

# DUKE ENVIRONMENTAL LAW

Fall 2006

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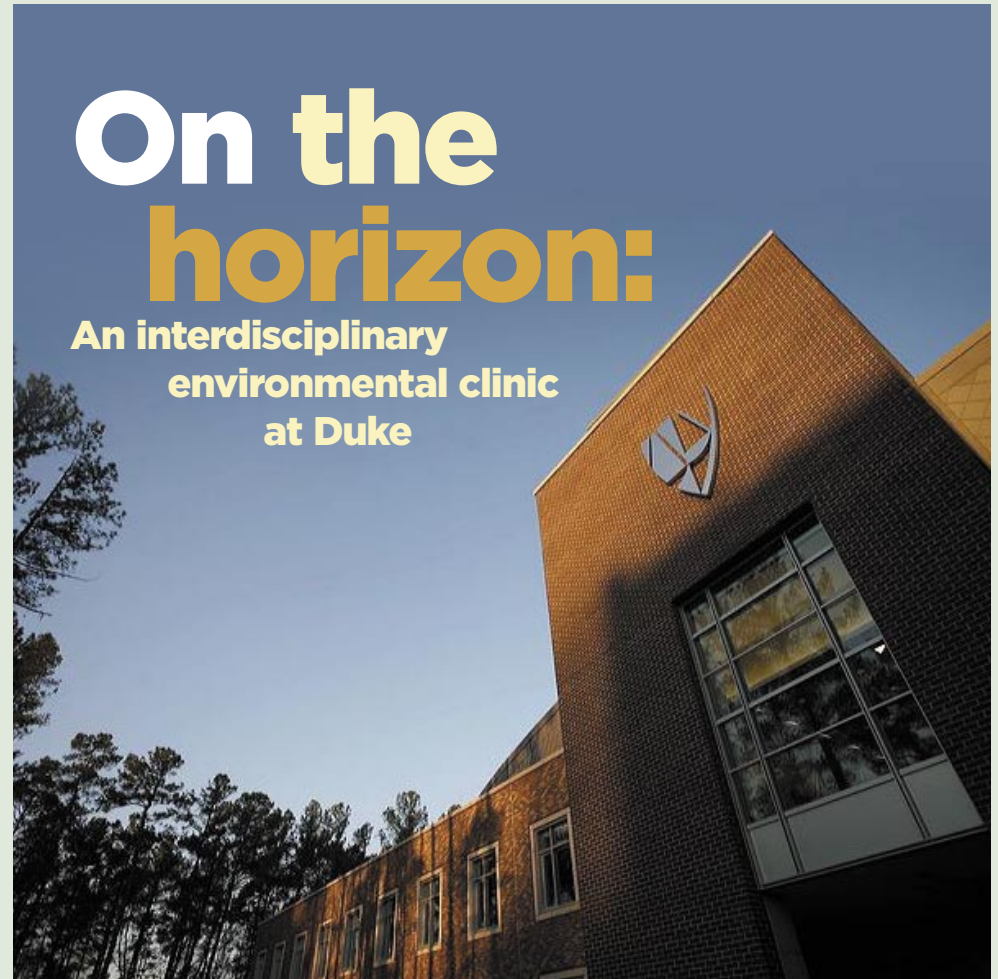
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**Any comments or questions?**

Please e-mail [environment@law.duke.edu](mailto:environment@law.duke.edu)



## On the horizon:

An interdisciplinary environmental clinic at Duke

**D**UKE LAW FACULTY have approved the establishment of the Duke Environmental Clinic, a joint undertaking of the Law School and the Nicholas School for the Environment and Earth Sciences. With fundraising in progress and interviews underway for the inaugural director, the Clinic will commence in 2007.

"It's no exaggeration to say that Duke has developed into one of the leading academic institutions for environmental studies," says Professor Jim Salzman. "In addition to the forty-plus professors at the Nicholas School, the University has strong faculty in the areas of environmental health, law, engineering, and policy," Salzman notes. "Now a year old, the Nicholas Institute for Environmental Policy Solutions is moving ahead at full steam.

Establishing an environmental clinic – giving students another way to learn about environmental protection – is a fundamental new piece in this development.

"Experiential learning is critically important for training the next generation of environmental leaders. It's one thing to write a paper for a class and talk about hypothetical issues that arise in environmental conflicts, but it isn't the same as solving real problems for real clients," says Salzman. "A hallmark of environmental work is that it is interdisciplinary. Environmental scientists and lawyers do things differently, view the world differently, and ask different questions. This is a challenge our students recognize quickly once they graduate and work in the field. But how do we bring these people with



PROFESSOR JIM SALZMAN

### Clinic

*continued from page 1*

their different ways of viewing the world together to solve common problems while still in school? Duke does well in providing classroom opportunities in law, science, and policy that are both theoretically sound and practical. But the most powerful way to teach interdisciplinary problem-solving skills is through well-developed experiential learning in a clinic setting – law students working with natural and social science students.”

And there is no shortage of environmental challenges in the Southeast for the Clinic to address. With the highest rate of population growth in the country, the region’s natural environment is suffering loss of open space, watershed pollution, air pollution, biodiversity loss, and myriad environmental health risks, translating to an abundance of opportunities to do hands-on work that teaches while strengthening environmental protection.

The Clinic will have litigation capability, and Salzman anticipates students working

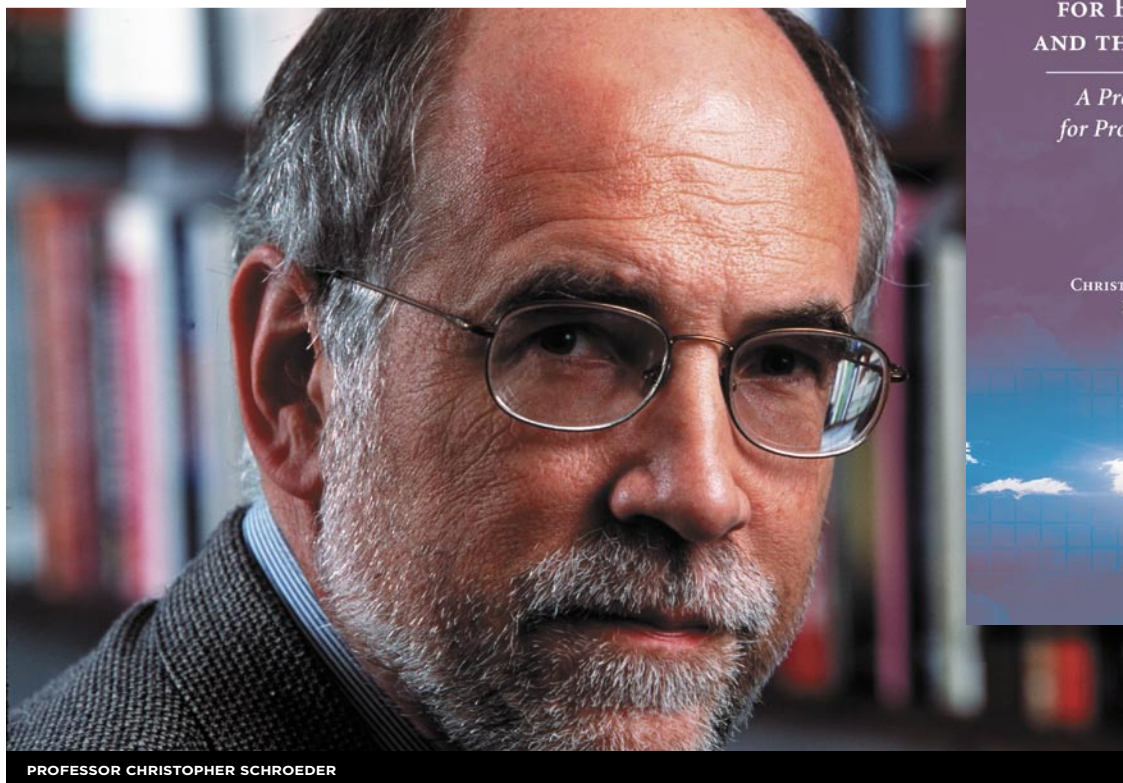
on a range of activities, from supporting small land trusts in Western North Carolina to environmental justice and children’s health issues next door in Durham.

“We will litigate when it serves our clients’ interests,” Salzman notes, “but much of the creative problem-solving in environmental matters takes place prior to litigation. Depending on the parties, mediation and participatory processes could be employed to search for enduring solutions to conflicts. In addition to being transaction designers and litigators, law students may also contribute entrepreneurial solutions to environmental dilemmas.

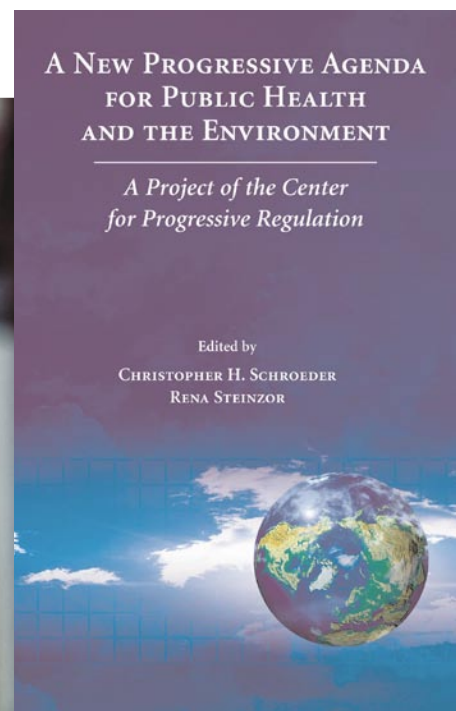
“For instance, if the Clinic was brought into a green-space initiative intended at curbing development at an early stage, we would want to explore a solution in tradable development rights,” says Salzman. “You essentially give up the right to develop in a certain area in exchange for the right to develop elsewhere.”

Reed Watson Jr. ’08, who is pursuing a joint J.D. /M.E.M., looks forward to having a clinical option on the curriculum. “The study of environmental law can be different from the practice of environmental law, so the more you can expose students to real-world practice, the better,” says Watson, whose summer job was with an environmental law firm in Santa Barbara, California. “I also think a clinic will attract more students who are specifically interested in environmental law to Duke.”

“Today’s environmental challenges are multifaceted and require multidisciplinary problem solving,” says John Adams ’62, co-founder of the Natural Resources Defense Council, who will chair the Clinic’s advisory board. “The Duke Environmental Clinic will play an invaluable role in giving students hands-on experience and training in finding common ground among experts and various stakeholders, particularly here in the Southeast which is experiencing such rapid growth.” ♪



PROFESSOR CHRISTOPHER SCHROEDER



## Schroeder helps craft progressive agenda for environment, public health

**C**HRISTOPHER SCHROEDER calls his work with fellow scholars in the Center for Progressive Reform (CPR) “a labor of love.” Schroeder, Charles S. Murphy Professor of Law and Public Policy Studies, established CPR in 2002 with four other law professors – Lisa Heinzerling of Georgetown, Thomas McGarity of the University of Texas, Sidney Shapiro at Wake Forest, and Rena Steinzor of the University of Maryland – to craft and champion policies relating to the environment and public health in counterpoint to those favored by the Bush administration and members of conservative think-tanks. Besides the original founders, CPR has now grown to a group of 41 “member scholars,” all of whom donate their professional services to CPR projects, in amounts that represent millions of dollars if services had been charged on an hourly basis. “The commitment to the

importance of public health and environmental issues that all the member scholars share is what drives their enthusiasm and involvement,” Schroeder explains.

“It became clear early on that the Bush administration has a different view of what sound environmental and public health policy is than what we have,” says Schroeder. “We felt that an organization like this could amplify the voices of scholars who were saying important things about what constructive environmental policy ought to look like, which would improve the chances that they would be heard by policy-makers.” To provide an alternative view on important issues, CPR often takes work that scholars have already produced in their own scholarship and develops white papers, congressional testimony, or submissions to administrative agencies that apply that expertise to specific public issues. At

other times, CPR marshals the reservoir of resources among its members to respond with new products. A case in point: Within a month of Hurricane Katrina’s devastation of New Orleans, CPR scholars had released a 56-page analysis of what went wrong from a regulatory standpoint.

What Schroeder calls “the general, progressive principles” of CPR’s platform were set out in its first book, *A New Progressive Agenda for Public Health and the Environment*, released in February 2005, which he co-edited with Steinzor, and to which all CPR scholars contributed. Among their key assertions: climate change is the most serious, long-term environmental threat facing future generations; “unwarranted government subsidies” of activities that destroy natural resources must stop; regulatory agencies such as the Environmental Protection Agency must



## Schroeder

continued from page 3

remain independent and autonomous from the industries they regulate; “cap and trade” systems must be designed and regulated to avoid areas of concentrated pollution; chemical producers should have to prove their chemicals aren’t damaging before they are approved for production and use; and civil rights laws should be strengthened to stop the practice of locating the dirtiest industries and manufacturing plants in poor and minority communities. A follow up book, edited by University of Florida Law Professor Alison Flournoy, will detail specific statutory reforms proposed and developed by individual CPR scholars, says Schroeder.

At the heart of CPR’s platform is the assertion that the federal government has a crucial role in environmental and public health regulation. While in need of reform, the legal infrastructure provided by such statutes as the Clean Air Act, Clean Water Act, “Superfund Statute,” Safe Drinking Water Act, Food Quality Protection Act, and the Resource Conservation and Recovery Act is sound, says Schroeder, and should be protected from those who would dismantle it.

“These statutes have done a lot of good in terms of improving the quality of envi-

ronmental and public health since 1970. Simply put, the Bush administration wants to roll back lots of federal regulations, so that there would be much less federal presence across the board in issues like clean air, clean water, hazardous waste disposal, and global warming, leaving it largely up to the states to figure out what kind of policies they want. But the states have always found it hard to regulate pollution or other problems related to national industries, because they are in constant fear of tough regulations resulting in an industry not locating in their state – they suffer disproportionate economic harm in their efforts to construct a sound environmental policy. There is little leverage for environmentally conscious groups to succeed at the state and local levels.”

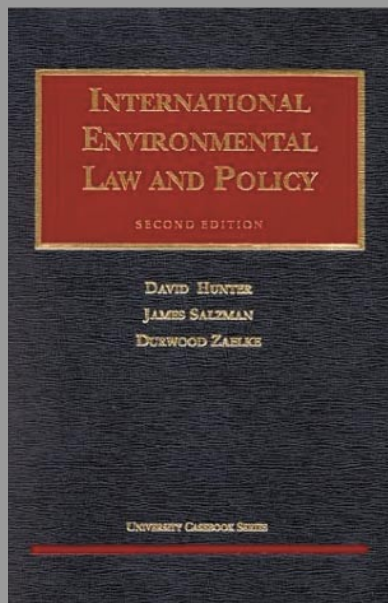
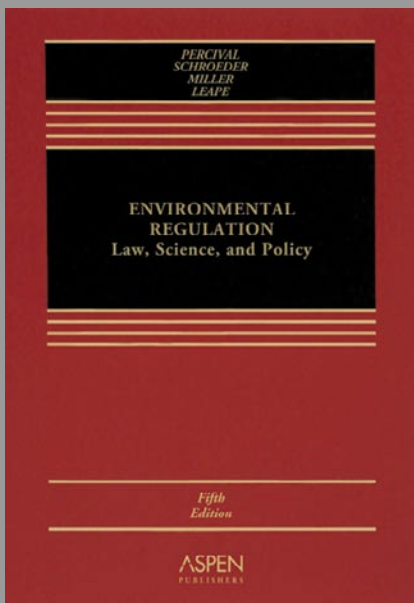
While CPR scholars recognize the need for pragmatism in matters of public health and environmental policy, Schroeder says, they object to the excessive application of cost-benefit analyses to these core societal issues.

“We want to remind people constantly

that children’s lives are at stake, as is the quality of life of future generations, and the mortality of elderly people with asthmatic conditions. We are trying to remind people, both explicitly and in the way we craft our proposals and arguments, that there are values at stake that often ought to be controlling.” Costs should be treated as only part of a conversation about political values, says Schroeder, not “a trumping card.”

With its steady release of white papers – 15 to date – and the connections of its scholars to lawmakers and regulators, CPR functions as a sort of “loyal opposition,” submitting testimony to congressional committees, writing op eds, helping members of Congress and their staffs – mostly Democratic – respond to administrative initiatives with which they disagree. “It’s the nature of the political landscape currently that there is not a lot of opportunity for new initiatives,” says Schroeder. “But without CPR, each of us would be less effective in getting our viewpoint into the public debate. It’s serving its ‘megaphone’ function well.” ♡

**FOR MORE INFORMATION ON THE CENTER FOR PROGRESSIVE REFORM VISIT [WWW.PROGRESSIVEREGULATION.ORG](http://WWW.PROGRESSIVEREGULATION.ORG)**



### NEW EDITIONS OF LEADING CASEBOOKS AVAILABLE

Professor Chris Schroeder and Professor Jim Salzman have spent the last year revising casebooks. Professor Schroeder’s book, *Environmental Regulation: Law, Science, and Policy*, co-authored with Percival, Miller, and Leape, is now in its fifth edition. According to Aspen Publishers, it is the most widely adopted text in the field of U.S. Environmental Law. Professor Salzman’s book, *International Environmental Law and Policy*, co-authored with Hunter and Zaelke, is now in its third edition. According to Foundation Press, it is the most widely adopted text in the field of international environmental law, used at over 170 schools around the world.

## Faculty Environmental Scholarship 2005–2006

### Jedediah Purdy

*The American Transformation of Waste Doctrine: A Pluralist Interpretation*, 91 *Cornell Law Review* 653-698 (2006)

*The Ethics of Empire, Again* (Essay), 93 *California Law Review* 1773-1817 (2005)

*A Freedom-Promoting Approach to Property: A Renewed Tradition for New Debates*, 72 *University of Chicago Law Review* 1237-1298 (2005)

*Filling Out the Civilizing Argument: Comment on Carol Rose's 2005 Childress Lecture*, *Saint Louis University Law Review* (forthcoming)

*The Limits of Courage and Principle*, 104 *Michigan Law Review* 1501-1521 (2006) (reviewing MICHAEL IGNATIEFF, *THE LESSER EVIL: POLITICAL ETHICS IN AN AGE OF TERROR* (2004))

*The New Biopolitics*, *Democracy* 6-18 (Summer 2006)

*The New Biopolitics: Demography, Autonomy, and Nationhood*, *Brigham Young University Law Review* (forthcoming)

*The New Liberal Imperialism: Assessing the Arguments*, in *GLOBAL INSTITUTIONS AND RESPONSIBILITIES* 323-338 (Christian Barry & Thomas W. Pogge eds., 2005)

*People as Property: On Being a Resource and a Person*, *Duke Law Journal* (forthcoming)

*Property and Empire: Conquest, Expropriation, and the Law of Colonialism*, *George Washington Law Review* (forthcoming)

*The Private-Law Origins of Sovereign Power: Trusteeship, Agency, and Wardship*, *Law & Contemporary Problems* (forthcoming)

*The Promise (and Limits) of Neuroeconomics*, *Alabama Law Review* (forthcoming)

### Barak D. Richman

*A Transaction Cost Economizing Approach to Regulation: Understanding the NIMBY Problem and Improving Regulatory Responses*, 23 *Yale Journal on Regulation* 29-76 (2006) (with Christopher Boerner)

### James Salzman

*Concepts and Insights in Environmental Law* (Foundation Press, 2d ed. forthcoming) (with Barton Thompson, Jr.)

*International Environmental Law and Policy* (Foundation Press, 3rd ed. forthcoming) (with D. Zaelke & D. Hunter)

*Creating Markets for Ecosystem Services: Notes From the Field*, 80 *NYU Law Review* 870-961 (2005)

*Decentralized Administrative Law in the Organization for Economic Cooperation and Development*, 68 *Law & Contemporary Problems* 189-224 (Summer/Autumn 2005)

*In Defense of Regulatory Peer Review*, *Washington University Law Quarterly* (forthcoming) (with J.B. Ruhl)

*The Effects of Wetland Mitigation Banking on People*, 28 *National Wetlands Newsletter* 1 (March-April 2006)

*A Field of Green? The Past and Future of Ecosystem Services*, 21 *Journal of Land Use & Environmental Law* 133-151 (2006)

*The Law and Policy Beginnings of Nature's Services*, *Journal of Land Use & Environmental Law* (forthcoming)

*Thirst: A Short History of Drinking Water*, 17 *Yale Journal of Law & the Humanities* 94-121 (2006)

### Christopher H. Schroeder

Special Editor, *CASE STUDIES IN CONSERVATIVE AND PROGRESSIVE LEGAL ORDERS*, 67 *Law & Contemporary Problems* (Autumn 2004)

*ENVIRONMENTAL LAW: STATUTORY AND CASE SUPPLEMENT WITH INTERNET GUIDE 2006-2007* (with Robert Percival)

*Environmental Regulation: Law, Science and Policy* (Aspen Publishers, 5th ed. 2006) (with R. Percival, A. Miller and J. Leape)

*Federalism's Values in Programs to Protect the Environment*, in *STRATEGIES FOR ENVIRONMENTAL SUCCESS IN AN UNCERTAIN JUDICIAL CLIMATE* 247-258 (Michael Allan Wolf ed., ELI 2005)

*Loaded Dice and Other Problems: A Further Reflection on the Statutory Commander in Chief*, 81 *Indiana Law Journal* 1332 (2006)

*A New Progressive Agenda for Public Health and the Environment* (Carolina Academic Press, 2005) (with Rena Steinzor)

*The Story of American Trucking: The Blockbuster that Misfired*, in *ENVIRONMENTAL LAW STORIES* 321-348 (Richard J. Lazarus & Oliver A. Houck eds., 2005)

### Laura S. Underkuffler

*The Just and the Wild*, 18 *Yale Journal of Law & the Humanities* 171-177 (2006)

*Kelo's Moral Failure*, 15 *William & Mary Bill of Rights Journal* (forthcoming)

*Tahoe's Requiem: The Death of the Scalian View of Property and Justice*, 21 *Constitutional Commentary* 727-755 (2004)

*Teaching Property Stories*, 55 *Journal of Legal Education* 152-162 (2005) (reviewing *PROPERTY STORIES* (Gerald Korngold & Andrew P. Morris eds., 2004))

### Jonathan B. Wiener

Après 2012 dans le Rapport de la Mission sur l'Effet de Serre de l'Assemblée Nationale de la France [After 2012, in the Report of the Panel on the Greenhouse Effect of the French National Assembly], *Rapport No. 3021, Tome II: Auditions* 475-479 (April 12, 2006)

*Better Regulation in Europe*, 59 *Current Legal Problems* (forthcoming)

*Book Review*, 24 *Journal of Policy Analysis & Management* 885-889 (2005) (reviewing RICHARD POSNER, *CATASTROPHE: RISK AND RESPONSE* (2004), and JARED DIAMOND, *COLLAPSE: HOW SOCIETIES CHOOSE TO FAIL OR SUCCEED* (2005))

*Foreword: Global Governance as Administration - National and Transnational Approaches to Global Administrative Law*, 68 *Law & Contemporary Problems* 1-13 (Summer/Autumn 2005) (with Benedict Kingsbury, Nico Krisch & Richard Stewart)

*Letter Responding to Ruth Greenspan Bell*, *Issues in Science & Technology* 9-10 (Spring 2006) (with Richard B. Stewart, James K. Hammitt, & Daniel J. Dudek)

*Madison and Change Climate Policy*, 31 *Science* 335-336 (January 20, 2006) (letters) (with Richard B. Stewart, James K. Hammitt & Jean-Charles Hourcade)

*A Pattern of Parity and Particularity*, *Who's Ahead in Environmental Protection: The United States or the European Union?*, *Environmental Forum* 52 (March/April 2006)

*Precaution*, in *OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* (Jutta Brunée, Daniel Bodansky & Ellen Hey eds., forthcoming)

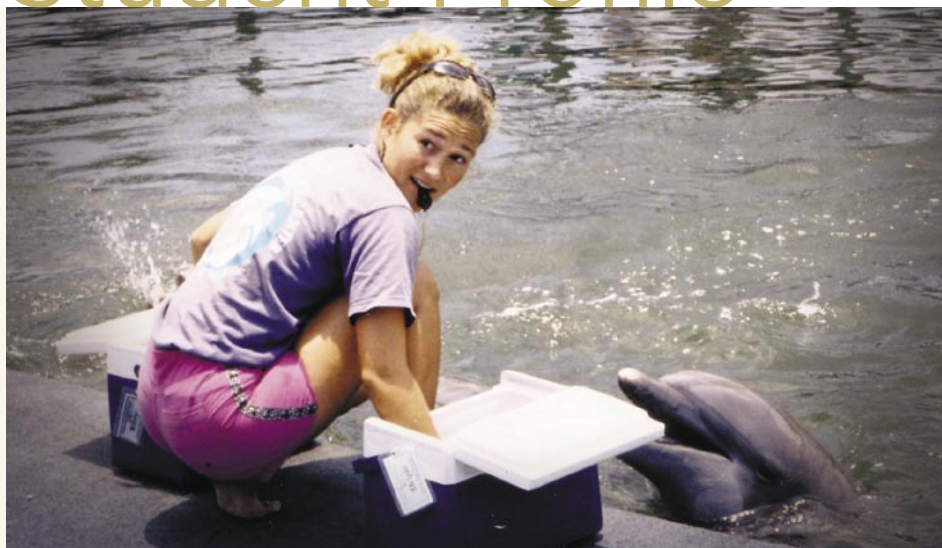
*Precaution Against Terrorism*, 9 *Journal of Risk Research* 393-447 (2006) (with Jessica Stern)

*Precautionary Regulation in Europe and the United States: A Quantitative Comparison*, 25 *Risk Analysis* 1215-1228 (October 2005) (with others)

*Risk and Regulatory Governance Organization for Economic Cooperation and Development (OECD), Public Management Directorate* (April 2006)



# Student Profile



## Brettney Hardy '07

**M**AJORING IN BIOLOGY at Pomona College, Brettney Hardy imagined going on to investigate marine science in a remote corner of the world. While her interest in ocean life remains as strong as ever, field experience and strong role models have led Hardy to pursue a joint J.D./M.E.M. and a career in environmental advocacy.

Hardy moved to Key West, Florida, following her college graduation, living aboard a dive boat and becoming certified as a scuba diving instructor. While she originally saw the move as a first step toward travel and ocean study abroad, the small community and unique environment of the Keys enticed her stay to explore the area. Hardy spent four years working in the education department of the Dolphin Research Center (DRC), where Education Director Peggy Sloan became her biggest role model.

“It’s amazing how one person can influence your life so profoundly,” says Hardy. “Even though I’ve always been interested in science, conservation was never at the forefront of my mind until I met Peggy, who approaches environmental problems from a realistic perspective. She taught

me that there is often no one to blame for marine issues like pollution or overfishing. Addressing environmental challenges is not as easy as saying, ‘don’t pollute.’ Instead, solutions involve a complex compromise between the desire to protect an environment and the need to use its resources.”

Hardy witnessed many compromising situations through her work at DRC. As a member of the facility’s Manatee Rescue Team, working with the Department of Fish and Wildlife to help protect the endangered Florida manatee, Hardy saw first-hand how political power struggles – and misguided good intentions – often got in the way of effective action.

“Because they are endangered, only select organizations are permitted to assess and rescue injured manatees. But some organizations without permits wanted to share in the prestige of rescue responsibilities. Other organizations were passionate about contributing to manatee welfare, but couldn’t find an outlet. As a result, those groups would race to help an injured manatee before the proper authorities arrived. In their flourish, they often unknowingly scared a manatee from the area, thus preventing rescue, or caused a struggle that delayed rescue operations.”

The difficulty of matching policy with

an effective outcome on the ground level intrigued Hardy. “The most fascinating part of environmental management is its complexity. More often than not, conservation clashes do not involve right versus wrong. There are many different perspectives and personal desires interwoven through every issue. Understanding the cause from all sides takes time, but can create success in the long run.”

Hardy’s new passion for environmental policy brought her to the Nicholas School of the Environment and Earth Sciences at Duke. Because the environmental management degree at the Nicholas School is interdisciplinary, she was able to explore not only policy and science, but also economics, business, and law.

“Two of my first classes at Duke were Environmental Law with Professor Wiener and Ocean and Coastal Law with [Senior Lecturing Fellow] Steve Roady [’76]. Not only did I love both these classes, I also quickly realized that law would provide the best tools for truly becoming immersed in an environmental struggle. More importantly, Professor Roady and Professor Wiener inspired me to work harder and delve deeper into environmental situations. They both have become important role models for me, as well as mentors and friends. Because of their guidance in large part, I decided to extend my stay at Duke in order to obtain a J.D. as well as an M.E.M. The flexibility and breadth of Duke’s environmental program made it easy to transition.”

Now in her third year of the joint degree, Hardy intends to pursue environmental law professionally and remains particularly zealous on marine topics. As president of the Duke Bar Association, she notes that she is also more curious about politics.

“Duke has really nurtured my environmental passions, but has also challenged me to explore myself, forcing me to build inner confidence,” she says. Whatever lies ahead, Hardy credits Duke with offering her a unique opportunity to design an education which will serve as a resource as she continues to “follow the winding road of life’s new adventures.” ♡

## THE ENVIRONMENT AT DUKE

### DUKE NAMED “TOP TEN” SUSTAINABILITY STAR IN HIGHER EDUCATION

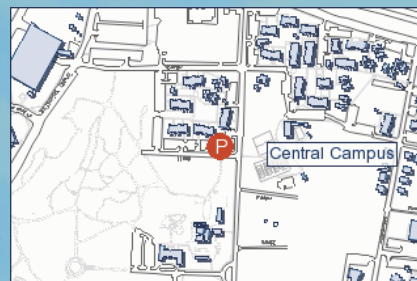
Duke was highlighted in the June 2006 issue of *University Business* magazine for its “green purchasing” initiatives. *University Business* lauded Duke for its adoption of environmentally preferable purchasing guidelines in 2004, among other initiatives. “With leadership from a purchasing specialist in the Procurement Services office, 38 percent of Duke’s purchases are now of Earthsaver products (up from 11 percent last year),” the article reported. Other institutions cited in the special section on sustainability included the California State University System, Carnegie Mellon, Harvard, Tufts, University of British Columbia, University of California, Merced, University of Vermont, Penn, and Yale.

For more on Duke’s green purchasing guidelines, see <http://www.duke.edu/sustainability/purchasing.html>. ♪

### PLANNERS WORKING TO MAKE CENTRAL CAMPUS SUSTAINABLE

Over the next 20 to 50 years, Duke University will be redeveloping the 200 acres between East and West Campus. The site, known as Central Campus, currently hosts low-density apartment units, a grocery store, a pool, and basketball and tennis courts. The goal is to create an “academic village” that attracts and serves members of the Duke community throughout the day and evening.

“Executive Vice President Tallman Trask has directed the design team to integrate ecological sustainability initiatives into all aspects of Central Campus, from designing a transit oriented walkable Campus to restoring biological diversity,” says Keith Bowers, president of Biohabitats, Inc., which has been retained by the project’s architects to develop “ecologically regenerative design” concepts for the campus, meaning that the designs will strive to support living systems, rather than just mitigate damage to them.



Bioretention landscaping is a good example of ecologically regenerative design. Though it looks like normal landscaping, bioretention landscaping holds its distinction and its value below the ground cover. Underneath the mulch, carefully composed layers of sand and planting soil provide storage for water and habitat for microbes that clean water-borne contaminants. During rain events, this underground zone fills up with water, filters it and slowly releases it downstream afterward. The result is a dramatic reduction in stormwater flow and an increase in downstream water quality. ♪

## DELPF Fall Symposium

# LAW, SCIENCE, AND UNCERTAINTY: THE FUTURE OF CHILDREN’S ENVIRONMENTAL HEALTH

**C**HILDREN’S ENVIRONMENTAL HEALTH WILL BE THE focus of *Duke Environmental Law & Policy Forum’s* fall symposium on Friday, October 27, at Duke Law School. The day-long event will include panel discussions and presentations on such issues as air pollution and legislative susceptibility standards, policy options and strategies to ensure water quality and availability to children domestically and internationally, and questions of incorporating children into the risk process.

“From lead paint, to mercury in water, to smog, the risks on which environmental law focus often affect children more than adults. *DELPF* is gathering impressive members of the legal, scientific, and policy communities to clarify the problems relating to children’s health and map practical solutions,” said Paul Graves ’07, *DELPF* editor in chief.

Symposium speakers include: Professor Wendy Wagner of the University of Texas, a leading authority on the use of science by environmental policy-makers; Dr. John Balbus, director of the Environmental Health Program for Environmental Defence, Dr. J. Routt Reigart, director of the Division of General Pediatrics at the Medical University of South Carolina and an expert on lead poisoning prevention and policy; and Professor Marie Lynn Miranda, director of the Children’s Environmental Health Initiative at Duke’s Nicholas School of the Environment and Earth Sciences, and a faculty member in Duke’s Integrated Toxicology Program. ♪



# Alumni Profile



## Leila Goldmark '01

**A** NATIVE OF Croton-on-Hudson in Westchester County, New York, Leila Goldmark recalls “sneaking off” during middle school to hang out in the woods with friends or go to favorite swimming holes on the Croton River, which flows down into the Hudson River. “A lot of those places are gone,” she says. “Now they are big subdivisions of ‘cookie-cutter’ mansions in place of trees and walls of condos where there used to be shoreline.”

Goldmark returned “home” after graduating from Duke with a J.D./LL.M. in international and comparative law to address issues that have arisen from Westchester’s rampant development, and to work to prevent others. As a watershed attorney with Riverkeeper, Goldmark engages in legislative policy work, grassroots advocacy, negotiation, and, where necessary, litigation, to help protect a 2,000 square mile watershed, the source of New York City’s drinking water supply.

One of the largest threats to the watershed lands and drinking water quality is non-point source pollution from overdevelopment, Goldmark explains. Sprawling growth generates contaminants such as sewage, pesticides, and petroleum products, and destroys wetlands and buffer lands that naturally filter pollutants from stormwater before it reaches downstream drinking water supplies. “Construction impacts cause erosion and sedimentation. An increase in pavement leads to increased stormwater runoff, and highly polluted sediment washes into the water supply.”

With development review a key focus of her work, Goldmark engages, where appropriate, with citizen groups and municipal councils to help them assess the environmental impact of and mount challenges to development plans. She points to the 2005 purchase and preservation of 650 acres originally scheduled to be developed in Westchester’s “Eagle River” subdivision as a major success in this regard.

The parcel sits between two reservoirs which are at the bottom of the distribution system, says Goldmark, an extremely sensitive point, as pollutants have little time to settle before the water reaches New York City consumers. It is also part of a critical wildlife corridor, which includes 300 wetland acres. Having taken the lead on writing comments on the environmental impact review and advocating for the preservation of the parcel, Goldmark was delighted when a number of parties, including the New York City Department of Environmental Protection, came together to purchase it for preservation.

“It’s a great model for future partnerships, fundraising, and land acquisition,” says Goldmark of the \$20 million + acquisition. “This was an example of the grass-roots power to make things happen – the local citizens’ group that formed around this project is now looking at other projects that are proposed for this town. The more Riverkeeper can work with local advocates and educate them about their rights and the public review process, the more effective, all-around, we can actually be in protecting our resources.”

Goldmark counts as another key success persuading an international corporation, MBIA Insurance Corp., to scale back and revise plans to expand its headquarters located close to the Kensico Reservoir, the terminal reservoir for New York City’s drinking water. Again teaming up with other environmental groups, including the Natural Resources Defense Council, Goldmark took the lead in negotiating contractual changes to the initial design proposal.

“This was a great example of a business being responsive. Once we made them aware of the issues, they were amenable to moving some roads and buildings out of wetlands and wetland buffer areas and away from the

extremely steep slopes that run off the property and directly into the reservoir. It wasn’t terribly expensive to change the design in ways that would satisfy environmental concerns and still allow them to build a project that fit their needs.” Some of these changes included adding a floor to the parking structure to reduce its “footprint,” and moving sports courts to the roof of the building.

Goldmark increasingly uses economic arguments to convince municipalities and homeowners that “McMansions” are not in their best interests. “The costs of servicing a sprawling residential development in terms of sewer, water, police – everything – are far higher than other kinds of land uses, such as open space or even some types of office space. And the increased cost of services most often outweighs the tax revenue generated from the new development,” she says.

Busy with legislative measures, including working to amend New York state laws to protect pocket wetlands and headwater tributaries from destruction and degradation, Goldmark also is laying the groundwork for new voluntary initiatives to preserve her watershed. One of these involves curbing the use of pesticides, herbicides and excess fertilizers on heavily landscaped suburban lawns and golf courses. Another involves reduction of road salts in winter road maintenance, which are largely unregulated, yet can threaten the water supply. “If we can help educate the public we can try to get some voluntary measures and voluntary reductions of the chemicals that are going into the water supply,” says Goldmark.

Goldmark says she thoroughly enjoys working on local issues with enormous downstream impact, largely for the strategic creativity she is called upon to employ in building consensus and otherwise tackling the issues that face the watershed.

“I like the variety of the grassroots, policy, and traditional litigation work. I’m always learning new approaches and facing new challenges. It’s always interesting. And, protecting the drinking water for more than nine million people is always very rewarding.” ♣





# Alumni Profile



## Steve Roady

'76

**T**HE SLOGAN of Steve Roady's public interest law firm, Earthjustice, is "Because the earth needs a good lawyer." Having spent more than 30 years fighting for healthy oceans, rivers, and clean air, Roady has delivered on that promise of good lawyering – with passion.

A native of Tallahassee, Roady credits two events for sparking his interest in protecting the environment: the 1971 spill of one billion gallons of phosphate slime from a holding pond at a mining operation near Lakeland, Florida, that "killed every living thing" in the Peace River, and the release of the 1970 census report that predicted rampant development in his home state.

The Peace River spill was "dramatic," says Roady. Reading news accounts of environmental devastation as the toxic slime spread downriver reminded him of something out of a Joseph Conrad story, where "every tree, every leaf, every bough, every tendril of creeper and every petal of minute blossoms seemed to have been bewitched into an immobility perfect and final."

The census report also was eye-opening. "I will never forget the report," Roady says, recalling a long black line denoting development that ran on a map from north of Jacksonville down the east coast, and another that began at Daytona Beach, crossed over to Tampa, and ran down the southwest coast. "I thought to myself, 'well, there's going to be a lot of paving over of swamps

and green spaces. We should do some planning for that.'" Roady headed to Duke Law School, deciding that "lawyers might have some ability to shape behavior."

Joining a small Washington, D.C., firm after graduation, Roady focused on a range of conservation-related issues, including a series of cases that challenged the U.S. Army Corps of Engineers on costly public works projects that destroyed rivers. One of those challenged a plan to dredge the Tombigbee River, which runs through Mississippi and Alabama, in order to create a passage for barge traffic parallel to the Mississippi River. The case helped establish standards for requiring supplemental environmental impact statements on federal projects. "The Corps of Engineers [originally] designed a 170-foot wide channel," Roady recalls. "Over time that channel morphed to about 300 feet wide, but they never went back and supplemented their studies. We persuaded the court to require the Corps to examine the impacts of the new channel."

As counsel to Senator John Chafee (R-RI) in 1989–90, Roady helped draft amendments to the Clean Air Act, which became law in 1990. After returning to private practice he remained heavily involved in issues relating to programs mandated by those amendments, such as the trading of emissions allowances for sulphur dioxide and nitrogen oxide.

Roady turned his focus more exclusively to ocean conservation in 1997, as director of the Ocean Law Project at Earthjustice. An initiative of The Pew Charitable Trusts, the Project's attorneys sought to protect ocean resources by filing cases that challenged government failures to comply with federal conservation statutes. One challenge to a fishing quota set by the National Marine Fisheries service to allow for the rebuilding of summer flounder stocks off the east coast resulted in new quota standards, Roady points out. "The fishery service is required to halt overfishing and rebuild the stocks, and the quota set had only an 18 percent chance of getting it done

in the time agreed upon." The D.C. Circuit Court ruled that a quota has to have at least a 50 percent chance of staying on the rebuild path.

Roady's work gained a global reach in 2001, when he became the first president of Oceana, Inc., an international ocean conservation collective of lawyers, scientists, policy and media experts who work on ocean conservation in U.S. federal waters and internationally. Roady calls the opportunity to start a non-governmental organization from scratch both educational and satisfying, noting that Oceana's staff – including those from the Ocean Law Project – grew from five to almost 40 during his 18-month tenure.

The biggest challenge to ocean conservation arises from simple ignorance, Roady observes. "People obviously can't see into the ocean, much less over the horizon, and they aren't fully aware of how badly we're overfishing and polluting our oceans. I think if people knew the extent of the problem we'd be able to mobilize more action on it." He also believes that high-level government leadership is needed to focus public attention on the importance of ocean resources.

Back at Earthjustice since 2002, Roady continues his efforts on behalf of the oceans, clean air, and water quality. He is currently challenging a series of permits issued by the Army Corps of Engineers to coal companies, allowing them "to blow off the tops of mountains in order to reach coal seams and thereby smother headwater streams in adjacent valleys." Roady is also training another generation of environmental advocates; having taught at Duke Law School and the University of Hawaii, he is currently teaching ocean and coastal law and policy at the Nicholas School for the Environment and Earth Sciences and environmental litigation at American University's Washington College of Law.

Roady says he is glad to share his expertise and passion for environmental lawyering with students. "This kind of work is tremendously rewarding, challenging, and intellectually stimulating, all rolled into one." ♡