

DUKE ENVIRONMENTAL LAW

Fall 2009

REGULATING CLIMATE

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LEADING CLIMATE and Clean Air Act experts gathered at Duke University in March to contemplate the role of clean air legislation in effecting climate change.

Titled "Regulating Climate: What Role for the Clean Air Act?," it was the first major conference to focus specifically on the statute's role in regulating greenhouse gases.

"The Environmental Protection Agency has statutory mandates it must satisfy, and their decisions will have enormous repercussions throughout the economy," said James Salzman, the Samuel Fox Mordecai Professor of Law and Nicholas Institute Professor of Environmental Policy. "Climate change legislation may emerge from Congress soon that makes this all moot, but there's a good chance that won't happen."

In fact, the EPA is making significant policy decisions, such as whether to allow California to adopt much stricter mobile

source emissions standards than the rest of the country, based on the Clean Air Act. For those reasons, the conference was both designed and staffed in close coordination with the EPA's Air Office, noted Salzman, a conference organizer. Each session opened with remarks by an EPA official that laid out the policy landscape and the important decisions facing the agency before experts from a range of sectors offered their perspectives on the most effective route forward.

"The panels were policy relevant because we were told what particular issues the EPA





“THE PRESIDENT SET SOME VERY AMBITIOUS POLICY GOALS — TRYING TO REDUCE EMISSIONS BY 14 PERCENT BY 2020, 80 PERCENT BY 2050. What we are, in effect, saying with this policy is [that individuals and businesses are] going to have to deal with climate change — with the need to cut greenhouse gases — as they make their decisions on new investments.”

— Rob Brenner, director of the Office of Policy Analysis and Review for the EPA’s Office of Air and Radiation

Climate

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staff want to hear debated,” said Salzman. “The conference didn’t make policy, but it surely has contributed to a more informed policymaking environment, and that’s an important public service.”

“Regulating Climate: What Role for the Clean Air Act?” was co-sponsored by Duke Law School, Duke’s Nicholas Institute for Environmental Policy Solutions, and Harvard Law School.

Rob Brenner, director of the Office of Policy Analysis and Review for the EPA’s Office of Air and Radiation, played a critical role in helping organize the conference.

His presentation addressed President Barack Obama’s proposed goals regarding emissions of greenhouse gases. “The president set some very ambitious policy goals — trying to reduce emissions by 14 percent by 2020, 80 percent by 2050,” he said. “The way I think about it is as a turnover of the capital stock.”

About every 40 years, Brenner said, factories, homes, power plants, and truck fleets have to be replaced or refitted. “What we are, in effect, saying with this policy to each of these sectors and the industries within sectors, is [that] they’re going to have to deal with climate change — with the need to cut greenhouse gases — as they make their decisions on new investments.”

Panelists discussed clean air legislation at all levels, from national policymaking on ambient air quality standards and state initiatives to the prospect of litigation forcing EPA’s hand. The panelists’ exchanges with each other and with the audience highlighted the intricacies of Clean Air Act legislation.

In a keynote speech that drew on his earlier service as counsel for the

environment to Sen. Joseph Lieberman, I-Conn, Nicholas Institute Director Timothy Profeta ’97 said the flagging economy made climate regulation more difficult.

He cited the July 2008 congressional debate over climate legislation as an example of the economic roadblocks that can impede environmental regulation. Profeta said that moderate Democrats from states that rely heavily on jobs generated by industry were not properly courted by those seeking to pass legislation.

“One lesson it taught us was that there was not sufficient engagement, and that there needed to be a bigger coalition built around this,” he said. For those hoping to pass clean air or climate change legislation, the 2008 election created as much uncertainty as hope, Profeta said.

“What’s changed in 2009? We now have a White House that wants to legislate. We now have a White House that has declared it a priority to do this, and that could be the change agent ...” That’s “doubly important,” he said, because of chaos created by key leadership changes in Congress since 2008.

“We had clear leadership in Congress on this in 2008. We had the Lieberman-McCain and Lieberman-Warner proposals in the Senate, and we had the Dingell-Boucher proposal coming forward in October 2008 in the House. Since that date, Lieberman and McCain are no longer on the committee of jurisdiction ... and John Warner is now retired. Representatives Dingell and Boucher have

been overthrown in their leadership of the House Energy and Commerce Committee.”

Strong leadership from the president can “control the chaos” by forcing equitable tradeoffs to get a law passed, Profeta said, but he predicted the emergence of another scenario: “The second option is that chaos reigns, that we don’t have any effective centralized leadership from the president or otherwise, and since there is this vacuum, all ideas — good, bad or ugly — come to the fore, ... and we spend most of this Congress posturing for position and not legislating.” New ideas are, indeed, emerging, including “a carbon-tax contingent that is getting increasingly strong,” he said.

The Law School’s interdisciplinary focus was on display at the conference. In addition to Salzman’s opening remarks, Jonathan Wiener, Perkins Professor of Law, Professor of Environmental Policy, and Professor of Public Policy Studies, moderated a panel on stationary sources of pollution. Christopher Schroeder, co-director of the Law School’s Program in Public Law, participated in a panel discussion on the federal Clean Air Interstate Rule and National Ambient Air Quality Standards. A leading expert on environmental law and regulation with deep experience in government, Schroeder was awaiting Senate confirmation to the post of assistant attorney general for the Office of Legal Policy in the Department of Justice at press time. (See story, page 3.)

♣ — *Forrest Norman*



Schroeder nominated to top administration legal post

CHRISTOPHER SCHROEDER, Charles S. Murphy Professor of Law and Professor of Public Policy Studies, has been nominated by President Barack Obama to the post of assistant attorney general for the Office of Legal Policy, Department of Justice. Confirmation was pending at press time.

Schroeder is a prominent thinker in the field of environmental law whose publications include a leading environmental law casebook, *Environmental Regulation: Law, Science and Policy* (6th Edition, 2008), and *A New Progressive Agenda for Public Health and the Environment* (2005).

“Chris has played a critical role in laying the foundation for the school’s successful environmental law program and he remains a leader in the field,” says Professor Jim Salzman. “His scholarship has been greatly enriched by his high-level work in both Congress and the Department of Justice, providing insights and practical understand-

“CHRIS HAS PLAYED A CRITICAL ROLE IN LAYING THE FOUNDATION FOR THE SCHOOL’S SUCCESSFUL ENVIRONMENTAL LAW PROGRAM AND HE REMAINS A LEADER IN THE FIELD.”

— Jim Salzman

ing that just can’t be learned from books. I’m excited for his latest opportunity to serve our country but, truth be told, equally eager to have him back with us in a few years.”

The assistant attorney general for the Office of Legal Policy serves as the primary policy adviser to the attorney general and deputy attorney general and develops and implements significant policy initiatives of the Department of Justice.

Co-director of the Law School’s Program in Public Law and co-director



of the Duke in D.C. program, Schroeder served in the Clinton administration as acting assistant attorney general in the Office of Legal Counsel at the Department of Justice. He also has served as chief counsel to the Senate Judiciary Committee. ♡ — Frances Presma

Introducing Joseph Blocher

DUKE LAW WELCOMED JOSEPH BLOCHER to the faculty on July 1. A prolific emerging scholar, Blocher’s principal academic interests include constitutional law, the First and Second Amendments, federal courts, property, and law and development.

Blocher studied land economy prior to entering law school at Yale, first as a Fulbright Scholar in Ghana, where he focused on the effect of customary or tribal law on land market efficiency, and then as a Gates Scholar at Cambridge University, where he expanded on his field work and received an M.Phil.

“I had — and still have — an interest in economic development and how property makes the economy work,” says Blocher. “In Ghana, land is the largest and most important asset, so it was a terrific place to see land economy in action.”

Blocher carried his interest into his legal scholarship; his article, “Building on Custom: Land Tenure Policy and Economic Development in Ghana,” published in the *Yale Human Rights & Development Law Journal*, which won Yale’s Edward D. Robbins Memorial Prize in 2006. He also is co-authoring, with Frank Nyame of the University of Ghana, a forthcoming paper on the influence of traditional land tenure arrangements on artisanal gold mining in Ghana. ♡ — F.P.





Looking at how we perceive nature

JEDEDIAH PURDY'S NEW PAPER SIFTS THROUGH SHIFTING CULTURAL REGARD FOR NATURE

IN HIS LATEST SCHOLARLY ARTICLE, PROFESSOR Jedediah Purdy examines the evolution of American thought about the natural world. His stated goal in “The Politics of Nature: Returning Democracy to Environmental Law,” forthcoming in the *Yale Law Journal*, is to broaden and deepen the ongoing discussion about the environment from the purely legal and narrowly-defined political template that he perceives is constricting the current public discourse on such issues as climate change.

“I think everyone who is engaged in an issue like this can benefit by knowing where their attitudes come from — the ideas and the sources and the history that they’re actually formed out of, that are often invisible to them [and] to us,” he says.

The paper had its genesis in an environmental law class Purdy took a decade ago at Yale. He found a disconnect between the attachment to nature that led him to enroll in the class and the “extremely technical nature” of environmental law, one he found he shared with others. “Not that we had a problem with the technical character of it, but it was like there was no relationship,” he recalls.

Along with a friend, Purdy developed a complementary syllabus of material on the history of environmental attitudes and politics, which their professor allowed them



Purdy

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to teach as an extra-credit option to the course. “People were very responsive to it, and the students who took it seemed to have the same feeling we had — that there was a lot to gain from integrating the larger cultural and political picture into the legal portion.”

His new scholarly article builds on the ideas he first traced in that seminar, with the addition of insight gained from a yearlong seminar on climate change and the law he taught at Duke with Professor Jonathan Wiener. Purdy says he found a lot of the legal scholarship on climate change failed to acknowledge how basic values sometimes change as a result of cultural argument and political mobilization.

“It seems to me that if climate change turns out to be as big an event as the mainstream forecasts have it being, it could be the kind of thing that we can’t address without changing our values and our language in the process of dealing with it,” he says. “And for that reason, it’s important to try to anchor our sense of it in an historical picture of how we’ve changed to get where we are.”

Evolution in environmental thought

In his article, Purdy traces the evolution of American thinking about natural resources. He observes that Romantic and Progressive-era ideals formed a pivot point for the public discussion of these ideas.

“The earlier view emphasized the utilitarian value of natural resources and the individual right to expropriate unused or unclaimed lands, which was often invoked as a mark of equal political membership

“I THINK EVERYONE WHO IS ENGAGED IN AN ISSUE LIKE THIS CAN BENEFIT BY KNOWING WHERE THEIR ATTITUDES COME FROM — the ideas and the sources and the history that they’re actually formed out of, that are often invisible to them [and] to us.”

— Jedediah Purdy

and thus an emblem of the democratic character of the polity,” Purdy writes.

He describes the transformative Romantic and Progressive ideals, expressed through such public figures as Sierra Club-founder John Muir and Teddy Roosevelt, which brought about a new language and framework for the national understanding of conservation and the experience of nature generally. These were epitomized, he writes, by “two ideas that later became central to environmental public language: that of nature as repository of non-utilitarian values, and that of a permanent public domain, subject to expert management and embodying a set of civic interests either distinct from aggregate individual interests or, if reducible to those, nonetheless best pursued through public governance.”

A shift in values

Tracking the evolution of political and legal discourse about nature has given Purdy a guarded optimism about the current state of public debate, as limited as it may sometimes seem, he says.

“I think that, in some cases, where there is basic change in public values, people are actually very aware of it,” he remarks. “That’s been markedly true in debates about social membership and political membership — slavery, race, civil rights.

“I think in some other cases where there has been very significant cultural change, it’s been more incremental and invisible. There has been a sea change in attitudes toward sexuality in the last 20 years ... primarily due to what people see on TV, who people know at work, who people go to school with, who’s in people’s families. I think that the environmental changes have frequently been closer to the second type.”

Professor Jim Salzman thinks this will prove to be a significant publication for the environmental community. “Jed benefits from a unique combination. He not only understands the climate issues, but he also has a deep understanding of the history of American democratic values and public discourse, as evidenced by his books on the subject,” he says. “Lots of people have been arguing at a very general level that our value structure will change and be changed by the magnitude of the climate change challenge. Jed explores this issue at a fundamental level that is historically rooted. He brings a new level of sophistication to this topic.”

In addition to following the public debate about climate change going forward, Purdy hopes to write a book on the history of the idea of nature in America, he says. That story, he adds, is likely to take him abroad.

“To really dig in to this question with the attention it deserves would mean learning in two directions: Back toward the European roots of Romanticism and the parallel developments in England and Germany particularly, and then forward in the development of new environmental movements in countries like India and China,” he says. ♡ — F.N.



Recent and Forthcoming Environmental Scholarship

Ryke Longest

Massachusetts versus EPA: Parens Patriae Vindicated, 18 *Duke Environmental Law & Policy Forum* 277-286 (2008)

Jedediah Purdy

THE MEANING OF PROPERTY: FREEDOM, COMMUNITY, AND THE LEGAL IMAGINATION (Yale University Press, forthcoming 2010)

The Politics of Nature: Returning Democracy to Environmental Law, 119 *Yale Law Journal* (forthcoming)

What Has to Change for Forests to Be Saved? A Historical Example From the United States, 19 *Duke Journal of Comparative & International Law* 467-486 (2009)

Climate Change and the Limits of the Possible, 18 *Duke Environmental Law & Policy Forum* 289-306 (2008)

Corn Futures: Consumer Politics, Health, and Climate Change, 38 *Environmental Law Reporter* 10851 (2008) (with James Salzman)

James Salzman

Who's Number One? The Most Significant Cases in Environmental Law, *Environmental Forum* (forthcoming) (with J.B. Ruhl)

Cross-Cutting Issues in the Sectoral Case Studies, in *ECONOMIC GROWTH AND ENVIRONMENTAL REGULATION: CHINA'S PATH TO A BRIGHTER FUTURE*, Tim Swanson & Tun Lin eds. (Routledge, forthcoming September 2009)

Implementing the New Ecosystem Services Mandate of the Section 404 Compensatory Mitigation Program — A Catalyst for Advancing Science and Policy, *Stetson Law Review* (forthcoming 2009) (with J.B. Ruhl & Iris Goodman)

Massive Problems in the Administrative State: Strategies for Whittling Away, *California Law Review* (forthcoming) (with J.B. Ruhl)

THE PRACTICE AND POLICY OF ENVIRONMENTAL LAW (Foundation Press, 2008) (with J.B. Ruhl & John Nagle)

Bank Failure, 2009, 26 *Environmental Forum* 22 (Jan/Feb 2009) (with J.B. Ruhl & Iris Goodman)

Ecosystem Services in Decision Making: Time to Deliver, 7 *Frontiers in Ecology and the Environment* 21-28 (February 2009) (with Gretchen C. Daily et al.)

Implementing the New Ecosystem Services Mandate: A Catalyst for Advancing Science and Policy, 31 *National Wetlands Newsletter* 11-13, 20 (March-April 2009) (with J.B. Ruhl & Iris Goodman)

Regulating Climate: What Role for the Clean Air Act?, 39 *Environmental Law Reporter* 10837-10841 (2009) (with Brigham Daniels, Hannah Polikov & Timothy Profeta)

The Importance of Curbing and Ending Population Growth to Achieve Sustainability, in *AGENDA FOR SUSTAINABLE AMERICA* 171-185 (John Dernbach ed., ELI Press 2009) (with Anne H. Ehrlich)

Corn Futures: Consumer Politics, Health, and Climate Change, 38 *Environmental Law Reporter* 10851 (2008) (with Jedediah Purdy)

Foreword: Making Sense of Information for Environmental Protection, 86 *Texas Law Review* 1347-1363 (2008) (with Douglas A. Kysar)

Is It Safe to Drink the Water?, 19 *Duke Environmental Law & Policy Forum* 1-42 (2008)

Christopher H. Schroeder

Public Choice and Environmental Policy: A Review of the Literature, in *HANDBOOK ON PUBLIC LAW AND PUBLIC CHOICE* (Dan Farber & Anne Joseph O'Connell eds., Elgar, forthcoming)

The United States Failure to Act, in *ECONOMIC THOUGHT AND THE FAILURE OF U.S. CLIMATE CHANGE POLICY* (David Driesen ed., MIT Press, forthcoming 2009) (with Robert Glicksman)

ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY (6th ed., Aspen Publishers, 2009) (with Robert Percival, Alan Miller & James Leape)

California, Climate Change and the Constitution, 35 *Environmental Law Reporter News & Analysis* 10653 (September 2007) (with others), reprinted in 25 *Environmental Forum* (Summer 2008)

Jonathan B. Wiener

Mechanism Choice, in Daniel A. Farber & Anne Joseph O'Connell, eds., *PUBLIC CHOICE AND PUBLIC LAW* (Edward Elgar, forthcoming 2009) (with Barak D. Richman), draft available at <http://ssrn.com/abstract=1408163>

Using Decision Analysis to Improve Malaria Control Policy Making, 92 *Health Policy* 133-140 (2009) (with Randall Kramer, Katherine Dickinson, Marie Lynn Miranda & others)

Theorizing and Generalizing about Risk Assessment and Regulation through Nested Analysis of Representative Cases, 31 *Law & Policy* 236-69 (April 2009) (with Brendon Swedlow, Denise Kall, Zheng Zhou & James K. Hammitt)

Society for Risk Analysis (SRA), Committee of Past Presidents, "Recommendations to OMB on Regulatory Review" (March 16, 2009) (chair of committee of 18 of the past presidents of SRA), available at http://www.sra.org/OMB_regulatory_review.php

Engaging China on Climate Change, 171 *Resources For the Future Magazine* 29-33 (Winter/Spring 2009)

Property and Prices to Protect the Planet, 19 *Duke Journal of Comparative & International Law* 515-534 (2009)

Climate Change Policy, and Policy Change in China, 55 *UCLA Law Review* 1805-1826 (2008)

Best Cass Scenario, 43 *University of Tulsa Law Review* 933-46 (2008) (contribution to Festschrift symposium issue honoring Prof. Cass Sunstein)

Intellectual Property and Alternatives: Strategies for Green Innovation, (Chatham House Energy, Environment and Development Programme Paper No. 08/03, December, 2008) (with Jerome Reichman, Arti K. Rai & Richard G. Newell)

Radiative Forcing: Climate Policy to Break the Logjam in Environmental Law, 17 *NYU Environmental Law Journal* 210-255 (2008) draft available as Nicholas Institute Working Paper No. 08-04, (November 2008)



Campus News



STAR COMMONS GETS LEED CERTIFICATION

THE U.S. GREEN Building Council granted the Law School's new Star Commons its Leadership in Energy and Environment Design (LEED) certification. LEED certification is an internationally recognized green building certification system that recognizes buildings using strategies aimed at improving performance across all important environmental metrics: energy savings, water efficiency, CO₂ emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts.

"The LEED certification expresses the Law School's commitment to environmental stewardship," said Professor **Tom Metzloff**, who managed construction of the Commons. ♪

DELPF PARTNERS WITH USDA FOR SYMPOSIUM ON ECOSYSTEM SERVICES MARKETS

The government's role in emerging ecosystem services markets will be the focus of the *Duke Environmental Law & Policy Forum's* annual fall symposium on Oct. 23. The daylong event is being co-sponsored by the U.S. Department of Agriculture (USDA) Office of Environmental Services and Markets.

Specialists from government, academia, and the private sector will come together to examine a range of policy options for compensating farmers and other land stewards for their provision of such ecosystem services — public goods — as clean water, flood protection, and pollination.

"Unless the landholders who provide these services receive compensation, then the services they provide are free and there's really no economic reason to manage their land so they keep providing those services," says Professor Jim Salzman, a conference organizer and pioneering scholar in the emerging and fast-growing field of ecosystem services markets. A key indicator of its relevance: Last year, the USDA established the Office of Environmental Services and Markets, its first new office in 30 years.

Partnership with the Office of Environmental Services and Markets in planning the symposium ensures that the topics discussed, such as the role of federal lands and standards development, will be highly relevant from a policy standpoint, Salzman notes.

In partnering with a key government division in planning its symposium, *DELPF* is following the highly-effective model used to plan the Clean Air Act conference held at Duke last March, which was planned with close input from policymakers in the EPA's Office of Air and Radiation. (See story, Page 1.)

"They provided key government speakers, and having their input helped ensure that the issues we talked about were incredibly policy relevant," comments Salzman, who also helped organize that conference. "They basically said, 'This is what we're struggling with and it would be great to hear a range of views on these issues.' It's not clear which of the options discussed they're going to take, but a big role of a university is to ensure that there is a meaningful discussion on issues of the day, and that worked very well."

For more information, see <http://www.law.duke.edu/journals/delpf/symposium>. ♪



LLM CANDIDATES CAN NOW PURSUE DUKE'S ENVIRONMENTAL LAW CERTIFICATE

TO RESPOND TO GROWING INTEREST in international environmental law and policy issues, Duke is offering a new provisional environmental law certificate to international LLM students who bring a minimum of two years of professional experience in the field. Students who are accepted to the program take intensive courses in the Law School and Duke's Nicholas School for the Environment and complete a substantial research project. ♪

Faculty news

Professor **Jim Salzman** was voted Professor of the Year for the 2008-2009 school year by Nicholas School students. It is the second time that Salzman has received that honor. ♪



Professor **Jonathan Wiener** concluded his yearlong tenure as president of the Society for Risk Analysis (SRA). The SRA is the leading scholarly body pursuing international risk analysis. "It has been bracing to be president of the SRA at a time when serious risk analysis is so vital," Wiener said. "The global crises we face in climate change, credit markets, and international conflict each derives in major part from flawed or neglected risk analyses." ♪



Turtle Advocacy

WHEN KAREN BEASLEY, beset by terminal cancer, asked her mother to use money from her life insurance policy to fund a program dedicated to sea turtle preservation, Jean Beasley didn't know where to begin. Karen had already started to build an organization for this purpose, but her mother Jean, a schoolteacher in Topsail Beach, N.C., was unsure about how to proceed after Karen's death.

"It took a turtle that had nowhere to go to push us into doing something," says Jean, now the director of the Karen Beasley Sea Turtle Rescue and Rehabilitation Center, leader of a hard-working corps of volunteers, and indefatigable advocate for the four species of turtle that frequent North Carolina's coastal waterways.

"This little turtle washed in and had a serious head injury," Beasley says, recounting her first turtle rescue in 1997. "I took the turtle to the vet school where they

STUDENTS RESEARCH REGULATIONS TO PROTECT SEA TURTLES

cleaned and bandaged the wound. I said, 'Can we come back to see the turtle in a few days?' They laughed and said, 'We don't have any place to keep a turtle.' So back it came with us."

The unlucky turtle launched the Sea Turtle Hospital and an ongoing community effort to protect endangered sea turtles. That effort is now aided by students and faculty in Duke's Environmental Law and Policy Clinic, who have studied the impacts of sonar testing off the coast of North Carolina and fishery regulation on the sea turtle population and provided counsel to Beasley as she develops an advocacy agenda.

"We were really trying to instruct the students that the role of lawyer or policy advisor goes beyond researching and analyzing the

applicable law and science to include a counseling role," says Michelle Nowlin JD/MA '92, the clinic's supervising attorney. "After the research we focused on counseling Jean about the ramifications and tradeoffs in the different actions she could pursue."

A grassroots effort

After bringing that first turtle home, Beasley says that she and a group of friends passed the hat to raise enough money to buy a tank, create a system to pump and filter water in from the sound behind the island, and feed the creature.

"The turtle went into the tank, we were nursing it, everything was great," Beasley says. "Until it started getting cold. We had no place inside, no way to heat water. We



ran a 150-foot extension cord across this lot and put a tent over the turtle tank.”

Beasley laughs at the memory of the heated turtle tent — in fact, she laughs a lot. If maintaining emotional equilibrium in the face of long odds was a necessity as a schoolteacher, her good humor is even more indispensable in her position with the Sea Turtle Hospital.

Of the six sea turtle species that are found in United States waters or that nest on U.S. beaches, all are designated as either threatened or endangered under the Endangered Species Act, according to the United States Fish and Wildlife Service. The Beasley center treats several individuals from each of the four species found in North Carolina waters — Loggerhead, Green, Leatherback and Kemp’s Ridley — at any one time.

“Whenever we get discouraged ... a turtle will come in that looks at you and literally hits you on the backside with their flippers and says ‘Stop wallowing in self pity here, and get going, we need you to do this!’” says Beasley.

Researching impact from military and fishing industry

Students at the Environmental Law and Policy Clinic have been working with the Sea Turtle Hospital for a year, says Nowlin.

“The first project we identified was commenting on a proposal that the U.S. Navy had for establishing a sonar training range off the coast of North Carolina,” she says. The proposed location bisected a state-designated sea turtle sanctuary, and the Navy did not take into account the effects of the sonar training on the navigation abilities of juvenile turtles.

“There were a number of different protocols that would be involved in the Navy’s training that would put a lot of detritus — parachutes, sonobuoys, and other trash — right in the middle of this raft of sargassum that floats along the Gulf Stream. It could potentially either look like food to juvenile sea turtles, or actually drown them.”

Students from the clinic reviewed the Navy’s draft environmental impact statement and submitted written comments.

“We were able to take a couple of students down to the coast for the Navy’s

public hearing, and they actually made comments at the hearing,” Nowlin says. “It was a really good opportunity for them to see how a government process works, to engage with the client in an intense way, to do some field research and literature studies around the science of sonar and sea turtle biology and behavior, and then to pull it all together.”

The clinic is also working with the Sea Turtle Hospital on regulations regarding bycatch, the accidental capture of sea turtles by fisheries in the sounds of North Carolina, particularly in the commonly-used pound nets and gill nets, which can easily snare and drown or injure turtles.

“[Jean] was concerned that there were insufficient regulations around that and wanted us to explore what the different regulatory options might be for protecting sea turtles,” Nowlin says. “They are entitled to federal protection, and it is against federal law to take or harm these turtles. So the capturing in these nets constitutes a take under the Endangered Species Act.”

Clinical students are studying the impact of the nets on turtle populations and on the species recovery plans developed by the National Marine Fisheries Service, and delving into applicable regulations.

“What are the regulatory options under the Endangered Species Act? What agencies have the authority and responsibility for the protection of sea turtles, in contrast with the regulations to ensure sound fisheries management? What we learned is that the regulation is divided between different federal agencies, and then again among various state agencies. So, combining all of that information, the students were able to come up with several different options.”

The students’ work and dedication has provided Beasley with the foundation she needs to develop and sustain her advocacy efforts.

“I couldn’t have been more thrilled when I first made contact with Michelle Nowlin about the possibility of some of the Duke environmental law students researching topics of interest to the Sea Turtle Hospital,” Beasley says. “I jumped on it like a flea on a dog. It has already had wonderful payoffs for the Sea Turtle Hospital.” ♡ — F.N.





Student Profile

Rhead Enion

'10

RHEAD ENION came to Duke Law with a master's degree in environmental management from the Yale School of Forestry & Environmental Studies and a strong interest in marine and coastal issues. He's been able to bolster his background with a wealth of experience in the classroom, in the field, and in the real-world legal forum provided by Duke's Environmental Law and Policy Clinic.

At Yale, Enion focused on coastal science and policy, taking classes on coastal marshes, hydrology, river restoration, and oceanography.

"My masters thesis was on detection of water quality in Chesapeake Bay and Long Island Sound using satellite imagery," he says. "And I worked as a graduate fellow with the Environmental Protection Agency's Long Island Sound Study, a science and technical advisory committee focused on environmental restoration of the Sound."

Enion, a native of Maryland's Eastern Shore, compared satellite imagery with on-the-ground sampling in the Chesapeake Bay and Long Island Sound, looking at transparency and light reflection. "In the Bay, that murkiness is a good proxy for how much sediment is in the water," he explains.

Enion enjoys hard science, but he also has policy experience, thanks to a post-undergraduate internship in the office of Senator Joseph Lieberman, I-Conn.

Enion says he then chose to attend Duke Law because he could marry environmental science, law, and policy through Duke's interdisciplinary opportunities.

"I knew I could take advantage of environmental classes and interact with students at the Nicholas School," he says. "And my Ocean and Coastal Law class [at the Nicholas School] and my work with the Environmental Law and Policy Clinic are two examples of that."



The clinic offered Enion a chance to work on two issues. "We represented the Yadkin Riverkeeper, voicing their concerns over a license renewal of a hydroelectric dam project on the Yadkin, and the other was research into stormwater runoff and mitigation efforts along the North Carolina coast."

Enion's clinical work involved assessing complex water-quality issues and applying them to state and federal rules regarding the environment and the licensing of hydroelectric dam operators.

"Rhead is a highly intelligent law student who has great facility with complex areas of the law," says clinic director Ryke Longest. "He stayed on top of a very complex set of legal issues involving the interplay of our state constitution, state rules and regulations, and the Clean Water Act. There was fairly advanced legal analysis involved in helping prepare the comments that we submitted on behalf of Yadkin Riverkeeper, and he showed a fine grasp of legal argument, research analysis, and the application of logic to a factually complex issue."

Enion has added to the practical environmental law experience he received during his clinical tenure with a summer internship with Oceana, the largest ocean conservation advocacy group

worldwide. He worked in the organization's Washington, D.C. office, alongside a senior litigator.

"One of the nice things about working for a nonprofit like Oceana is how much responsibility they give even interns," Enion says. "In our bycatch litigation, I drafted an objections brief appealing the ruling of a magistrate judge. I also worked on the first draft of our summary judgment motion in that case."

Enion spent most of his internship working on two cases.

"We were working on a lawsuit to force the National Marine Fisheries Service and the U.S. Fish & Wildlife Service to implement better protections of sea turtles in the North Pacific and North Atlantic and we're involved in an ongoing lawsuit to require the Fisheries Service to implement a scientifically sound methodology to measure bycatch in the New England fisheries," he explains.

Enion is pursuing federal clerkships and fellowships with the U.S. Department of Justice as a prelude to continued work on environmental issues after his law school graduation.

"The trick is that, in the public interest field, it's best to have a lot of experience, both work experience and educational experience," he says. "I think I've done well in both areas here at Duke." ♪ — F.N.



Alumni Profile

Justine Thompson '95

JUSTINE THOMPSON says she entered Duke Law with a clear goal in mind.

“I wanted to run a nonprofit environmental law organization,” she says. Thompson achieved her goal 10 years ago when she became executive director of GreenLaw, an Atlanta-based nonprofit — founded in 1992 as the Georgia Center for Law in the Public Interest — that provides free legal and technical assistance to environmental organizations and community groups throughout Georgia. She serves as lead attorney on most of GreenLaw’s high-profile cases in addition to her administrative duties.

A nature lover since her days growing up in San Francisco among California’s redwoods, Thompson says she developed an interest in environmental issues as a teenager. After graduating from the University of California at Berkeley in 1988 she worked in her home state and in Washington, D.C., for such organizations as the Sierra Club, the National Wildlife Federation, and the California Public Interest Research Group.

Thompson found that she enjoyed living in the South during her time at Duke Law and her subsequent clerkship for U.S. District Court Judge Robert L. Echols in Nashville. She decided to stay. “I felt that the need was the greatest and I could make the biggest impact here,” she says.

After doing “normal, boring, business litigation” as an associate with Chorey, Taylor and Feil in Atlanta, Thompson practiced environmental litigation as a staff attorney with the Southern Environmental Law Center.

After taking over as executive director at GreenLaw, she built the organization from a staff of one to its current size of six, who together have more than 70 years of legal and nonprofit experience.



Thompson is proud to have created an environmental justice program at GreenLaw that works predominantly in minority and impoverished communities, making it one of the few programs in the country to combine social justice and environmental issues.

The program was successful in preventing Complex Environmental in Atlanta from developing a 1,000-acre landfill in rural Taliaferro County, the state’s least-populous county where more than 25 percent of residents live below the poverty line.

Grateful community members celebrated the victory with a celebration where they presented Thompson with a \$2,500 donation to GreenLaw, using funds raised through ice cream socials, church events, and a haunted house, funds that otherwise would have been used to pay for a private attorney. “I raise about a half-million dollars a year, but that was the best check I ever got,” Thompson says. “It was special. I’ll always remember it.”

Thompson also is proud of GreenLaw’s Clean Air Project that launched in November 2000. The project is intended to clean up existing coal-fired power plants,

and prevent construction of new ones, and encourage the development of renewable energy in the state.

“There’s a lot of focus on protecting waterways in Georgia because it’s tangible, and you can see it. You go out on your river and you want that river to be clean, but every single day we’re breathing air,” Thompson says. “For some reason I have seen a disconnect between people’s concern about pollution and the actual air that they breathe even though it’s the most pervasive form of pollution in terms of its impact on people’s daily lives.”

Working with the Clean Air Act has brought Thompson’s career full circle: Early in her career, when she was an intern with the Sierra Club, she lobbied to have the legislation reauthorized; with GreenLaw she is working to make sure it is implemented properly in Georgia.

Thompson relishes the growth she’s seen at GreenLaw and in the number of public interest lawyers in her area. “When I first decided that I wanted to be a public interest environmental attorney there were very few positions, and the legal environmental community that worked on pro-environmental issues was really just a fledgling community, a handful of people here and there,” says Thompson, who now ranks as the senior female public interest environmental attorney in Georgia. “Now we have a Public Interest Environmental Law Coalition here that I helped start with attorneys that meet every month. There’s a real network of lawyers that are all working in conjunction together and a network of organizations that we work with and represent.”

Thompson credits former Duke Law Professor Laura Underkuffler with encouraging her to continue traveling down a road less traveled by many law school graduates and pursue a public interest career. She now provides similar counsel to students who hold ambitions like hers. ♡ — *Matthew Taylor*