

ENVIRONMENTAL LAW AT MARYLAND

University of Maryland School of Law

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This Newsletter is published by the University of Maryland Environmental Law Program.

*Robert V. Percival, Director
Environmental Law Program*

*Rena I. Steinzor, Director
Environmental Law Clinic*

Laura Mrozek, Editor

*Contributors to this Newsletter include
faculty, alumni, students, and friends of the
Environmental Law Program*

University of Maryland School of Law
500 W. Baltimore St.
Baltimore, MD 21201
(410) 706-8157

Environmental Law 1

CLINIC STUDENTS ARGUE CASE BEFORE THE D.C. CIRCUIT



Tanya Greeley and Todd Hooker

On April 2, two Environmental Law Clinic students, Todd Hooker (3D) and Tanya Greeley (3D), argued a case in the U.S. Court of Appeals for the D.C. Circuit. Representing the Military Toxics Project, a national coalition of citizens who live near military bases, the students challenged EPA's regulations governing when military munitions become hazardous waste. The students argued that EPA had failed to comply with the law by generally treating spent munitions as products rather than wastes. EPA had been ordered to issue the regulations as a result of a previous lawsuit handled by the Environmental Law Clinic.

The students argued before a panel that included Chief Judge Harry Edwards, and Judges Douglas Ginsburg and David Tatel. The judges asked numerous questions of the law students and the lawyers representing EPA and an industry trade association. The students handled themselves with such aplomb that Chief Judge Edwards took the unusual step of complimenting them from the bench after the argument had concluded. Chief Judge Edwards stated that the court initially had been apprehensive about letting law students argue such a complicated case. However, he indicated that those reservations had proven unfounded in light of the high quality of the students' advocacy. (See related article on page 3)

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The Road from Kyoto

by Alan S. Miller*

The penguins are melting.

Forme, one of several thousand who attended the December 1997 Kyoto Climate Negotiations in Japan, the sight of a trio of ice-sculpted penguins melting in the unusually mild weather outside the conference hall came to symbolize the importance - and the frustration - of trying to slow down global warming.

The search for solutions to the problem of climate change brought representatives of virtually every nation to the ancient capital of Japan. Our goal was ambitious -- to negotiate an international treaty to reduce emissions of carbon dioxide and other green house gases that scientists believe are affecting the global climate. The stakes and challenges were obvious to all: addressing the problem will require major changes in the sources and use of energy worldwide, but the price of inaction could be even greater and effectively irreversible.

There were many reasons for going. As a teacher of international environmental law with 20 years experience in global environmental issues, it was simply the place to be, one of the largest and most important international environmental negotiations in history. I also had professional reasons (and support) to be there in my new position as a climate specialist with the Global Environment Facility (GEF) -- an international organization that provides financing to developing nations to facilitate global environmental protection, including reductions in greenhouse gases.

The first surprise upon arrival was the magnitude of the event. Well over 100 countries and many international organizations had official delegations; the U.S. group exceeded eighty, while many small nations had only one or two. Business and environmental interests were well represented and even had the use of a separate building well supplied with computers and communication services. Whereas international agreements are usually concluded prior to such public events, this time was to be different. International diplomacy would unfold in the glaring light of world opinion, with only the modest privacy afforded by the restriction of key working groups to national delegates.

The cavernous, space-age conference site quickly became a kind of international community dedicated to competing opinions of climate change and what to do about it. While government representatives engaged in the labor of line-by-line negotiations, business and environmental interests fought for press attention, milled around exhibits, stared at computer screens, or caucused in separate meeting rooms.

The appearance of Vice President Gore to begin the final three days of negotiations had an enormous psychological effect. Simply by his appearance, he demonstrated U.S. seriousness.

Initially it seemed that the ten days allocated to reach an agreement was much too short. Nations reiterated past positions and divided along many lines. The European nations advocated the deepest cuts, while Australia, a major coal exporter, maintained the need for increased emissions. The U.S. and Japan were in the middle. Although by far the largest emitter, the U.S. position took on disproportionate significance. The U.S. virtually alone among industrialized nations urged that developing nations also accept at least some modest obligations. Developing nations maintained a united

front against new requirements and proposed increased financial support. Tensions ran high as the meetings went on long into the night and days passed with little sense of progress.

The appearance of Vice President Gore to begin the final three days of negotiations had an enormous psychological effect. Simply by his appearance, he demonstrated U.S. seriousness. Ultimately, however, it was his instruction to the U.S. delegation to show more flexibility that broke the gridlock and facilitated agreement by industrialized nations on a five percent overall reduction in emissions relative to 1990 levels in the period 2008 to 2012, including a seven percent reduction by the U.S.

What was accomplished, and where do we go from here? (Those who want a more formal review of the subject should start with 92 *Am. J. Int'l. L.* 315 (1998)) Another round of negotiations is scheduled in November, in Buenos Aires, in the hope of resolving some of the many unresolved details. But the real test of the agreement's success or failure will be its impact on private investors in renewable energy and other technologies with the potential to maintain economic growth without

the continued buildup of greenhouse gases. While a clean technology expo took place near the meeting hall, most delegates and reporters were too caught up in the short-term, win-lose atmosphere of the negotiations to notice.

Based on the exhibits and numerous recent corporate announcements, the Kyoto process may have accomplished far more than is yet apparent. Toyota, for example, showed off its new Prius automobile which can achieve 66 miles per gallon through a combination of an electric battery and a gasoline engine (now commercially available only in Japan). Shortly after Kyoto, Ford announced a new agreement with Mercedes Benz to commercialize a virtually pollution-free fuel cell car for introduction in 2001. In the weeks before Kyoto, two major oil companies, British Petroleum and Shell, announced more than a billion dollars in new investments in renewable energy technologies based partly on perceived technological progress and partly on the market demand created by the climate negotiations. Solarex, a Frederick, Md.-based solar company owned by large oil and gas companies, already has sold most of its production for next year despite tripling production and operating 24 hours per day, 7 days a week.

While most new technologies have come from companies based in the industrialized nations, developing nations have also begun to recognize their benefits. China, India, and Brazil all have reduced subsidies for fossil fuels and adopted major initiatives to promote renewable energy and energy efficiency. If we can accelerate this process, everyone can be winners--the industrialized nations as developers and exporters of technology, the developing nations who will grow as fast or faster, and the environment that will sustain us all.

Diplomats and legal scholars will no doubt argue for years to come about the meaning of what was agreed and which nation most effectively achieved their objectives. Renewed speculation will precede the next round of negotiations. In less dramatic fashion, the real answer to climate change may have already emerged outside the conference hall in the form of new technology.

**Alan S. Miller is an adjunct professor at the University of Maryland School of Law and a Senior Environmental Specialist at the Global Environmental Facility, in Washington, D.C.*

D.C. CIRCUIT ARGUMENT A TEAM EFFORT

by Todd Hooker*



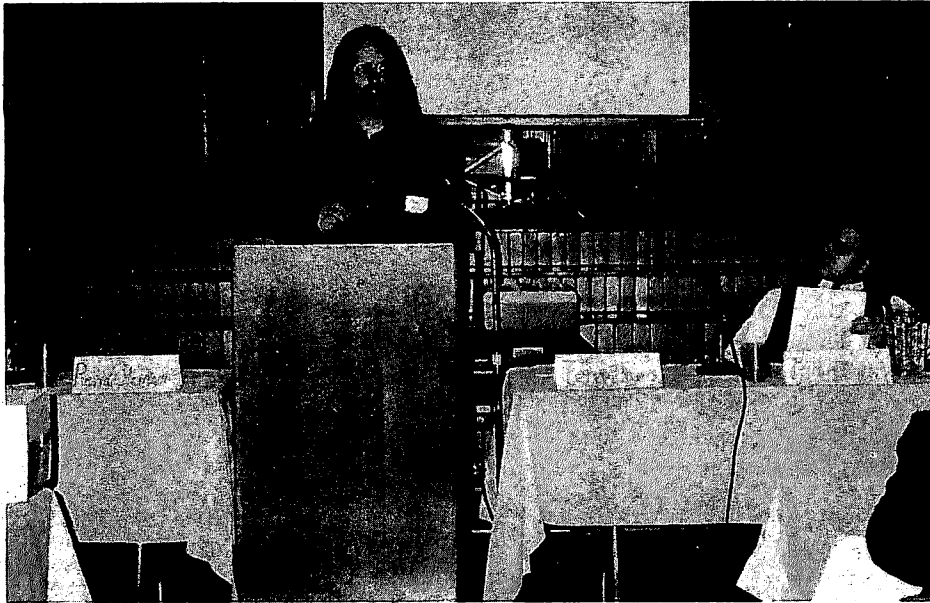
From left to right, Professor Rena Steinzor, Charles Dodge, Tanya Greeley, Todd Hooker, Eric Manas, Tara Thornton (MTP), Lori Schectel, and Cathy Lemar (MTP)

The fact that law students argued a case before the D.C. Circuit, while newsworthy, is not the real story behind the MTP case. (see article on p. 1) The most intriguing aspect of the case is the tremendous amount of teamwork it took to get the case to the oral argument stage. It is easy to forget that the MTP litigation began five years ago. Thus, the MTP team included all five "generations" of law students who worked on this case. This year's team included not only Tanya Greeley and myself, but also Charles Dodge, Eric Manas, Lori Schectel, and of course, Professor Rena Steinzor. In a relatively short period of time we were able to turn out two forceful and persuasive briefs and a 1500 page joint appendix. All five student members of the team contributed significantly to the briefs. In the end, we were all very proud of the briefs that we sent to the court, but we all know that it would have been impossible without long hours, late nights, and extraordinary cooperation by the members of the team. Similarly, preparation for the oral argument involved teamwork, teamwork and more teamwork. In all we had eleven moot court sessions in which the entire team participated. While this year will be remembered because the clinic litigated a case in the D.C. Circuit, for me and the others involved, the case will always represent a lesson in what discipline and teamwork, fostered by great leadership, can achieve.

**Todd Hooker is a May '98 graduate and in the fall will be an environmental attorney with a New Jersey law firm.*

RECLAIMING BROWNFIELDS FROM A CITIZENS' PERSPECTIVE

by Rena I. Steinzor*



Cleanup Coalition organizer Terry Harris welcomes participants to Citizens' Brownfield Conference

Brownfields cleanup is one of the hottest topics on the environmental agenda as the 1990s draw to a close. One recent bar convention even billed its session on the subject as a soup-to-nuts instruction on "turning brownfields into gold," promising to connect lawyers with bankers and environmental consultants. Indeed, it is not an exaggeration to suggest that brownfields laws are replacing the federal and state Superfund programs as the remedy-of-choice for lingering toxic waste contamination and that the importance of such programs may soon eclipse more traditional enforcement.

In the rush to take advantage of the rapidly multiplying state programs offering liability protection in exchange for cleanup and redevelopment, local citizens' groups often get lost in the shuffle. Notices announcing a public comment period on cleanup plans for abandoned neighborhood factories are overlooked or, when they are discovered, too often lead to the frustration of reading opaque technical documents that offer no understandable clue as to what is really going on.

This past spring, at the urging of a new client, the Cleanup Coalition, the University of Maryland Environmental Law Clinic sponsored the first "citizens' conference" on brownfields in the state and, perhaps, the region. (If readers hear of similar efforts, please let us know!) Participants spent the day learning the terminology and concepts necessary to take advantage of the public participation process provided by the

new Maryland law, using a *Citizens' Manual on Brownfields* written by student attorneys John Sheer, Stuart Barr, and Alison Rosso, all second-year students at the law school.

Maryland's brownfields law, more appropriately known as the Voluntary Cleanup Program because its scope extends far beyond abandoned lots in the blighted inner city, was enacted in April 1997. The Environmental Clinic's introduction to the law began on the ground floor, when a previous generation of students (Michael Carlson, Jennifer McGee, Patricia Deem, and Eric Veit) served as special counsel to state Senator Brian Frosh, a Democrat from Bethesda who chairs the Senate Environment Subcommittee. With the clinic's help, Senator Frosh drafted the

first bill on the subject in the fall of 1995, but it took two legislative sessions and many arduous hours of negotiation to produce a compromise endorsed by the full range of interest groups.

The program operates on a "pay-as-you-go" basis: applicants are required to pay a \$6,000 application fee and to reimburse MDE for any additional expense involved in reviewing their applications. In return, MDE review must abide by tight deadlines designed to ensure that applicants get a quick and meaningful response to their proposals. Any cleanup approved under the program must "protect human health and the environment." Needless to say, views of what this standard means in specific contexts often differ widely.

The Cleanup Coalition is an umbrella group for a wide range of environmental organizations and activists, including the Sierra Club, MaryPIRG, Clean Water Action, the Maryland Waste Coalition, and the Fairfield/Wagner's Point Neighborhood Coalition. Led by Terry Harris, a veteran activist in Baltimore and Annapolis, the group has as one of its primary missions to represent citizen interests in the implementation of the new Voluntary Cleanup Program. One of its first official acts was to file written comments on a proposal submitted by Struever Bros. to clean up the Port Liberty site. The "Citizens' Conference on Brownfields," held on April 29, 1998, at Westminster Hall, was its second major undertaking.

Citizen activists from a wide variety of local organizations attended the conference, which featured talks by Senator Frosh, who explained the legislature's goals for the new law; Bill Struever, the chief executive of the developer that proposed the Port Liberty project; Amanda Sigillito, an MDE toxicologist responsible for determining the adequacy of cleanup plans; and Theodore Henry, a University of Maryland toxicologist who works with citizens' groups on the same issues and who assisted in the preparation of the Cleanup Coalition's comments on Port Liberty.

In the afternoon, participants formed smaller groups to practice drafting comments on a hypothetical scenario that illustrated common problems that arise in evaluating a developer's cleanup plans. The Cleanup Coalition then held a brief organizational meeting. The Coalition decided to commit its resources to providing comments on a major MDE rulemaking designed to develop uniform, "numeric," "risk-based" standards for determining whether cleanup proposals will protect public health and the environment. According to MDE's Amanda Sigillito, the Agency is still drafting the rule and does not expect to issue it for comment for several more months.

If you want copies of the conference agenda, the Clinic's *Citizens' Manual on Brownfields*, or the scenario developed for the conference, please write or call us. Our address is: Professor Rena Steinzor, University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, Md. 21201. Our telephone is: (410) 706-8157. We ask that people interested in receiving the Manual contribute \$5.00 to cover photocopying costs.

**Professor Rena Steinzor is Director of the Environmental Law Clinic at the University of Maryland School of Law.*

VISITING PROFESSOR JILL EVANS TO TEACH *FEDERAL REGULATION OF HAZARDOUS WASTE*



Professor Jill E. Evans will be visiting the University of Maryland School of Law during the 1998-99 school year from Samford University, Cumberland School of Law, in Birmingham, Alabama. Born in Cleveland, Ohio, but transplanted to Los Angeles during high school, Ms. Evans graduated from the University of California-Irvine with a B.A. in Social

Ecology before heading to Chicago for graduate school. After earning both business and law degrees at Northwestern University in 1983, Ms. Evans served as a clerk for a year with the Hon. James E. Doyle, a federal district court judge in Madison, Wisconsin. Prior to joining the law faculty at Samford, Ms. Evans was a partner at the Los Angeles and Chicago offices of Keck, Mahin & Cate, a 375-lawyer Chicago law firm. During her 11-year practice, Ms. Evans

handled a diverse commercial litigation caseload, developing a specialty in the rapidly-emerging field of environmental law. She has experience in defending government regulatory environmental actions, as well as actions brought under state environmental protection statutes, and brings these experiences with her into the classroom environment. Ms. Evans currently teaches several courses in environmental law and concentrates her scholarship on environmental issues. She recently completed an article, to be published shortly, entitled *Challenging the Racism in Environmental Racism: Redefining the Concept of Intent*, which examines remedies available to minority communities challenging the siting of hazardous waste facilities.

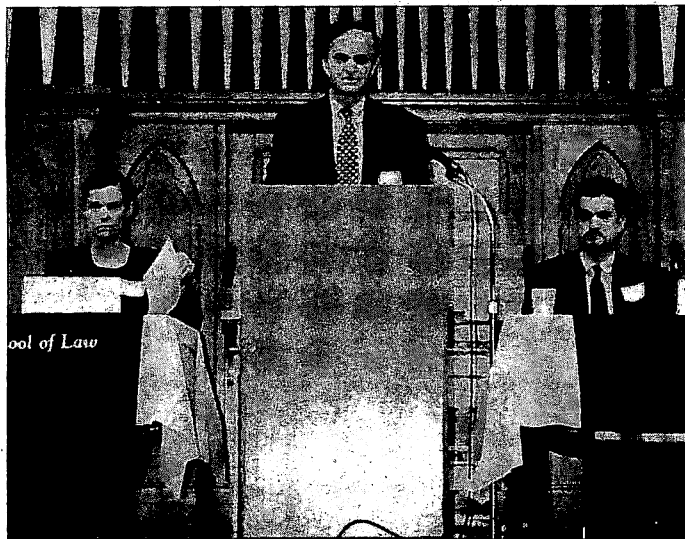
In the Fall semester, Professor Evans will be offering a seminar on Federal Regulation of Hazardous and Solid Waste. This seminar is intended as both an in-depth study of current federal hazardous and solid-waste laws and a broader examination of the legal issues common to federal environmental regulation generally. The class begins with a study of legal responses to abandoned hazardous waste sites. Starting with common law remedies, the class will move quickly to the liability scheme imposed by CERCLA and the regulation of ongoing hazardous and solid-waste generation, treatment and disposal under RCRA. The class will look at alternative strategies for responding to potential hazardous waste liability and proposed regulatory changes designed to encourage redevelopment and settlement. Other issues the class will consider include future trends in solid waste law and issues of social justice.

Professor Evans is married and has three children. Her family lives in Reston, Virginia and surrounding areas. We are delighted to welcome her as part of our environmental faculty.

The 1998 Ward, Kershaw and Minton Environmental Symposium

"Up in Smoke: Coming to Terms with the Legacy of Tobacco"

by Maureen O'Doherty*



(from left to right) Moderator, Maureen O'Doherty,
Speakers, H. Richard Smouse and Adam Levy

The University of Maryland Environmental Law Program, the Law and Health Care Program, and the *Journal of Health Care Law and Policy* presented the annual Ward, Kershaw and Minton Environmental Symposium on April 24, 1998. This year's topic, "Up in Smoke: Coming to Terms With the Legacy of Tobacco," proved to be both immediate and provocative because of the daily legislative and courtroom battles. Strong debate on the topics of Medicaid litigation, commercial speech, and economic impacts engaged the audience and panelists throughout the day. The discussion confirmed the awareness that a remedy for tobacco related illnesses is not as close as was hoped in June of 1997. As one of the speakers so aptly stated, "there are no heroes" in this saga. Political ambition, financial interest, and self-protection have controlled much of the discussion related to settlement with the tobacco industry. At the end of the day it was clear that the economics of this battle may result in claiming many more victims beyond those afflicted with smoking-related diseases.

The first panel of speakers addressed tobacco liability litigation and the proposed settlement. H. Russell Smouse is the lead litigator with the Law Firm of Peter G. Angelos. Attorney Smouse heads a team of lawyers representing the State of Maryland in their litigation against the tobacco industry to recover medicaid costs associated with tobacco-related illnesses. Smouse stated that approximately 7,000 Marylanders die each year from tobacco-related illnesses. Beginning in 1953 with a nationally published advertisement

called "The Frank Statement," Smouse alleged that the tobacco industry contrived to perpetuate a fraud regarding the consequences of smoking on health. Industry memoranda from 1958 and 1960 reveal data which linked smoking with cancer.

Since the early 1960s, evidence of nicotine manipulation was exposed through documents and whistle blowers. A former general counsel for Brown and Williamson stated in a 1963 memorandum that "[n]icotine is indeed addictive. We are then in the business of selling nicotine, an addictive drug effective in the relief of stress mechanisms." Smouse stated that nicotine is considered more addictive than cocaine.

Attorney Smouse indicated that one of the major flaws of the settlement by the Attorneys General and some subsequent legislative proposals was that the industry was given too much relief from tort liability. He stated that the unfortunate outcome of proposed settlements is that the ultimate burden will fall on the victim, the smoker.

Following Attorney Smouse was Adam Levy, Atlanta Bureau Chief for the Bloomberg Press and co-author of the book *People vs. Big Tobacco*. Mr. Levy outlined the history of the states' Medicaid litigation beginning with a solo practitioner from Mississippi named Michael Lewis. Having visited his former secretary who was terminally ill with a tobacco related illness, Attorney Lewis thought of an end-run around the industry's very successful defense in prior litigation. In the past, juries tended to be sympathetic to the argument that the smoker assumed responsibility for his/her illness. Attorney Lewis evaluated the costs to the state through Medicaid payments and realized that the same argument could not be made as the states did not assume the risk. He pressed his idea on a former law school classmate, Mississippi Attorney General Mike Moore. Attorney Lewis' brainstorm served as the basis for over forty states initiating litigation against the tobacco industry. Levy's lucid account of the settlement, which is powerfully portrayed in his book, demonstrated that there were no heroes. He believed that Attorney General Moore settled for less in order to boost his political position. The lawyers battled over contingency fees and President Clinton, in the end, failed to give any strong endorsement of the June 1997 settlement.

Ultimately, however, Levy believes that the June 1997 settlement will be the foundation of any legislation which may be hammered out in the future. He concluded that, like



(From left to right) Moderator, Professor Robert Percival, Speakers, Cassandra Yutzy, Pat Davidson and Burt Levin

it or not, the government and the people will have to work with the industry in order to achieve a viable solution. He did not feel that any legislator had the stomach for the concessions which might be necessary to reach that solution.

Robert Levy from the CATO Institute in Washington, D.C. gave a spirited response to Attorney Smouse's presentation. It was his opinion that the states, including Maryland, manipulated legislation in order to attain an unfair advantage in the courtroom against the tobacco industry. Levy strongly believes that Congress should cease tobacco subsidies and that stronger enforcement against those who sell to minors would be a more effective tool. Quoting George McGovern, Levy emphasized his aversion to overly intrusive government: "We cannot micro manage each other's lives. When we no longer allow those choices, civility and common sense will be diminished."

Professor Oscar Gray from the University of Maryland School of Law joined the panel during the question and answer period. During this time Professor Gray addressed the issue of "assumption of the risk" by smokers. It is his contention that, because of the long term disingenuousness on the part of the industry, the consumer was not fully apprised of the risks, especially of nicotine addition.

The second panel addressed social issues related to advertising, health and commercial speech. Patricia Davidson, Staff Attorney for the Tobacco Control Resource Center addressed the issues related to gender specific targeting in tobacco advertising. She specifically analyzed the target

group of teenage girls. Disagreeing with Robert Levy, Davidson stated that marketing seems to be the strongest factor influencing adolescents' decisions to smoke. She indicated that forty (40%) percent of white teenage girls smoke as opposed to twelve and one half (12 1/2%) of African American teenage girls.

Cassandra Yutzy, a lobbyist for the American Lung Association of Maryland, gave a lively presentation outlining the political obstacles faced by states attempting to regulate cigarette vending machines. She expressed her dismay that the American Lung Association was left out of the discussions and consultation regarding the June 1997 settlement with the Attorneys General and the tobacco industry. The American Lung Association is one of the few health groups which remains

skeptical about the settlement and some recent legislative proposals.

Burton H. Levin, counsel to the City of Baltimore, was involved in landmark litigation upholding Baltimore's Billboard Ordinance. Levin gave a comprehensive outline of the difficulties of overcoming first amendment barriers to restraints on cigarette advertising, a form of commercial speech. While such ads do not enjoy the same strict protections as other speech, a strong justification is required to uphold any restrictions. In the case of the Baltimore Ordinance, a convincing argument was made for restricting advertising in areas most likely to be frequented by children.

The third panel addressed economic considerations related to settlements, litigation and/or legislation concerning the tobacco industry. Among his many responsibilities to the farmers of Southern Maryland, Gary Hodge, Director of the Tri-County Council of Southern Maryland, represents the interests of tobacco farmers. Hodge emphasized the economic role of these farmers, stating that they were the agricultural lynchpin to the viability of Southern Maryland's economic health. He stated that these farmers, because they have opted not to receive federal subsidies, have been neglected in the settlement discussions thus far. In his presentation he argued that legislation addressing health concerns may have other serious ramifications on the livelihood of tens of thousands of tobacco farmers.

Professor Donald Garner is a legal scholar from Southern Illinois University School of Law. Garner has written widely on the subject of tobacco since the late 1970s. He is quoted



(From left to right) Moderator, Professor Rena Steinzor, Speakers, Gary Hodge and Donald Garner

in the book, *The People v. Big Tobacco* as stating that "[t]he industry that markets the most dangerous product sold in America is the only industry completely sheltered from the storm of 20th century products liability." Despite having written numerous amicus briefs opposing tobacco interests, Garner argued that the Attorneys General's settlement and proposed legislation would impose an unfair tax on the victims of tobacco. Because the majority of smokers are in a lower income bracket, already addicted to a tobacco product, they will have to pay the cost of financing any settlement or legislation. The irony of these recent proposals is that the financing of the penalty depends wholly on the population that will continue to smoke.

The afternoon ended with a round table discussion by the speakers and John P. Coale of Coale, Cooley, Lietz, McInerney & Broadus, P.C. and Professor David Hyman of the University of Maryland School of Law. Responding to the speakers and questions from the audience, Coale indicated that an opportunity has been lost following the historic June 1997 settlement. He stated that at no other time has there been such a gathering of forces from the White House, industry, state governments, health community and private bar.

Professor Hyman joined the argument over economic considerations, disputing calculations set forth to demonstrate the cost of treating tobacco related illnesses. He stated that the current excise tax on cigarettes already captures the financial burden of tobacco-related illnesses.

A final discussion focused on the tobacco industry's targeting of third world countries. It was the opinion of Coale that, while the issue was discussed by the Attorneys General and other participants in the settlement, it was understood that the states had no jurisdiction related to advertising and marketing in foreign countries. A related concern was raised regarding the use of African American law firms in the tobacco litigation since the African American community is strongly targeted through advertising. Coale responded that the multi-state, class action litigation in which he is currently involved has hired a number of African American firms, not because of their minority status, but because he was looking for the best firms to participate.

In the end, more questions were raised than answered, and no clear consensus emerged concerning recommended solutions for an undoubtedly serious problem. With such a diverse group of speakers and audience members, the sharp and lively exchanges that occurred were only to be expected. This symposium demonstrated that an intelligent discussion of many sides of this serious issue can occur with civility and open mindedness. Perhaps it was the afternoon tour of Westminster Church's historic graveyard and catacombs which prepared everyone to be good listeners during the roundtable discussion.

**Maureen O'Doherty, a '93 alumna of the University of Maryland School of Law, is an environmental attorney in Hamden, CT.*

Note from the Editor: On behalf of the Environmental Law Program and Health Care Program, we would like to thank Maureen O'Doherty for generously giving of her time and talent to organize the above symposium. You did a great job and we thank you.

If you are interested in writing an article for our next issue of the Newsletter, please call, e-mail or write to:

**Laura Mrozek
Editor, The Newsletter
University of Maryland School of Law
500 W. Baltimore Street
Baltimore, MD 21201
(410) 706-8157
e-mail - lmrozek@law.umaryland.edu**

STUDENT HONORS

PMI PROGRAM



Joe Pelletier ('98) has been selected as a 1998 Presidential Management Intern (PMI).

The PMI Program is administered by the U.S. Office of Personnel Management. For over 20 years its mission has been to recruit graduate students for training as senior federal government managers

and supervisors. Joe will be an attorney with the Department of Transportation in Washington, D.C.

Joe was active in the Maryland Environmental Law Society (MELS), and received the certificate of Concentration in Environmental Law at graduation. He worked as an extern with the Associate Legislative Director for Environment, Energy and Land Use at the National Association of Counties (NACo), and as a Legislative Policy Analyst at the Waste Policy Institute in Arlington, VA.

NNEMS FELLOWSHIP



Michelle Vanyo (1D) has been awarded a Fellowship with the Environmental Protection Agency's National Network for Environmental Management Studies (NNEMS). The NNEMS Program provides students with financial support to develop their research and analytical skills in environmental law and policy. Michelle's re-

search will be sponsored by EPA's Office of Policy, Planning, and Evaluation. Her study will focus on the impacts of sea level rise on coastal and wetlands property.

Michelle is a dual degree student working to receive her Masters in Public Management at the University of Maryland School of Public Affairs and her Juris Doctorate at the University of Maryland School of Law. She begins her second year in the dual degree program in the Fall and will specialize in environmental policy and law.

EPA SUMMER HONORS PROGRAM



Apple Chapman (2D) has been selected to participate in the U. S. Environmental Protection Agency's Summer Honors Program. She will be working in the EPA's Office of General Counsel.

The Office of General Counsel (OGC) is the chief legal advisor to the U.S. Environmental Protection Agency. The Summer Honors Program is the primary vehicle that OGC uses to recruit law students for attorney positions. Apple will be working in the Cross-Cutting Issues Law Office, which provides legal advice concerning laws that affect all of EPA's programs.

Apple is an executive board member of the Maryland Environmental Law Society. While in law school she is pursuing a Concentration in Environmental Law. Apple has served as a teaching assistant for Professor Rena Steinzor in the Environmental Law Clinic and as a research assistant for Professor Robert Percival, director of Maryland's Environmental Law Program.

An Extern's Perspective

A Different Kind of Environmental Externship: CEI's Center for Private Conservation

by Kimberle Dodd*

Entering law school with the intention of practicing international corporate law, environmental issues were the furthest thing from my mind. Once I realized that the field I was interested in, which consisted primarily of transactional work, would bore me to tears, I experienced one of those career panic attacks some of us have come to know all too well. This occurred at a point in the semester where THE SUMMER JOB was the hot topic. I eventually decided to take advantage of D.C.'s proximity and use my summer as an opportunity to sample different areas of policy. I spent time working on the Hill for Senator Kay Bailey Hutchison (R-Texas) and at the Competitive Enterprise Institute (CEI) working for the Environmental Studies Department. CEI is a public policy organization committed to advancing the principles of free enterprise and limited government. Pursuit of these principles provides ample opportunities for challenging current public policies.

It was during my time spent at CEI that I developed an interest in environmental law. CEI exposed me to the policy issues involved with environmental protection. While there is broad agreement that such protection is a worthwhile endeavor, there is far less agreement regarding how best to go about it. In recent years, there has been a dramatic increase in criticisms of conventional environmental policies and the underlying assumptions upon which they are based. CEI is a proponent of free-market environmentalism (FME) which suggests that those institutions upon which free and prosperous societies are built - private property, voluntary exchange, freedom of contract, rule of law - will best provide for the protection and advancement of ecological values. As such, FME represents a radical departure from the status quo in environmental policy. Contemporary environmental policies are typically based on the premise that only government action is capable of improving environmental quality. It is presumed that environmental problems are the result of market failures which produce externalities. In other words, the market fails to address environmental impacts that are external to exchanges in the marketplace, and therefore government action is required to regulate those economic activities and transactions that have an environmental impact.

Since all activities, from driving a car to turning on a light bulb, can have environmental impacts, the conventional environmental policy paradigm creates a justification for the regulation of all economic activity. According to Jonathan Adler, Director of Environmental Studies for CEI, economic central planning may be discredited, but the market failure thesis has been used to justify environmental central plan-

ning, a far more complex endeavor that is prone to produce even more disastrous results. FME, on the other hand, rejects



Kimberle Dodd

the market failure model. Rather than viewing the world in terms of market failure, we should view the problem of externalities as a failure to permit markets and create markets where they do not yet - or no longer - exist, argues Fred L. Smith, Jr., President of CEI. While environmental activists often disparage private ownership, the record of private owners in conserving resources is far superior to that of governmental agencies. For those of you still reading this article, my economic diatribe is over - scout's honor.

When the summer came to an end, I was offered the opportunity to continue working at CEI throughout the Fall semester. In all candor, I have to confess that I was hesitant to approach the committee at school for approval of my petition for externship credit. If you took a look at the sponsoring organizations then listed in the Environmental Law Program information packet, you could deduce why CEI stands out a bit among groups such as the Chesapeake Bay Foundation, Environmental Defense Fund, the National Wildlife Federation and the EPA. Nevertheless, I decided to test the waters and pose my request to Professor Percival.

Pausing for a moment - I would like to take advantage of this opportunity and thank Professor Percival for his continued help and support. Although our political views differ in some respects, he has never hesitated in providing me with assistance and advice. It is an unfortunate reality that some

other professors are not capable of placing the student's best interests ahead of their own.

To continue, Professor Percival presented my application to the committee, and with his support, my externship was approved. Thus, I was able to spend the fall semester working as an extern at CEI. The environmental studies department at CEI focuses upon issues such as wildlife management, private property rights, wetlands, environmental audits, ESA reform, and global warming. Having already spent a summer at CEI sampling different areas of environmental policy, my interests had become more defined. The majority of my externship research focused upon private property rights, in particular, state regulatory takings legislation. My primary project while at CEI was a monograph evaluating the state experience with regulatory takings laws in both Florida and Texas and drawing lessons from these experiences for the federal level.

My time spent at CEI was a welcome break from the daily monotony of classes. I feel as though I learned more through my externship than in the majority of required law school courses. While I do disagree with CEI's stance on certain issues, the organization consists of individuals who are willing to listen and discuss the reasoning behind their positions. Experiential learning, in my opinion, is a more effective and interesting method of education. To those students reading this article who are considering an externship, I cannot emphasize enough how valuable the experience was for me personally.

A native Texan, I had never been to Baltimore prior to my law school apartment search. In selecting Maryland Law, I based my decision primarily upon the school's excellent clinical law program. But I soon discovered that Maryland's Environmental Law program is equally outstanding. Perhaps fate was smiling on me. I fully credit my externship experience with providing and developing my interest in environmental law. As of yet, it has been the most valuable educational experience of my law school career.

I would like to thank Professor Percival, Jonathan Adler, Sam Kazman, and R.J. Smith for making my externship experience not only possible but enjoyable as well.

**Kimberle Dodd will be a third-year law student at the University of Maryland School of Law. She is currently serving as a summer law clerk to Judge Loren Smith, Chief Judge of the U. S. Court of Federal Claims.*

First Concentrations in Environmental Law Awarded to Graduates

The first certificates of Concentration in Environmental Law were awarded to eight members of the class of 1998 at graduation. The program recognizes students who choose to specialize in environmental law. The Concentration was approved by the Faculty Council in 1997. To qualify for the concentration, students must complete at least 17 credits in environmental courses as well as satisfying research and experiential learning requirements. Congratulations to:

Kelsey Bush
Renee Frank
Todd Hooker
Michele LeFavre
Joseph Pelletier
Diane Poling
Jerrold Poslusny
Barrett Vitol

THANK YOU BarBri

For the third year, BarBri has contributed a free bar review course to the Maryland Environmental Law Society (MELS). MELS auctions off the course and uses the proceeds to participate in EPA's SO₂ allowance auction every March. Thanks to BarBri, MELS was successful in retiring 4 tons of SO₂ in 1998.

Join the Peace Corps: Protect the Environment

by Darshana Patel*

I am a 1994 graduate of the University of Maryland School of Law currently serving as a Peace Corps Volunteer in the Dominican Republic. Most Americans think Peace Corps is an after college experience, but in reality Peace Corps attracts volunteers of all ages. It is an opportunity to assist in grassroots community development in the international arena.

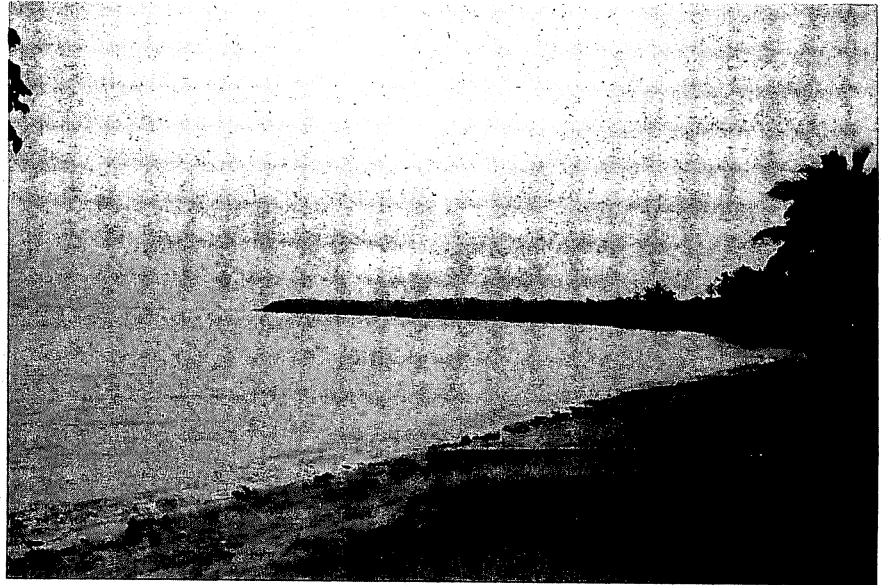
Peace Corps was established when John F. Kennedy received a 10,000 signature petition after delivering a speech at the University of Michigan where he solicited Americans to give two years of service living with the poor in foreign countries to effectuate change. Tarzie Vittachi, once UNICEF-External Affairs Deputy Executive Director said, "occasionally a man like John Fitzgerald Kennedy comes along and uses power to stir our common sense of humanity, to make change seem possible, to bring about a necessary revolution in the set perceptions of the world, in national and global relationships, to scout new ideas and to innovate."

This inspiration set the goals for Peace Corps which are to foster understanding of foreign cultures as well as their understanding of America and technology transfer which should ameliorate the living situations of those in the so-called developing world. These goals and a sincere desire to create change are the motivating forces of many Peace Corps volunteers.

The Dominican Republic (D.R.) is located on the Caribbean Island of Hispanola which it shares with Haiti. There is a very large immigrant community of Dominicans in the United States, primarily in New York. Thus, American culture has significant influence here in the D.R. not only due to U.S. domestic and foreign policy, but also as a result of the influx of tourists as the D.R. becomes a more popular tourist attraction. I am writing to share my experiences as a volunteer in this neighboring country.

I was assigned to be an agriculture volunteer in the Dominican Republic and arrived in the country in the summer of 1996. I was a neophyte to the world of

agriculture, being a city person from the East Coast. Luckily, there is an intensive training program which teaches enough to enable novices to promote some grassroots development. Never before had I really considered the multiple impacts agriculture has on the environment. I learned about the problems of feeding a rapidly increasing population, about erosion, contamination of water due to pesticide use, and other areas where the two fields overlap.



View of Las Cañitas

The Peace Corps agriculture program in the Dominican Republic focuses on incorporating sustainable agricultural practices in crop production including integrated pest management. Essentially, we hope to demonstrate and implement techniques that use organic pesticides and organic gardening, which is less technology and resource intensive than commercial agriculture practices, and to reduce soil contamination and erosion while increasing crop yields and soil fertility. With some training in these areas we were sent out to our sites.

My site is a beautiful rural fishing village off the Samana Bay called Las Cañitas about four hours from the capital Santo Domingo. Las Cañitas is a campo (village) of about 1,250 people located at the base of one of the several mountain ranges of the Dominican Republic. To the north is the Samana Bay and to the east and west lie two fresh water rivers. The major forms of income generation in Las Cañitas are agriculture and fishing. The predominant crops produced are rice, cacao (from which we get chocolate), coconuts, coffee, and root crops like plantains.

In such a picturesque setting surrounded by water, Las Cañitas has neither a running water system nor an irrigation system. I have worked on the construction of an irrigation dam since rice is a water intensive crop and I'm now working on obtaining a mechanized sprinkler system. I have also been working on getting an aqueduct system for running water. In addition to these water projects, I also am working on an organic garden plot with a community member and in conjunction with the State Agriculture Agency I'm offering a series of classes on organic agriculture.

The skills learned in law school can be a great asset for a Peace Corps volunteer. They have been very useful to me in organizing people into groups as well as strengthening existing organizations and creating and presenting options to a group in a clear manner. The information and skills I learned in clinic while working with the marginalized in the States are similarly useful when working with impoverished and poorly educated Dominicans.

There are frustrating aspects of the job as well. The democracy here is relatively new and governmental organization is a very convoluted organism when duties are not clearly divided among national, regional, and local government.

This leads to a lot of difficulty in implementing projects and locating resources for your community. And such poor organization permeates to community groups since there are no proper models and few people with practical experience working in (or with) a well-run organization. Yet with our experiences in the States, this is an arena in which small changes can lead to great strides in efficiency while making good use of your legal education.



Mural by Ecology Group "Duration of Garbage"

My other work focuses on environmental education. Las Cañitas's proximity to the Samana Bay has brought it to the attention of CEBSE, an environmental NGO which is aided by many international organizations like the Center for Marine Conservation. The area is the focus of environmental concerns because of its rich biodiversity, concern for endangered species like the manatee, mangroves, and marine turtles, as well as ecotourism proposals because of the beautiful beaches in the area.

I, with the help of CEBSE, organized an ecology group called *Comite Pro-Desarrollo de Las Cañitas*. We give charlas (a talk which is more interactive than a lecture) on garbage disposal and reuse and endangered species, have conducted an education campaign with murals, attempt to find a proper dumpsite and maintain regular garbage pick-ups, conduct regular beach and drainage ditch cleanups, as well as implement reforestation projects using indigenous species.

On the whole, the work has been very fulfilling. Peace Corps has permitted me to make great friendships and to realize that humans are a very important resource (and for a large part of the world the only resource), and that living and working with people with limited economic resources encourages you to think and implement creative solutions. Peace Corps is an opportunity to design and implement projects that consider environmental impacts and to effectuate change in people's thinking and activities. I encourage those who seek the adventure of travel and experiencing a new culture, the challenge of learning a new language, and the desire to work on a grassroots level to effectuate change - economic and social, to consider working with Peace Corps.

**Darshana Patel is a '94 graduate of the University of Maryland School of Law who is now working for Peace Corp in the Dominican Republic.*

POLLUTION PREVENTION IN THE MARITIME INDUSTRY: THE ISM CODE

Jeanne M. Grasso*

The maritime industry is going through a revolution in its approach to safety and pollution prevention. In the past, emphasis was placed on equipment standards, technological advances, and imposing new prescriptive requirements on vessels. Over the last few years, however, attention has focused on people and the human element as the most effective means of preventing incidents and accidents, e.g., oil spills. This approach represents a significant change in thinking in the maritime industry, recognizing that despite the

operators that have an impressive safety record. Implementation of the ISM Code is targeted to some degree on forcing bad operators to either expend monies to improve their safety practices or go out of business, thus creating a level playing field for existing quality operators who already invest in safety and pollution prevention. Companies are coming to the realization that safety and pollution prevention are business issues that can have a major impact on a company's bottom line. In other words, it is much more economical to invest in effective systems to protect employees and keep cargoes out of the water and off the beach than to deal with the public outrage and legal and financial issues related to a major marine casualty and/or spill incident.

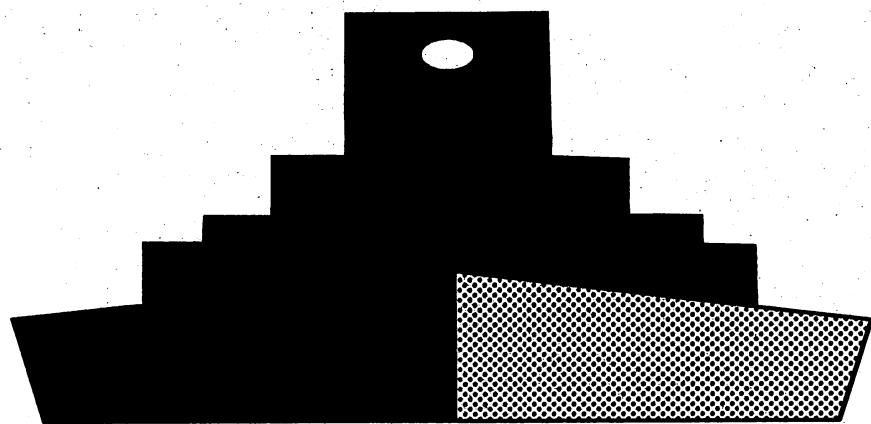
BACKGROUND AND ENTRY INTO FORCE

The ISM Code was developed and ultimately adopted in May 1994 as Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS), 1974,² as a result of the recognition that human factors play a significant role in marine safety and environmental protection. The

ISM Code recognizes that appropriate organization and management, both onshore and at sea, is needed to ensure safety and protection of the environment. The ISM Code is intended to change the current approach of passive regulatory compliance to a proactive and aggressive approach to safety and environmental protection.

The ISM Code will become mandatory on July 1, 1998 for passenger vessels, cargo high-speed craft, oil tankers, chemical tankers, gas carriers, and bulk carriers of 500 gross tons or more engaged on a foreign voyage, and on July 1, 2002 for other cargo ships and self-propelled mobile offshore drilling units of 500 gross tons or more engaged on a foreign voyage.

In the United States, Congress enacted legislation to require the Coast Guard to implement the ISM Code. The Coast Guard Authorization Act of 1996 added a new Chapter 32, Management of Vessels, to Title 46, United States Code. Although amendments to SOLAS are typically self-executing, the Coast Guard's view was that legislation was necessary because, while the Coast Guard had the authority to inspect vessels under Title 46, it lacked authority to require an audit of a company's safety management system at its office as required by the ISM Code. On December 24, 1997, the Coast



technological innovations and modern equipment on today's vessels approximately 80 percent of all serious marine casualties are attributed in some degree to human error.

The international community and national regulatory agencies are addressing problems resulting from human error through legislative and regulatory efforts. In the United States, the human element is the focus of the U.S. Coast Guard's Prevention Through People initiative, a government-industry partnership addressing the human element's role in marine casualties. And, the human element was the driving force behind the International Maritime Organization's¹ adoption of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code).

The ISM Code's purpose is to provide an international standard for the safe management and operation of ships and for pollution prevention. Because all shipping companies are different, the ISM Code is based on principles and objectives, rather than prescriptive requirements. The Code's goal is to encourage a safety culture in the world's shipping industry. While there are undeniably bad operators in the shipping industry, as there are in any industry, there are also good

Guard published a final rule implementing the ISM Code for certain U.S. vessels in the foreign trade and foreign-flag vessels operating in U.S. waters.

REQUIREMENTS OF THE ISM CODE

The ISM Code's objectives are to ensure safety at sea, prevention of human injury or loss of life, and protection of the marine environment. The shipowner's safety management objectives pursuant to the ISM Code should provide for safe practices in ship operation and a safe working environment, establish safeguards against all identified risks, and continuously improve safety management skills of personnel ashore and at sea, including preparing for emergencies related both to safety and environmental protection. To accomplish these objectives, the ISM Code requires a link between the shipowner and the seafarers aboard its vessels. The ISM Code requires the development of a safety management system that includes:

- a company safety and environmental protection policy;
- instructions and procedures to ensure safe operation of ships and protection of the environment;
- procedures for preparing for and responding to emergencies;
- defined levels of authority and lines of communication between shore and shipboard personnel, and identification of a designated person onshore responsible for ISM Code compliance;
- procedures for reporting accidents and ISM Code non-conformities; and
- procedures for internal audits and management reviews.

The implementation of a safety management system requires a company to document its management procedures to ensure that conditions, activities, and tasks, both ashore and onboard, are executed in accordance with statutory and company requirements. The Coast Guard estimates that it may take 12 to 18 months to develop and implement an adequate safety management system. Assessments of compliance with the ISM Code are carried out both onshore and aboard ship by the vessel's flag state. The shipowner will be issued a Document of Compliance (DOC) following verification that the shipowner's safety management system complies with the requirements of the ISM Code. Shore-based management must have a valid DOC before any

onboard assessment can be carried out to determine if the ships under the company's management meet the requirements of the ISM Code. Each vessel will be issued a Safety Management Certificate (SMC) following verification of ISM Code compliance.

An essential feature of the ISM Code is its recognition of the importance of periodic internal and external audits. Internal audits involve self-evaluation, identification and documentation of non-conformities, and corrective action. External audits are to ensure that the requirements of the ISM Code are met based on an independent review of the procedures and documents that make up the safety management system. Through this audit process, a myriad of data is collected and maintained concerning every aspect of a company's operations, including inspections, non-conformities, training, maintenance, manning, procedures, and drills.

THE ISM CODE ENFORCEMENT REGIME IN THE UNITED STATES

As previously noted, the ISM Code becomes effective on July 1, 1998, for certain vessels. In preparation for implementation, the Coast Guard published an interim final rule on December 11, 1997, requiring vessels subject to the July 1 compliance date to provide advance notice of arrival information related to ISM Code compliance. Specifically, this rule requires vessels to include their ISM certification status in notice of arrival messages that are routinely sent to the Coast Guard 24 hours before entering a U.S. port. This allows the Coast Guard to monitor compliance with ISM Code certification requirements prior to the July 1, 1998 implementation date. Once ISM Code requirements go into force, the Coast Guard can then more effectively allocate its resources and determine appropriate enforcement priorities prior to a vessel entering port.

The Coast Guard makes it emphatically clear that vessels not having ISM Code certificates on board will be denied entry into any U.S. port after July 1, 1998. Further, vessels subject to the ISM Code may be boarded under the Coast Guard's existing Port State Control Program upon their arrival in port. The Coast Guard also makes it clear that if a vessel is found to have valid ISM certificates but has not properly implemented or maintained its safety management system, the vessel will be detained and may be prohibited from discharging cargo. In such a case, the Coast Guard will ask the vessel's flag state to attend to the vessel and ensure that actions are taken to correct the non-conformities to the vessel's safety management system prior to the vessel departing port. If the non-conformities are serious, the vessel may be detained for a prolonged period.

Cont. on page 16

LEGAL IMPLICATIONS OF THE ISM CODE

Implementation of the ISM Code in the United States raises a host of legal issues. From an environmental viewpoint, it brings into question a vessel owner's ability to limit its liability under the Oil Pollution Act of 1990 and raises issues with respect to criminal enforcement of environmental laws.

Oil Pollution Act of 1990 (OPA 90)

OPA 90 establishes limits of liability for parties responsible for oil spills into waters of the United States, i.e., out to 200 miles. Liability limits are based on a vessel's size and type, e.g., an oil tanker's liability limit for an oil spill is \$1200/gross ton, while a cargo ship's liability limit for an oil spill (i.e., fuel oil) is \$600/gross ton. Responsible parties are, for the most part, strictly liable for removal costs and damages up to their limits of liability. Damages include damage to natural resources, real and personal property, subsistence use, lost revenues and profits, and costs of providing increased or additional public services during and after a spill response. Accordingly, the potential damages resulting from a spill are extremely high.

Limits of liability, however, do not apply where an incident was proximately caused by the gross negligence or willful misconduct of, or violation of an applicable federal safety, construction, or operating regulation by, the responsible party. Whether a vessel owner/operator failing to comply with the ISM Code will be a violation of an applicable federal safety or operating regulation will be determined by the courts. Now that the Coast Guard has promulgated regulations implementing the ISM Code, however, it is likely that a failure to comply with the ISM Code will be construed to be a violation of an applicable safety or operating regulation and a responsible party will lose its liability limitation if the violation is the proximate cause of an incident. This is because the ISM Code sets a standard for establishing procedures and instructions concerning the safety of the vessel and prevention of pollution. Accordingly, shipowners have a huge incentive to comply with the ISM Code.

Criminal Liability for Environmental Crimes in the United States

Criminal enforcement of environmental laws is at an all-time high in the United States. A few years ago, the U.S. Department of Justice announced that the maritime industry was at the top of its target list for criminal prosecution of environmental violations. In addition, in October 1997, the Coast Guard published a Commandant Instruction on the Criminal Enforcement of Environmental Laws designed to provide guidance to field units and investigating personnel

regarding criminal referrals to DOJ for environmental violations under the Coast Guard's jurisdiction. The stated purpose of the Commandant Instruction is to establish procedures to promote the successful criminal prosecutions of corporations and/or individuals for violations of federal marine pollution laws and regulations. This new trend has emerged as a result of a series of recent Federal prosecutions and investigations of vessel owners and operators, including corporate executives, managers, and individual crew members, for violations of U.S. environmental laws.

Thus, with this increased emphasis on criminal enforcement of environmental laws, one of the questions looming before the maritime industry is: "Will implementation of the ISM Code provide the shipowner protection from prosecution for environmental violations or will the ISM Code be used against the shipowner"? As a general matter, the answer lies in the hands of the shipowner.

Aggressive compliance and proper implementation of the ISM Code may be a shipowner's best defense. Proper documentation of non-conformities and prompt corrective action will provide strong evidence that whatever happened was not standard company practice but rather was aberrational. Thus, ISM Code documentation can demonstrate a company's commitment to safety and environmental compliance. The paper trails from ISM Code documentation requirements can be exemplars demonstrating that the company is an environmental good citizen that identifies problems, reports them as required by law, and promptly takes corrective action, including disciplining of employees where warranted. Proper documentation and prompt correction of deficiencies can go a long way in convincing a prosecutor that civil or administrative penalties are more appropriate than criminal prosecution.

Conversely, if compliance is viewed as a paperwork exercise, a shipowner may provide a roadmap for a prosecutor to follow because the documents required to be maintained by the ISM Code often evidence violations of environmental laws. A company's safety management system establishes a standard of conduct for that company and a prosecutor, when investigating an incident, will hold that company to that standard of conduct. If a company merely establishes a safety management system on paper, but does not fully implement and comply with the system, it will be inviting strict enforcement and severe penalties for violations. This is because all company activities, including compliance with ISM requirements, will be subject to intense scrutiny in the aftermath of a marine casualty or environmental incident. Failure to properly implement the safety management system will likely demonstrate simple negligence, if not gross negligence or willful misconduct. The ISM Code therefore has serious implications, not only for a company's operations, but for the

liability exposure of senior management in their individual capacities.

CONCLUSION

The human element will always play a role in marine casualties. And, no matter how much time, effort, and resources a company puts toward a safety management and pollution prevention system, it is unrealistic to think that oil spills can be eliminated entirely. The ISM Code, however, gives shipowners a framework for ensuring that the necessary steps are being taken to reduce the likelihood of incidents and accidents.

The ISM Code provides an opportunity for companies, regardless of size and organization, to reassess and modify their operating procedures to better ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the marine environment. Through ISM, a company can identify problem areas and fix them *before* an accident or pollution incident occurs. The more a company learns to use and rely on its safety management system, the more its operations will be enhanced. Improvements in operations and reductions in incidents will undoubtedly result in a better bottom line, which is not only good for the shipowner, but also good for the environment.

Footnotes

¹ The IMO is an agency of the United Nations responsible for regulating maritime safety and pollution prevention.

² The United States is a contracting party to SOLAS, the most comprehensive of all treaties dealing with maritime safety.

**Jeanne Grasso, a 1994 graduate of the University of Maryland School of Law, is an associate at Dyer Ellis & Joseph specializing in maritime and environmental law.*

FITZSIMMONS TO CHAIR WETLANDS COMMITTEE



Ocean City attorney Erin Fitzsimmons ('91) has been appointed by Governor Parris Glendening to chair a 28 member committee charged with restoring 60,000 acres of wetlands in Maryland.

Last year, Governor Glendening called for a voluntary cooperative effort to restore the tens of thousands of acres of Maryland's tidal and nontidal wetlands that have been lost since the 1940s, moving the State's goal from "no-net-loss" to one of "net-gain." Following the Governor's lead, the Chesapeake Bay Executive Council last fall issued a directive to the Bay states to set a "net gain" wetlands goal throughout the watershed.

The new State Wetlands Restoration Steering Committee will help guide the State's restoration efforts by identifying areas that would be suitable for wetland creation or restoration projects, working with landowners on innovative funding options, and launching an all-out effort to educate the public about the importance of preserving and restoring these important natural resources.

The Governor said the committee also will develop a wetland conservation plan, identify priority protection and restoration areas, provide guidance and technical support for wetlands projects and recommend incentives for wetland creation.

Fitzsimmons, whose Ocean City practice includes environmental and wetlands law, joins key business, agricultural and environmental leaders and top local, state and federal government officials in the governor's innovative endeavor.

ALUMNI UPDATE

1989

Christopher Cook is an attorney with the Maryland Energy Administration in Annapolis, Md. **Pamela Wexler** is an associate with the Cadmus Group, Inc., an energy & environmental consulting firm in Alexandria, Va. Pamela specializes in international atmospheric issues, ozone depletion and climate change. She also is vice-chair of the ABA Special Committee on Climate Change & Sustainable Development, and teaches a course on "Global Environmental Change" at the University of Maryland College Park.

1990

Joe Espo recently has become partner with the law firm of Brown, Goldstein & Levy in Baltimore. **Christyne Neff** is an associate with Kahn, Smith & Collins in Baltimore.

1991

Stephanie Pullen Brown is an attorney-advisor with EPA, Office of Enforcement and Compliance Assurance in Washington, D.C. **Sandy Saltzman Fink** is studying for her Ph.D in Environmental Policy at University of Maryland Baltimore County. **David B. Fischer** is Counsel for the Chemical Manufacturers Assn., in Arlington, Va. He provides legal support to the Chlorine Chemistry Council of CMA. David is the father of two children. **Erin Fitzsimmons** is an Assistant Professor at Salisbury State University. Erin teaches environmental law, environmental policy, and politics of the Chesapeake Bay. In addition, Erin has a private practice in Ocean City, Md. In January, Erin was appointed by Governor Parris Glendening to chair a 28 member committee charged with restoring 60,000 acres of wetlands in Maryland (see article on page 17). **Joshua Gordon** is a sole practitioner practicing appellate work in New Hampshire. He's also involved in representing the anti-nuclear/ratepayer organization and representing an occasional homicide defendant. He has two children. **Ann Hobbs** is a patent attorney with Pillsbury, Madison & Sutro, LLP in Washington, D.C. **John F. Hopkins** is an environmental attorney with the consulting firm of Fluor Daniel GTI in Norwood, Ma. **Carol Whitehurst** is an Environmental Project Manager with the Army Environmental Center, Edgewood, Md.

1992

Carol Iancu is an Assistant Attorney General with the Environmental Protection Division of the Massachusetts AG's Office in Boston, Ma. **Tom Lavelle** is an attorney for ADI Technology Corp. in Arlington, Va. He is involved in projects providing regulatory support to the Chief of Naval Operations,

Environmental Protection, Safety and Occupational Health Division and environmental compliance issues for the Naval Sea Systems Command's (NAVSEA) submarine recycling program.

1993

Ali Alavi is an attorney with Horsehead Resource Development, Environmental Dept. in Palmerton, Pa. **Darrell Cook** is an attorney with the National Security Administration (NSA) in Fort Meade, Md. Darrell is married to Jill Frost, a '93 graduate. They recently purchased a home in Otterbein. **Lorraine Ebert** is an attorney with the Office of Administrative Hearings in Hunt Valley, Md. **Jill L. Frost** is Assistant Director, Office of Legal Career Services, The Catholic University of America, Columbus School of Law, Washington, D.C. **Martha Joseph** is an attorney with the U.S. Department of Agriculture, Office of General Counsel in Washington, D.C. **Karin Krchnak** is Director of the Environmental Law Program and Country Director for the Western Newly Independent States for the American Bar Association's Central and Eastern European Law Initiative in Washington, D.C. **Jackie McNamara** is a freelance writer/editor (environmental and real estate) and the author of the 1997-98 updates to the treatise Law of Condominium Operations published by the West Group. **Maureen O'Doherty** has a private environmental practice in Hamden, Ct. **Colleen Ottoson** practices health care law for Group Health Cooperative, a Pacific Northwest region HMO, based in Seattle, Wa. Colleen has recently moved to Puget Sound and become involved in community issues, like water protection and growth management. **Mary Raivel** is an environmental attorney with the U.S. Army at the Aberdeen Proving Ground in Maryland. **Wib Chesser** recently passed the patent bar and now practices primarily patent law at the firm of Kilpatrick Stockton, LLP, in Washington, D.C. He also continues a limited practice of environmental law.

1994

Lauren Calia is an associate with Israelson, Salsbury, Clements & Bekman, L.L.C. **Carrie Capuco** is President, Capuco Consulting Services, Inc., in Annapolis, Md. Carrie has 2 children. **Jeanne Grasso** is an associate with Dyer, Ellis & Joseph specializing in maritime and environmental law (see article on page 14). **Steve Groseclose** is an environmental attorney with Piper & Marbury in Washington, D.C. **John H. Knight** is an associate with Shanley & Fisher, P.C., in Morristown, NJ. **Jennifer Miller** is an associate with McDermott, O'Neill & Associates in Boston, Ma., where she is involved in developing community relations programs, with a focus on environmental issues, for the largest communications firm in New England.

1994 continued

Darshana Patel has been serving as a Peace Corps Volunteer in the Dominican Republic (see article on page 12). **Jael Polnac** is an attorney with the Environmental Law Institute in Washington, D.C. **Carol Tischhauer Rowan** is an economist with the U.S. Department of Labor. Although she is not practicing environmental law, she continues to enjoy the environment through camping, cycling, and hiking with her husband, Doug and their two dogs. **Kim Strasser** is an attorney with the Office of the Federal Public Defender for the District of Maryland. She lives in Millersville, Maryland with her husband Rich and two-year old son Kevin. **Rob Wing** is an attorney with the EPA, Office of Pesticides and Toxic Substances in Washington, D.C.

1995

Steven Anderson is Associate Law Librarian with Baltimore County Circuit Court, Law Library. **Lauren Buehler** is an attorney with EPA, RCRA Enforcement Division, Washington, D.C. **Jake Caldwell** is Deputy-Director of the Trade, Health, and Environment Program of the Community Nutrition Center in Washington, D.C. He is the proud father of a son. **Michael S. Caplan** is an environmental attorney at Piper & Marbury in Baltimore, Md. **Stephen Dolan** is Director of Communications for the New York Lottery. **Chris Dollase** is an associate at Whiteford, Taylor & Preston, L.L.P., working in corporate transactional/intellectual property. **Catherine Giovannoni** is an associate with Steptoe & Johnson, L.L.P. where she represents clients involved in the restructuring of the electric utilities industry in California, New York, and the former Soviet Union. **John Kang** is an associate with Graham & James, L.L.P.; in San Francisco, Ca. **John G. Kelly** is an attorney with Papermaster & Weltmann in Rockville, Md. **Mark Petrauskas** recently got married, moved to Crofton, Maryland and honeymooned in the Carribbean. **Kenneth O'Reilly** is an associate with Fieldman, Hay & Vilman, L.L.P., in New York City.

1996

Jocelyn Adkins is a facilitator for the Keystone Center, an environmental conflict resolution organization located in Washington, D.C. **Theresa Boutchyard** is an associate at the law office of Patrick P. Spicer, P.A. **Michael Carlson** is an associate with Corbin, Schafer, Wilsman & Aviles in Severna Park, Md. **Fei-Fei Chao** formed her own law practice, Snider & Chao, L.L.P., in Washington, D.C. **Kelly Conklin Davidson** is an attorney for Freishtat & Sandler in Baltimore, Md. **Matthew Gilman** is an associate in the corporate law department at Brown, Rudnick, Freed & Gesmer in Boston, Ma.

1996 continued

Thomas A. Janke is President and Senior Analyst, T. S. Systems. He practices environmental nuclear science and radiation protection law. **Ann Lembo** is a private practitioner in Baltimore, Md. **Chris Van de Verg** is a private practitioner in Baltimore, Md.

1997

Carrie Bland is a law clerk for the Honorable James P. Salmon of the Maryland Court of Special Appeals. In August, Carrie will begin a second clerkship (one year) with Chief Administrative Law Judge Mary Ellen Bittner of the Drug Enforcement Administration, U.S. Department of Justice. **Pat Deem** practices environmental law as an associate with Verner, Liipfert, Bernhard, McPherson & Hand in Washington, D.C. **Jared Littmann** is a law clerk for the Honorable Ann S. Harrington of Montgomery County Circuit Court. **Mike Gyeric** is an attorney with EPA, Region 7, Office of Regional Counsel in Kansas City, Kansas. **Brian Perlberg** is an environmental consultant with Booz, Allen, Hamilton in Phil., Pa. **Rachel Schowalter** is an attorney for the Environmental Law Institute in Washington, D.C. **Eric Veit** is a Judge Advocate, U.S. Marine Corps, Camp LeJeune, N.C. **Imoni Washington** is an attorney with the U.S. Conference of Mayors, Environmental Section in Washington, D.C. **Cheryle Wilson** is a Legal Specialist at Science Applications International Corporation, SAIC, in Gaithersburg, MD, where she is involved with environmental management system implementation. She has just published an article on ASARCO's environmental management system in the Spring 1998 issue of *Natural Resources & Environment*.

NOTICE TO ALUMNI

If you change employment or have moved, please contact Laura Mrozek, Environmental Law Program, University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, MD 21201, or call 410-706-8157 or e-mail to lmrozek@law.umaryland.edu.

Chesapeake Waters (Tidewater Publishers: 2nd ed. 1997) and *Pfiesteria Piscicida*

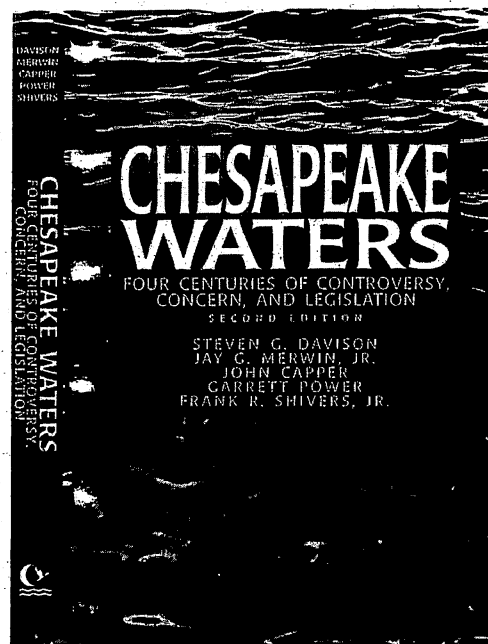
by Garrett Power*

Twenty years ago I undertook a study funded by U.S. Environmental Protection Agency, of the history of public efforts to manage Chesapeake Bay resources. Over the years John Capper, a resource planner, Frank Shivers, a local historian, Steven Davison, an environmental law professor, and Jay Merwin, a journalist-lawyer, have joined me in this effort. Our premise was that those concerned about the quality of the Chesapeake Bay must understand the human-political dimension as well as the physical-biological side. The results of our studies can be found in the recently published second edition of the book *Chesapeake Waters* (Tidewater Publishers: 1997).

The book's main conclusion is that public agencies lack the capacity to manage, much less comprehensively plan, the future of the Chesapeake Bay. Nature is too complex, scientific knowledge too limited, and public choices too fickle.

Crises, conflicts and controversies concerning the Bay demand public choices. But when scientists are asked for definitive answers, they seldom have them. The Bay may be the most studied estuary in the world, but science will always have limited knowledge of its nature. The inhabitants of the Bay region, watermen and recreationists, industrialists and environmentalists, farmers and developers, engage in debate as to the Bay's future. Scientists join in both as advocates for their theories, and as supplicants for public support for their research. It is in a climate of acrimony and uncertainty that Bay bureaucrats make their trade-offs.

Since publication of the 1997 edition of *Chesapeake Waters*, this same scenario once again has played out on the public stage. During the summer of 1997 Bay fish, particularly in the Pocomoke River, exhibited ulcerous sores. Based upon her studies in North Carolina tidewater, researcher Jo Ann Burkholder placed the blame on the fish-killing microbe *pfiesteria piscicida*. Environmentalists advanced the unproven theory that excessive nutrients found in poultry wastes activated the organism. Some public health doctors opined that exposure to *pfiesteria*-laced waters was causing shortness of breath, nausea, skin lesions and memory loss in humans, while others had their doubts. A medical team used a high-tech brain scan machine to examine complaining watermen and state workers who were exposed to the rivers during fish kills but the results were inconclusive. Tourists were frightened and some seafood lovers skipped the steamed crabs.



The government response has not waited for definitive answers to the underlying scientific questions. Maryland officials will spend over \$1 million to monitor suspected *pfiesteria* blooms, while the General Assembly has considered proposals that would limit the use of chicken waste as fertilizer along with proposals that would burn chicken manure to generate electricity for prisons. Meanwhile Congress has appropriated at least \$15 million over the next 5 years to study the effects of the *pfiesteria* toxin on fish and humans.

Once again when making decisions concerning the Bay, government agencies responded more to public opinion than to scientific analysis and economic conditions. Crisis comes first, political pressure comes second, and scientific and economic analysis comes third.

*Garrett Power is a Professor at the University of Maryland School of Law.

1998 Supplement to *Environmental Regulation* Published

In May Aspen Law & Business released the 1998 Supplement to Professor Robert Percival's best selling environmental law casebook, *Environmental Regulation: Law, Science & Policy*. The supplement provides a comprehensive updating of material contained in the second edition of the casebook, published in 1996. Professor Percival, director of Maryland's Environmental Law Program, and his coauthors will soon begin work on a third edition of the casebook. In the meantime, the casebook will be continually updated through its website at www.law.umaryland.edu/courses/environment.

NEGOTIATION TEAMS PLACE SECOND AND THIRD IN NATIONAL COMPETITION

On March 28 two teams of Maryland law students placed second and third in the seventh annual Robert R. Merhige, Jr. National Environmental Negotiation Competition. The competition, which was held at the University of Richmond School of Law, featured twenty-two teams from law schools throughout the nation. Students competed by participating in negotiation sessions to resolve a challenging Clean Air Act problem involving the electric utility industry. The team of Adrienne Beck (2D) and Tom Beach (2D) placed second, while Leslie Hill (1E) and Michael Hannagan (3D) placed third. A team from the University of South Dakota Law School won the competition.

Maryland students also participated in the annual National Environmental Moot Court Competition at the Pace University School of Law. Dan Schreier (2D, John Sheer (2D) and Charlie Wagner (3E) were the members of Maryland's environmental moot court team.

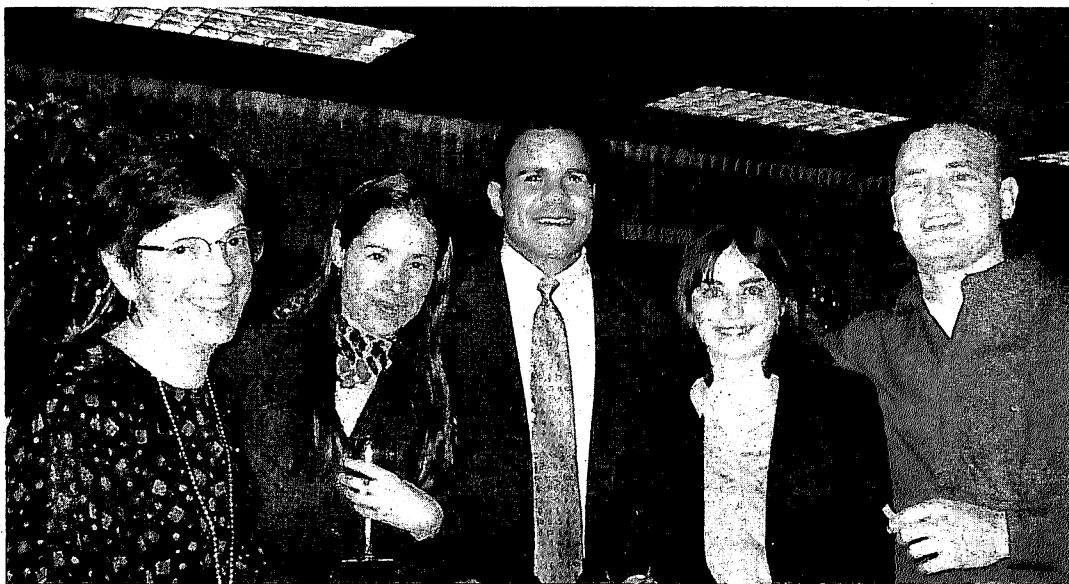


Negotiation team (from left to right) Leslie Hill, Mike Hannagan, Pace Duckenfield (coach), Adrienne Beck and Tom Beach



Moot Court team, (from left to right) John Sheer, Dan Schreier, and Charlie Wagner

ALUMNI, STUDENTS AND FACULTY CELEBRATE 10TH



*Professor Rena Steinzor,
Students, Yvette Pena, Pete
Johnson, Lori Schectel and
Stu Barr*

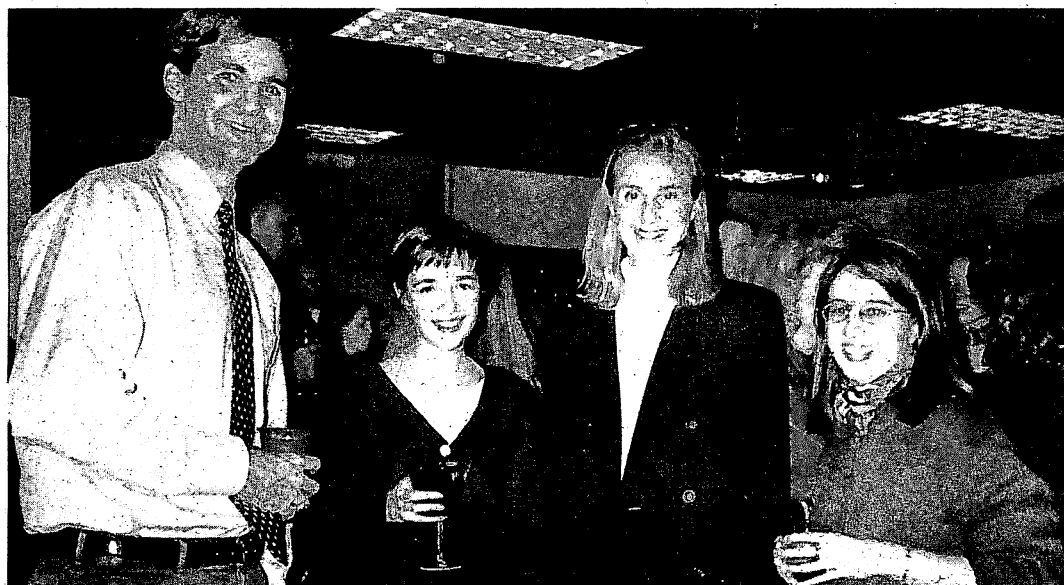
*Students, Adrienne Beck and
Elizabeth Coco present
Professor Robert Percival
with a 10th anniversary cake.*



*Adjunct Professor Jane Earley,
alumni, Chris Van de Verg, Brian
Perlberg & Cleo Pappas*

ANNIVERSARY OF THE ENVIRONMENTAL LAW PROGRAM

*Alumni Jill Frost,
Ruthie Waxter, and
Darrell Cook*



*Student John Schoaf speaks with
alumni, Mary Raivel, Lorraine
Ebert & Pat Deem*

*Alumni Jennifer Bragg and
Pat Ostronic*



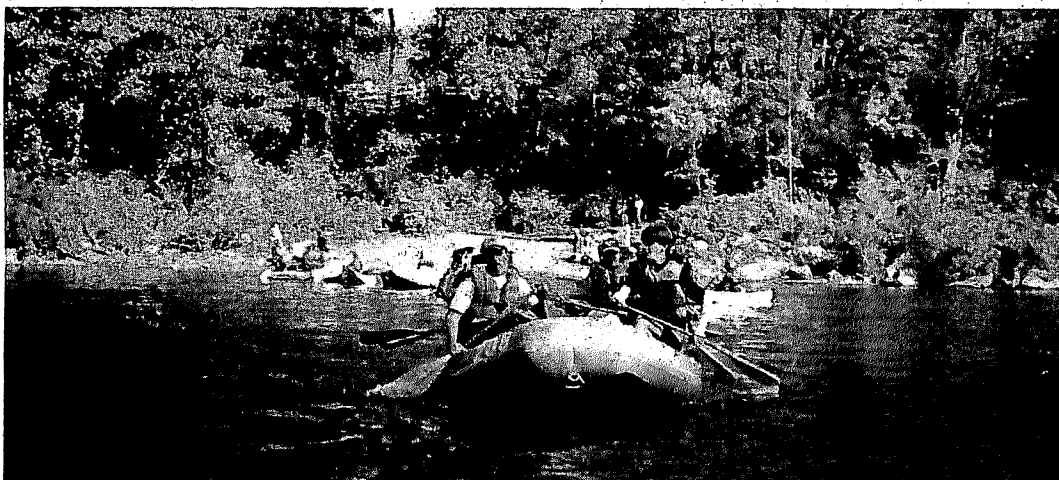
MELS COMPLETES ANOTHER SUCCESSFUL YEAR

The Maryland Environmental Law Society (MELS) has completed a busy year under the leadership of Apple Chapman, Nicole Bowles, Lori Schectel and Stuart Barr. Highlights of the year included a whitewater raft trip, the annual dinner, an Earth Day celebration, and the traditional purchase for retirement of SO₂ allowances at EPA's annual auction. The MELS annual dinner in December featured guest speaker Mark Sagoff, from the university's Institute for Philosophy and Public Policy, who spoke on environmental ethics. At EPA's auction of emissions allowances in March MELS bid successfully on four SO₂ allowances, which sold for substantially higher prices than in previous years. Other student environmental law societies that were successful bidders included those from Drake, CUNY, McGeorge, and Catholic University.



Many thanks to outgoing officers (left to right) Apple Chapman, Nicole Bowles, Lori Schectel and Stu Barr

Mark Sagoff, Professor at the Institute for Philosophy & Public Policy at University of Maryland College Park, spoke about environmental ethics at the annual MELS dinner.



MELS members enjoy a rafting trip on the Youghioagheny River in Ohio, PA.