

BRADFORD C. MANK

James B. Helmer, Jr. Professor of Law
College of Law, University of Cincinnati
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PROFESSIONAL

1991- present **UNIVERSITY OF CINCINNATI COLLEGE OF LAW, CINCINNATI, OHIO**

7/1/2001-	James B. Helmer, Jr. Professor of Law
1997-present	Professor of Law
1995-1997	Associate Professor of Law
1991-1995	Assistant Professor of Law

Courses: Environmental Law; Introduction to Law; Property; International Environmental Law; Administrative Law

Honors/Awards

Harold C. Schott Publication Award, 2004 (recognizing outstanding scholar of the year) (selected by Dean)

Harold C. Schott Publication Prizes, 2002, 2003, 2006 (recognizing excellent scholarship) (selected by Dean)

Goldman Prize for Excellence in Teaching, 2001 (selected by students & Dean)

Faculty Bonus Award for the period of September 1, 2002 through August 31, 2005 (selected by Dean).

Faculty Bonus Awards 1996, 1997 (Tier One Awards) (selected by Dean with advice of elected faculty committee)

Parker/McFarland Award of Excellence, Public Interest Service & Support, 2003 (selected by student/faculty committee)

Practice

1989-1991 **ASSISTANT ATTORNEY GENERAL**, State of Connecticut, Hartford, CT
(environmental law)

1988-1989 **ASSOCIATE**, Murtha, Cullina, Richter and Pinney, Hartford, CT
(environmental law)

1987-1988 **LAW CLERK**, Justice David M. Shea
Connecticut Supreme Court, Hartford, CT

EDUCATION

- 1984-1987 **YALE LAW SCHOOL**, New Haven, CT
J.D., June 1987 (Yale Law School does not grant graduation honors nor rank students.
Grades: "Honors" ("A") -- 17 Courses (83% of graded credit hours)
- Editor, **Yale Law Journal**, Volume 96 (1986-87)
Research Assistant, Professor Kate Stith
(76 **Calif. L. Rev.** 593, 595 (1988))
- 1979-1983 **HARVARD UNIVERSITY**, Cambridge, MA
A.B., Summa Cum Laude
History, June 1983
Phi Beta Kappa; National Merit Scholar

ARTICLES

Standing and Statistical Persons: Should Large Public Interest Organizations Have Greater Standing Rights than Individuals?, **Ecology Law Quarterly** (published at California-Berkeley) (forthcoming 2009).

Standing and Future Generations: Does *Massachusetts v. EPA* Open Standing for the Unborn?, **Columbia J. Envtl. L.** (forthcoming 2009)

Should States Have Greater Standing Rights Than Ordinary Citizens?: *Massachusetts v. EPA*'s New Standing Test for States, 49 **William & Mary L. Rev.** 1701-1787 (2008)

Can Plaintiffs Use Multinational Environmental Treaties as Customary International Law to Sue Under the Alien Tort Statute?, 2007 **Utah L. Rev.** 1085-1170 (2007)

Are Public Facilities Different From Private Ones? : Adopting a New Standard of Review for the Dormant Commerce Clause 60 **SMU Law Rev.** 157-207 (2007) (described as an "excellent treatment" of the *United Haulers* case, Kenneth L. Karst, "From Carbone to United Haulers: The Advocates' Tales," 2007 *Supreme Court Review* 237, 240 n.12).

After *Gonzales v. Raich*: Is the Endangered Species Act Constitutional under the Commerce Clause?, 78, **University of Colorado Law Review** 375-463 (2007)

Implementing Rapanos-Will Justice Kennedy's Significant Nexus Test Provide a Workable Standard for Lower Courts, Regulators and Developers?, 40 **Indiana Law Rev.** 291-349 (2007)

Title VI and the Warren County Protests, 1 **Golden Gate Environmental Law Review** 73-89 (2007) (invited symposium celebrating the 25th Anniversary of Warren County, North Carolina Environmental Justice Protests Opposing Landfill in Minority Area)

Prudential Standing and the Dormant Commerce Clause: Why the "Zone of Interests" Test Should Not Apply to Constitutional Cases, 48 **Arizona Law Review** 23-65 (Spring 2006)

A Scrivener's Error or Greater Protection of the Public: Does the EPA Have the Authority to Delist "Low-Risk" Sources of Carcinogens From Section 112's Maximum Available Control Technology Requirements?, 24 **Virginia Environmental Law Journal** 75-124 (Fall 2005)

Standing and Global Warming: Is Injury to All Injury to None?, 35 **Environmental Law** 1-84 (2005) (published by Lewis & Clark Law School, ranked No. 1 in environmental law by U.S. News & World Report in 2005)

Can Administrative Regulations Interpret Rights Enforceable Under Section 1983?: Why Chevron Deference Survives *Sandoval* and *Gonzaga*, 32 **Fla. St. U. L. Rev.** 843-896 (2005)

Are Anti-Retaliation Regulations in Title VI or Title IX Enforceable in a Private Right of Action: Does *Sandoval* or *Sullivan* Control This Question?, 35 **Seton Hall L. Rev.** 47 (2004)

Can Congress Regulate Intrastate Endangered Species Under the Commerce Clause?, 69 **Brooklyn L. Rev.** 923-1001 (2004)

The Murky Future of the Clean Water Act After *SWANCC*, 30 **Ecology Law Quarterly** 811-91 (2003) [University of California, Berkeley].

Suing Under § 1983: The Future After *Gonzaga v. Doe*, 39 **Houston L. Rev.** 1417-82 (2003).

Essay, Are Title VI's Disparate Impact Regulations Valid?, 71 **U. Cin. L. Rev.** 517 (2002) (Faculty Symposium/Solicited).

Legal Context: Reading Statutes in Light of Prevailing Legal Precedent, 34 **Arizona State Law Journal** 815-70 (2002).

Protecting Intrastate Threatened Species: Does the Endangered Species Act Encroach on Traditional State Authority and Exceed the Outer Limits of the Commerce Clause?, 36 **Georgia Law Review** 723-95 (2002).

South Camden Citizens In Action v. New Jersey Department of Environmental Protection: Will Section 1983 Save Title VI Disparate Impact Suits?, 32 **Envtl. L. Rep.** 10454-10479 (Envtl. L. Institute) (April 2002).

Proving an Environmental Justice Case: Determining an Appropriate Comparison Population, 20 **Virginia Env'tl. L.J.** 365-430 (2001).

(Co-author with Denis Binder et al) A Survey of Federal Agency Response to President Clinton's Executive Order 12898 on Environmental Justice, 31 **Env'tl. L. Rep.** 11133-11167 (Env'tl. L. Institute) (Oct. 2001) (authored EPA portion of article)

Using Section 1983 to Enforce Title VI's Section 602 Regulations, 49 **Kansas L. Rev.** 321-382 (2001).

The Draft Recipient Guidance and Draft Revised Investigation Guidance: Too Much Discretion for the EPA and a More Difficult Standard for Complainants?, 30 **Env'tl. L. Rep.** 11144-11174 (Env'tl. L. Institute) (Dec. 2000).

Should State Corporate Law Define Success or Liability? The Demise of CERCLA's Federal Common Law, 68 **U. Cin. L. Rev.** 1157-1198 (2000) (Symposium/Solicited).

Do State Brownfield Programs Violate Title VI?, 24 **Harv. Env'tl. L. Rev.** 115-187 (2000).

Title VI and Environmental Justice: Making Recipients Justify Their Siting Decisions, 73 **Tulane L. Rev.** 787-843 (1999).

Is There a Private Cause of Action Under EPA's Title VI Regulations?: The Need to Empower Environmental Justice Plaintiffs, 24 **Colum. Env'tl. L. Rev.** 1-61 (1999).

The EPA's Project XL and Other Regulatory Reform Initiatives: The Need for Legislative Authorization, 25 **Ecology Law Quarterly** 1-88 (1998) [University of California, Berkeley].

Textualism's Selective Canons of Statutory Construction: Reinvigorating Individual Liberties, Legislative Authority and Deference to Executive Agencies, 86 **Kentucky L.J.** 527-616 (1998).

American Mining Congress v. Army Department: Ignoring Chevron and the Clean Water Act's Broad Purposes, 25 **N. Ky. L. Rev.** 51 (1997) [Solicited/Symposium].

Is a Textualist Approach to Statutory Interpretation Pro-Environmentalist?: Why Pragmatic Agency Decisionmaking Is Better Than Judicial Literalism, 53 **Wash. & Lee L. Rev.** 1231-92 (1996).

Protecting the Environment for Future Generations: A Proposal for a "Republican" Superagency, 5 **N.Y.U. Env'tl. L.J.** 444-516 (1996).

Environmental Justice and Discriminatory Siting: Risk-Based Representation and Equitable Compensation, 56 **Ohio St. L.J.** 329-425 (1995).

What Comes After Technology: Using an "Exceptions Process" to Improve Residual Risk Regulation of Hazardous Air Pollutants, 13 **Stan. Env'tl. L.J.** 263-345 (1994) (quoted with approval in *Natural Resources Defense Council v. EPA*, --- F.3d ----, 2008 WL 2310951 n.5 (D.C. Cir. 2008)).

Superfund Contractors and Agency Capture, 2 **N.Y.U. Env'tl. L.J.** 34 (1993).

Preventing Bhopal: "Dead Zones" and Toxic Death Risk Index Taxes, 53 **Ohio St. L.J.** 761 (1992).

The Two-Headed Dragon of Siting and Cleaning Up Hazardous Waste Dumps: Can Economic Incentives or Mediation Slay the Monster?, 19 **B.C. Env'tl. Aff. L. Rev.** 239 (1991).

Out-of-State Trash: Solid Waste and the Commerce Clause, 38 **Wash. U. J. Urb. & Contemp. L.** 25 (1990).

Rewarding Defendant Cooperation Under the Federal Sentencing Guidelines, 26 **Crim. L. Bull.** 399 (1990).

Truth in Sentencing: Accepting Responsibility Under the United States Sentencing Guidelines, 25 **Gonz. L. Rev.** 183 (1989/90).

Do the United States Sentencing Guidelines Deprive Defendants of Due Process?, 37 **Drake L. Rev.** 377 (1987/88).

Broken Promises and Involuntary Confessions, 36 **Clev. St. L. Rev.** 423 (1988).

Post-Sentence Sentencing: Determining Probation Revocation Sanctions, 18 **Cumb. L. Rev.** 437 (1988).

Corrections Law: The Role of Employment Factors in Sentencing, 24 **Crim. L. Bull.** 249 (1988).

The Scope of Criminal Restitution: Awarding Unliquidated Damages in Sentencing Hearings, 17 **Cap. U. L. Rev.** 55 (1987).

BOOK CHAPTERS

Book Chapter on *Standing and Remedies*, Chapter 6, Global Warming (Michael B. Gerrard ed.) (American Bar Association March 2007)

Book Chapters on (1) *Title VI and Environment Justice* and (2) *Executive Order 12,898* in **Environmental Justice** (Michael B. Gerrard & Sheila Foster eds.) (Second Edition American Bar Association 2008).

The Rights of Indigenous Peoples to a Healthy Environment and Use of National Resources Under International Human Rights Law, in 235-248 **Effective Strategies for Protecting Human Rights: Economic sanctions, use of national courts and international fora and coercive power** (David Barnhizer ed.) (Ashgate 2001).

Environmental Justice Litigation Chapter in **Environmental Law Practice Guide** (Michael B. Gerrard ed.) (Matthew Bender 1998).

Book Chapters on *Public Participation* (Chapter 31) and *Other Remedial Issues* (Chapter 25), in **Brownfield's Law and Practice** (Michael B. Gerrard ed.) (Matthew Bender 1998).

WORK IN PROGRESS

PRESENTATIONS AND LECTURES

(I have made a scholarly presentation every summer for more than ten years at our internal summer faculty workshop series at the University of Cincinnati College of Law; I have not listed these presentations)

Should States Have Greater Standing Rights Than Ordinary Citizens?: Massachusetts v. EPA's New Standing Test for States, faculty workshop, University of Louisville, Louis D. Brandeis School of Law, November 1, 2007, <http://www.law.louisville.edu/faculty/workshops>

Continuing Legal Education, Evolving Climate Change Regulations: Developing Trends in Law and Litigation, Teleconference, Sponsored by *The Digest of Environmental Law* and the Legal Publishing Group of Strafford Publications, Wednesday, September 12, 2007 (discussing NEPA, state lawsuits, private litigation and obstacles to litigation)

Continuing Legal Education, Evolving Climate Change Regulations: Developing Trends in Law and Litigation, Teleconference, Sponsored by *The Digest of Environmental Law* and the Legal Publishing Group of Strafford Publications, Tuesday, November 14, 2006 (discussing NEPA, state lawsuits, private litigation and obstacles to litigation)

Environmental Justice and the Poor, Law Professors' Christian Fellowship Annual Conference, Catholic

University, Columbus School of Law, Washington, D.C., January 4, 2003

Environmental Justice and Air Permits, Community Conference on Air Pollution, Environmental Community Organization, Corryville Public Library, Cincinnati, Ohio, November 9, 2002

Environmental Justice: The Impact of Sandoval and South Camden on Title VI and Section 1983, Tulane Environmental Conference, New Orleans, Louisiana, March 8, 2002

Environmental Justice: The South Camden Case, Faculty Presentation sponsored by University of Cincinnati Law Review and Moot Court, Cincinnati, Ohio, March 4, 2002

The Legal Aspects of Environmental Justice, City of Cincinnati, Environmental Advisory Council, Nov. 28, 2001

The Demise of CERCLA's Federal Common Law and Corporate Successor Liability, Cincinnati Bar Association, Environmental Law Seminar, November 8, 2000.

The Demise of CERCLA's Federal Common Law and Corporate Successor Liability, Corporate Law Symposium, University of Cincinnati, March 9, 2000.

Title VI Litigation, Environmental Justice Symposium, College of Law, University of Cincinnati, April 23, 1999.

The Case for Affirmative Action, Affirmative Action Debate, Northern Kentucky University, March 29, 1999.

Endangered Species Symposium, College of Law, University of Cincinnati, April 17, 1998.

Bridging the Gap Between Environmental Lawyers and Engineers or Scientists, U.S. Environmental Protection Agency-University of Cincinnati College of Engineering Seminar Series, May 23, 1996.

Implications of the Federal Budget Crisis on Environmental Protection, U.S. Environmental Protection Agency-University of Cincinnati College of Engineering Seminar Series, February 22, 1996.

Environmental Compliance: A Short Course, University of Cincinnati College of Engineering, May 31 to June 2, 1995.

Environmental Implications of the North American Free Trade Agreement, University of Cincinnati College of Law, Environmental Law and International Law Societies, March 11, 1994.

Presenter, Preventing Bhopal: "Dead Zones" and Toxic Death Risk Index Taxes, 35th Annual Meeting, Association of Collegiate Schools of Planning (ACSP), Philadelphia, October 29, 1993.

Overview of Environmental Law, University of Cincinnati Department of Environmental Health, Graduate Seminar, February 3, 1993.

Using Alternative Dispute Resolution Techniques to Site Landfills, Workshop for Southwestern Ohio Solid Waste Management Districts, Miami University, Oxford, Ohio, Institute for Environmental Studies, November 6, 1991.

Composting Seminar, University of Cincinnati Department of Environmental Health, March 8, 1991.

MEDIA

Paul Webster, *Is it time to hand global warming to the lawyers?*, Toronto Star, April 29/May 3 2007 (“‘The lawsuits are putting pressure on companies,’ says Bradford Mank, a University of Cincinnati specialist on climate change and law. ‘It’s becoming much easier to force companies to discuss the issues around climate change.’”), at 2007 WLNR 8085117 (also available on LEXIS).

Fox Hannity & Co., Interview by Jeff Goldblatt, Ohio Residents Fight Eminent Domain Abuse, FOX NEWS, March 15, 2006, at 21:00, at 2006 WLNR 4347812 (also available on LEXIS) (discussing eminent domain case before Ohio Supreme Court, *Norwood v. Horney*).

Catherine Trevison, *Suit over emission threat hovers in legal gray zone*, Oregonian, October 5, 2005 (discussing standing in cases involving global warming) (available LEXIS & Westlaw)

Andrew Welsh-Huggins, State Supreme Court to hear eminent domain case, 10/3/05 AP Alert - Political 21:38:57 (discussing whether Ohio Supreme Court will follow *Kelo* in *Norwood* eminent domain case) (available Westlaw)

Kimbell Perry, Property seizure legal, Cincinnati Post, June 24, 2005 (commenting on *Kelo* public use/ eminent domain) at [1. http://news.cincypost.com/apps/pbcs.dll/article?AID=2005506240348](http://news.cincypost.com/apps/pbcs.dll/article?AID=2005506240348) (available Westlaw)

April Yee, City resumes fight on sources of bad odors, Cincinnati Post, June 12, 2004, <http://www.cincypost.com/2004/06/12/odor061204.html> (stating “Brad Mank, professor at the UC College of Law, worked with law students...to research and write a draft of a new ordinance [on air pollution for the City of Cincinnati]”) (available Westlaw)

Research By UC Law Students May Help Clean Up Dirty Air Problem, April 30, 2004 (stating “With faculty leadership by UC law professor Bradford Mank,” three students in UC Law’s Center for Law and Justice convinced Cincinnati City Council to enact Cincinnati Clean Air Act to address air nuisances and pollution in City) <http://www.uc.edu/news/NR.asp?id=1612>

Featured Guest, Newsmakers-Dan Hurley, WKRC-Channel 12 Television, April 18, 2004 (commenting on role of eminent domain in economic redevelopment by private developers, discussing case involving Rookwood Exchange, Norwood Ohio)

Featured Commentary, 'Takings' can be an appropriate way to stop decline, Cincinnati Enquirer, April 18, 2004 (commenting on role of eminent domain in private economic redevelopment) (available Westlaw)

Bruce Ritchie, Environmental Threats Persist at St. Marks, Fla., Refinery, Tallahassee Democrat, August 12, 2001 (commenting on role of environmental consultants) (available Westlaw)

John McQuaid, Industries Lose Civil Rights Case. Minorities Get Tool to Fight Pollution, New Orleans Times-Picayune, May 27, 2001 at O5 (describing Mank as “Title VI expert”) (available Westlaw)

John McQuaid, Can Spewing Smog . . . Violate Someone’s Constitutional Rights to Equal Protection Under the Law, New Orleans Times-Picayune, May 22, 2000 at A12 (quoting Bradford Mank on EPA’s Title VI disparate impact standards) (available Westlaw)

Interview, WLW-AM 700, Michael McConnell, Los Alamos Fires, May 16, 2000.

Primary Guest, Two Programs on Environmental Justice, Make Peace with Nature, Syndicated PBS Television Program, June 1st and June 8th, 1997.

EDITOR/REFEREE/ADVISOR

Faculty Advisor, **Immigration and Nationality Law Review** (2008-present)

Peer Reviewer, 2005, 2006, 2007, 2008 (select best environmental law articles published in previous year for LAND USE AND ENVIRONMENTAL LAW REVIEW (Professor Dan Tarlock, Chicago-Kent selects reviewers)

Peer Reviewer, National Science Foundation (reviewed social science/environmental projects for NAS funding in 2003 & 2004; reviews & proposals are confidential)

Editorial Board, **Projections 3: MIT Journal of Planning: Planning for Environmental Justice** (2002) (reviewed/edited papers for environmental justice issue)

UNIVERSITY SERVICE

Affiliated Faculty Member, Women Studies (2001-present) (Law School has joint M.A.-J.D. program
Chair, M.A. Thesis Committee, Anne Lucas, Environmental Justice: The Impact of Dioxin on Inuit
Women in Nunavut, Canada (Spring 2002)

CORE MEMBER, UC Health and Environmental Risk Institute (1996-present).

FACULTY SENATOR, University Faculty Senate (1993-1997).

RESEARCH DIRECTOR, Hazardous Substances Issues, Center for Dispute Resolution, University of
Cincinnati, College of Law (1991-1993) (Directed three interdisciplinary research projects
involving mediation and the siting of hazardous waste facilities. These projects produced articles
in **B.C. Env'tl. Aff. L. Rev.** and **Ohio St. L.J.** Worked with faculty from Miami University and
from the University of Cincinnati School of Planning and Department of Environmental Health).

LAW SCHOOL SERVICE

Committee Work, College of Law:

Reappointment, Promotion and Tenure Committee (elected by faculty) (Chair, 1998-99, 2002-2004, 2008-
2009); (Member: 1997-1998, 2000-2001, 2001-2002, 2004-2007, 2008-present)

Academic Policy and Curriculum Committee (Chair, 1999-2004, 2006-2007); (Member 1992-1993, Fall
2005, 2008-2009)

Committee on Committees (elected by faculty) (1994-1998, 2001-2006)

Faculty Appointments Committee (Chair, 2004-2005); (Member, 1995-1996, 1997-1998)

Dean Search Committee (appointed by Provost) (2004-2005)

Decanal Review Committee (elected by faculty) (2003-2004) (reviewed and wrote report regarding Dean
Joseph P. Tomain)

Chair, Career Placement Committee (1997-1998, 2002), Member 2003-2004

Honors Council (1993-1994, 1995-1996, 2000-2002, Chair 2002)

Center for Corporate Law Committee (1996-1997)

Admissions Committee (1993-1997)

Merit Pay Advisory Committee (elected by faculty) (1997)

Ad Hoc Technology Committee (1994)

Library Committee (1991-1993; 1994-1995)

Faculty Board Member, Center for Law & Justice (I advise students on public interest environmental
projects and legislative proposals)

Co-Author, **A Report to the City of Cincinnati Recommending the Enactment of a Modified, Cost
Effective Air Nuisance Ordinance** (November 2003), available at

<http://www.law.uc.edu/clj/envir0311.pdf> (In May 2004, Cincinnati City Council enacted ordinance
entitled Cincinnati Clean Air Act imposing fines on air nuisances in City)

COMMUNITY SERVICE

Cincinnati Environmental Advisory Council, (appointed by City Manager, advises City Council, City Manager and City Departments regarding environmental issues)
Chair, 2006-2009 (elected by EAC membership), Co-Chair (elected by EAC membership) 2005-2006,
Vice Chair 2003-2005 (elected by EAC membership), Member, 2002-present

Member, Green Cincinnati Steering Committee (appointed by Mayor Mallory) 2008-present

Member, City of Cincinnati Climate Change Steering Committee, 2007-2008, available at
http://www.cincinnati-oh.gov/cmgr/downloads/cmgr_pdf18280.pdf ; press release at
http://www.cincinnati-oh.gov/mayor/downloads/mayor_pdf18844.pdf (Mayor Mallory, April 24 2004)

Member, Working Group on Establishing Office of Environmental Quality (OEQ) for City of Cincinnati,
Spring 2006, Mayor Mallory and City Council member David Crowley named me to the OEQ working
group,(we drafted a mission statement for OEQ; in December 2006, OEQ was enacted in the City's
budget)

Member, Environmental Justice Working Group, Fall 2005-Winter 2006, Cincinnati City Council
member David Crowley named me to a seven-member group to help draft an environmental justice
ordinance for the City

Member, Environmental Decision-Making and Public Participation Working Group, Hamilton County
Environmental Priorities Project (1996-1997)

PROFESSIONAL ACTIVITIES

BAR ADMISSIONS

United States Court of Appeals for Third Circuit
State of Connecticut
United States District Court, District of Connecticut

Participant, ECONOMIC INSTITUTE FOR LAW PROFESSORS, sponsored by George Mason
University Law and Economics Center, Summer 1992.