tying oneself to the mast, much in the spirit of Ruckelshaus.¹³⁹

It is interesting to note that despite all that Ruckelshaus did to protect the environment, he never considered himself an environmentalist.¹⁴⁰ Along these lines, he said:

I thought it was important that the government act for a whole variety of reasons, but it was not based on my background of what I would think of as an environmentalist. You’ve probably heard people say, “Everybody is an environmentalist.” Well, in that sense I am an environmentalist, but I have never been part of the environmental movement and haven’t thought of myself as such.¹⁴¹

How then was he able to work so effectively in EPA, an agency dominated by an explicit (and eponymous) mission to protect the environment? This is particularly remarkable given that his time at EPA came both during the presidency that many would label one of the high-water marks of environmental protection (that of Nixon) and one of its absolute low points (under Reagan), during which he could have certainly garnered himself political antagonists of very different stripes. That he lived through shifting landscapes at EPA was not lost on Ruckelshaus, who once provided this reflection on the Agency: “It is staggering under the assault of its enemies—while still gravely wounded from the gifts of its ‘friends.’ That is a deliberate exaggeration: much like the Internal Revenue Service, EPA has no friends.”¹⁴²

To manage this contradiction, Ruckelshaus found great personal satisfaction in his work, as he understood the purpose of his work separately from his own personal worldview. To this point, he said, “at EPA, you worked for a cause that is beyond self-interest and larger than the goals people normally pursue. You’re not there for the money, you’re there for something beyond yourself.”¹⁴³ For Ruckelshaus, the thing that was bigger than himself was the trust of the public:

I think at any one time at EPA there are always half a dozen big, visible public issues. They become visible for different reasons, but they are public issues. The public is aware of them. Climate change is an example of that today. To be effective, an administrator has to be believable. For those issues that you decide are important, maybe substantively important or maybe important symbolically because the public is watching it, you have to really master them. You really have to spend the time to understand what the issues are all about, to get on top of it, and to see all the various strains of people that it’s affecting in society. Then you have got to show that the government is really going to step up to that issue and try to solve it. You do not have to solve it in a way that people all will like, but you have to solve it.¹⁴⁴

We have enormous problems that seem to be worsening at an alarming rate. While Ruckelshaus has been described as being “as big as the great outdoors,”¹⁴⁵ what is needed is not a hero of mythic proportions to solve them, but instead a reconsideration of the principles of effective governance and for more of us to approach the work and challenges of democracy in the way that Ruckelshaus did: be true to higher ideals, build a track record of reliability, be transparent and honest, surround ourselves with good competent people, and find those things that we believe to be bigger than ourselves, sacrificing for them when needed. We have it within us to meet the challenges we face. We just need to decide to muster the hero within and bind ourselves to the mast.

Tales From a Troubled Marriage: Science and Law in Environmental Policy, 17 TUL. ENVTL. L.J. 163 (2003); Robert W. Adler, *The Supreme Court and Ecosystems: Environmental Science in Environmental Law*, 27 VT. L. REV. 249 (2003).

137. Robyn C. Gilden et al., *Pesticides and Health Risks*, 39 J. OBSTETRIC GYNECOLOGIC & NEONATAL NURSING 103 (2010).

138. For example, Ruckelshaus alone recommended to the president that he sign the 1972 Clean Water Act without a dissenting signing statement. Memorandum from John C. Whitaker, Domestic Policy Counsel, to President Richard M. Nixon (Sept. 26, 1972) (on file with authors as Nixon 4-3).

139. See *supra* note 80 and accompanying text.

140. Interview by Brigham Daniels, *supra* note 50.

141. *Id.*

142. William D. Ruckelshaus, *Stopping the Pendulum*, ENVTL. F., Nov./Dec. 1995, at 25. See also Andrews, *supra* note 45, at 232 (quoting Ruckelshaus comparing running EPA to “performing an appendectomy on yourself while running a hundred-yard dash”).

143. William Ruckelshaus, *Who Defied Nixon During Watergate, Dies at 87*, GUARDIAN, Nov. 28, 2019, <https://www.theguardian.com/us-news/2019/nov/28/william-ruckelshaus-nixon-watergate-epa-trump>.

144. Interview by Brigham Daniels, *supra* note 50.

145. William Ruckelshaus, *Who Defied Nixon During Watergate, Dies at 87*, *supra* note 143.