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Q&A With Haynes & Boone's Jeff Civins

Law360, New York (September 08, 2009) -- Jeff Civins is a partner in the Austin, Texas, office of Haynes and Boone LLP and has been practicing environmental law since 1975. He previously taught science at public and private schools in New York City. Civins received an AB in Chemistry from Brandeis University, an MS in Chemistry from Penn State, and his JD from the University of Texas School of Law, at which he has been an adjunct professor since 1992. Civins is a former chair of the State Bar of Texas environmental law section and is the standing chair of the section's annual Superconference. He is the co-editor of a two-volume treatise on Texas Environmental Law and a frequent speaker on environmental law and climate change topics.

Q: What is the most challenging case you've worked on, and why?

A: Although we generally represent the regulated community, we had a unique opportunity to represent the state of Texas, as a citizen intervener, in Clean Water Act enforcement litigation brought by the Department of Justice (DOJ) and EPA against an independent oil company that was alleged to have been responsible for over 300 oil spills in six states.

The unusual challenges were to coordinate with various agencies of both the state and federal government and to develop a comprehensive approach for handling what constituted virtually 300 individual actions in two cases.

We were fortunate in working with professionals in both state and federal agencies who were highly competent and flexible, and together we were able to develop a consensus approach on to how the cases should be worked up and tried. We developed a template of pertinent statutory elements that enabled us to process pertinent facts and to develop and support our theory of the case.

We settled the case before trial with a judgment that included the largest penalty the DOJ had ever recovered under the Clean Water Act and the state, under its environmental laws, as well as commitments from the company to upgrade leak

protection on their pipelines and to contribute to supplemental environmental projects, which benefited citizens of the state.

Q: What accomplishment as an attorney are you most proud of?

A: Although there are many matters on which I have worked that were both challenging and rewarding, I am proudest of the efforts I have made to help educate, and create dialogue among, the various segments of the environmental community, especially the bar.

In 1994, I organized a project, working with what is now Thomson West, to write a treatise on Texas Environmental Law. With contributions by well over 50 lawyers from the environmental section of the state bar, we published a first edition in 1997, which we annually update and which we revised in 2005. I also have written and spoken, and continue to write and speak, on topics of interest to me that raise new issues or perhaps new ways of dealing with old issues, including on environmental due diligence, Superfund liability, and carbon management and sustainability.

I also helped establish an informal group of Austin environmental lawyers, which meets periodically to discuss issues of concern. As an adjunct at UT Law School, each year I invite lawyers who represent the state and who represent environmental groups to speak to my environmental litigation class.

For the past 21 years, I have chaired an environmental conference, sponsored by the environmental section of our state bar and five other environmental associations, which draws more than 500 attendees each year.

The conference is both entertaining and informative, with themes and skits, and encourages discussion of significant environment issues. Last year's theme — "Join the Party" — was politics; this year's theme is "Viva Las Vegas."

Topics for this year's program include Legislative Update (Circus Circus), Water Quality (Royal Flush), and Environmental Ethics (What happens in Vegas...). Speakers and attendees represent all aspects of the environmental community — regulated industry, environmental groups and government — and include both lawyers and nonlawyers. Dialogue initiated at the annual conferences often continues in between them.

Q: What aspects of law in your practice area are in need of reform, and why?

A: I believe that generally our policies for remediation of environmental media are flawed and in need of reform. Among other things, we base our cleanups on theoretical calculations, often involving worst-case assumptions. The money spent for incremental increases to achieve more stringent cleanups often seems disproportionate to the benefits obtained and could be better spent on projects that provide immediate and actual, as opposed to theoretical, benefits.

The regulatory remediation process also often requires that those performing cleanups jump through numerous administrative hoops and encourages legal sparring, both of which significantly increase costs and completion time. The process should be streamlined.

Q: Where do you see the next wave of cases in your practice area coming from?

A: I see new business coming from increased federal enforcement in traditional environmental areas and from corporate responses to legislative, regulatory and market-driven pressures to address energy independence and climate change, including, in particular, pressures to develop carbon management programs. I believe these pressures will generate business not only for environmental lawyers, but also for a wide range of other practice areas, including energy, corporate, real estate, consumer protection and intellectual property.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Larry Starfield. Larry presently is serving as Acting Regional Administrator of EPA Region 6, but has served in other positions at EPA as well, including as Regional Counsel. Larry impressed me, as both a lawyer and an administrator, by his ability to look at the big picture and think outside the box to solve problems creatively; Larry focuses on removing obstacles rather than creating new ones.

Larry also impressed me in his dealings with regulated industry by his understanding that often the process is as important as the result and by his willingness to consider stakeholder concerns in the Region's decision-making even if the final decision may not have gone that particular stakeholder's way.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: My advice to a young lawyer would be that our area of practice is ever-changing, requiring that lawyers who work in it be nimble. Especially now, there are likely to be opportunities in areas none of us even thought about only a few years ago. I would advise trying to become proficient in one or more particular areas while at the same time developing a breadth of understanding of the entire field.