

Mother Earth's counsel

Lisa Heinzerling, JD'87, helped convince the Supreme Court that the federal government must confront greenhouse gases.

When the news broke that the Supreme Court had ruled on the federal government's responsibility to fight global warming, legal scholar Lisa Heinzerling, JD'87, learned about the decision not from a court official but from one of her own gung-ho law school students.

The moment—"We won, 5-4! We won!"—took place April 2 at Georgetown University Law Center near Capitol Hill. Heinzerling, 46, ran into her student Justin Wade, who informed her that the high court's decision in *Massachusetts v. Environmental Protection Agency* had just gone online. "The two of us rushed to the nearest computer screens," Heinzerling recalled. "For the first time the Supreme Court was telling the federal government that it has the power to regulate greenhouse gases to prevent global warming."

Heinzerling's interest ran deeper than her environmental concern: she'd written the 48-page legal argument on which 29 petitioners—state and local governments, public-health organizations, and environmental groups—based their contention that the EPA had unlawfully failed to regulate greenhouse gases from motor vehicles. The high court agreed, decreeing that the 1970 Clean Air Act requires the government to regulate pollutants that cause global warming and ruling that the EPA must address automobile carbon-dioxide emissions.

Cars and power plants together emit 60 percent of the more than 5 billion metric tons of CO₂ dumped in the U.S. each year. Under the Bush Administration the EPA had insisted it lacked the authority to regulate these pollutants, but the April decision—overruling a 2005 federal-appeals court verdict—means the agency must review its rules

on greenhouse-gas emissions. Responding to the decision May 14 from the Rose Garden, President Bush ordered the EPA to develop programs to curb CO₂ from automobiles.

For Heinzerling, who teaches environmental law at Georgetown, the case was the latest in a series of battles. In addition to testifying before Congress six times on environmental regulation, she wrote the winning brief in the 2001 Supreme Court case *Whitman v. American Trucking Assns.*, which affirmed the constitutionality of the Clean Air Act.

Heinzerling, a past editor-in-chief of Chicago's law review, traces her environmental concern to her upbringing in small-town Chaska, Minnesota. "I spent lots of time outside as a kid," she says, including hiking trips along forest trails, "so the outdoors were really important to me." She also picked up "a strong sense of social responsibility" at the family dinner table. From her father Carl, a socially minded family-practice doctor, and her mother Patricia, an attorney who "wasn't afraid to go to law school when everyone told her women shouldn't be lawyers," Heinzerling learned to take "a stand on important public issues."

As a Princeton undergrad she studied philosophy, heading to law school in search of a "practical tool" to help her emulate the social ideals of her favorite philosopher, Bertrand Russell. "I was fortunate to study law at Chicago when I did because they placed so much emphasis on teaching and not just research," she says. "It was extremely intense, of course, and I worked hard. But I also enjoyed the setting. I remember these long lunch breaks in the Green Lounge—just sitting there for an hour and a half, talking with classmates and





Illustration by Richard Thompson

watching the passing parade.”

After law school she clerked for Seventh Circuit Appeals Judge and Law School lecturer Richard A. Posner, and then for Supreme Court Justice William J. Brennan Jr. In 1989–90 she began public-service work, helping to litigate Chicago equal-housing cases and then becoming an assistant attorney general in Massachusetts’s environmental-protection division. Joining Georgetown’s faculty in 1993, she’s had visiting stints at Harvard and Yale, coauthored three books, and done pro bono research on environmental issues for several advocacy groups.

For the *Massachusetts v. EPA* brief, Hein-

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zerling worked about nine hours a day from June through November 2006. “I started by reading the Clean Air Act as carefully as I could,” she said, asking herself: “What does this law tell us that Congress would have wanted, with respect to the biggest environmental issue of our time?” She concluded the act did require the EPA to regulate greenhouse gases, based on two key facts: first, the petitioners had been “injured” by global warming—Massachusetts, for one, lost significant shoreline to rising ocean levels; second, the act already required the agency to monitor and sometimes reduce emissions of CO₂ and other greenhouse pollutants.

Evidence organized, she drafted the opening brief. Although she “thoroughly enjoyed” the writing process, Heinzerling was frustrated that her 29 clients had their own phrasing ideas. Four-hour conference calls focused on individual words: “One person will hate *farraginous*”—from *farrago*, or hodgepodge—“and another will hate *mélange* or *blundered*. But if you take them all out, you’ll end up with a dull, lifeless document that sounds like it was written by a committee.” She kept all three words intact. Describing the EPA’s failure to comply with the Clean Air statute, for example, the brief noted: “In place of careful analysis of the text, structure, and history of the Act, EPA offered a farraginous list of reasons why it was declining to do what the statute so plainly tells it to do.”

Heinzerling’s brief also relied on her analytical ability. “There’s no doubt Lisa is a brilliant legal scholar,” said Cornell Law

professor Douglas A. Kysar, her colleague on several environmental cases. “What she’s done in her research is to partner her legal brilliance with a conviction that legal scholarship has to be connected to an underlying ethical basis.” Described by Harvard Law professor Jody Freeman as “tenacious and heroic” and by Chicago’s Cass Sunstein as “an extremely provocative, idealistic, and committed scholar who pushes hard to protect the environment,” Heinzerling has criticized some prominent conservatives for what she considers their environmental insensitivity.

Last year she critiqued Posner’s book *Catastrophe: Risk and Response* (Oxford, 2004) for his economics-based approach to environmental regulation. “I’m grateful to Judge Posner for the many valuable lessons I learned from him,” she said recently, “but I do disagree strongly with his cost-benefit approach to environmental regulation because I don’t think the catastrophic human damage that could result from pollution can be measured by restricting your analysis to a financial balance sheet.”

For his part, Posner calls Heinzerling “a distinguished student who did a terrific job [as his clerk]. Of course, she’s very liberal; that’s obvious. And she doesn’t like my cost-benefit analysis approach to environmental issues, which is fine. But she’s a good lawyer, very careful, and she wrote a good book of her own.” Heinzerling’s book on environmental regulation, *Priceless: Human Health, The Environment, And The Limits Of The Market* (New Press, 2003, coauthored with Frank Ackerman), argues that pollution’s effects can’t be measured by economics alone.

Heinzerling wrote the Massachusetts brief pro bono because, she says, she “wanted to be ready when my children ask me what I did about global warming.” She and her oncologist husband, Bob Lechleider, and children Mariah, 11, and Lucas, 8, go camping together in the Rockies, “and I think that has helped sensitize us to the importance of protecting the environment.” Similarly, she “learned from my own family that you have to take on the ethical responsibility for facing up to the issues of your day. I hope my own kids are learning that lesson as they see me struggle with these legal briefs.”

Perhaps they are. Recently, when Heinzerling asked Mariah if it was OK that her mother worked so much, she responded: “Of course it’s OK. How many moms write briefs—and then win—on global warming?”—Tom Nugent