



ENVIRONMENTAL LAW AT MARYLAND

*University of Maryland School of Law
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In this issue . . .

2007 Ward Kershaw Environmental Law Conference Addresses Issues of Global Clinical Education.....	1
Exploring Economically Viable Alternatives for Tobacco under the WHO Framework Convention on Tobacco Control.....	4
Faculty and Students to Visit China as Exchange Program Expands.....	5
Conference Focuses On Legal Responses To Climate Change.....	6
Around the Clinic.....	8
Environmental Students Participate in Beach Cleanup, Book Drive, and Public Service.....	10
Students Win “Best Memorial Brief” at the International Moot Court Competition.....	11
Maryland Environmental Law Society Purchases 450,000 Pounds of Carbon Offsets.....	11
Testimony Supports Restoring Broad Federal Authority to Protect Wetlands.....	12
Film Festival Wins Award.....	12
Jane F. Barrett Joins Environmental Law Program.....	13
Professor Percival Named “Teacher Of The Year”.....	14
Twentieth Anniversary Notes: Our Accomplished Alumni.....	15
20th Anniversary Celebration and Annual Winetasting.....	16

2007 WARD KERSHAW ENVIRONMENTAL LAW CONFERENCE ADDRESSES ISSUES OF GLOBAL CLINICAL EDUCATION

Globalization is transforming law and legal education. Nowhere is this more evident than in the field of environmental law. Environmental problems increasingly are viewed as transcending national borders and some – including global warming and climate change – pose significant risks to the very health of the planet. Law has become a critical part of efforts to combat global environmental problems and to improve living conditions in developing countries.

Legal systems across the globe are responding to environmental concerns in surprising new ways. Throughout the world, nations are upgrading their environmental standards. As they do so, they are frequently transplanting law and regulatory policy innovations derived from the experience of other countries, including nations with very different legal and cultural traditions. The result has been the development of a kind of “global environmental law.”

Legal education is also changing rapidly. As environmental law becomes an important specialty field, more law schools are launching environmental law clinics to give students practical experience in the field. In April 2007 the University of Maryland School of Law hosted the first international conference of clinical law professors who specialize in the environmental field. Participants in this conference included more than 40 professors, public interest lawyers, and government officials from 17 countries on six continents. Countries represented at the conference included Argentina, Australia, Brazil, Canada, Chile, China, Costa Rica, the Czech Republic, India, Israel, Italy, Japan, Nepal, Nigeria, Norway and Uganda. A dozen environmental clinicians from law schools in the United States also participated in the conference.

The principal purpose of the conference was to foster greater collaboration between environmental clinicians throughout the world. Prior

continued on page 2

2007 Ward Kershaw Environmental Law Conference Addresses Issues of Global Clinical Education, Celebrates 20 Years of Maryland Environmental Law

continued from page 1

to coming to the conference, participants prepared brief, written descriptions of their past activities, their future plans, and what they would like to do if additional resources became available. These materials were bound together in a 164-page book distributed to conference participants. Sessions focused largely on brainstorming among the participants on selected issues including pedagogy, litigation and enforcement, working with non-governmental organizations, and influencing the development of legislation and regulatory policy.

From the outset, it became clear that by bringing together such an extraordinary group of participants, the conference would achieve its goal of promoting greater global collaboration and information exchange among environmental clinicians. One prominent U.S. environmental clinician observed that his extensive travels around the world had taken him to nearly all of the countries represented at the conference, but that he had no idea that environmental clinics were being launched in the countries he was visiting. Clinics represented at the conference varied considerably in their stages of development. Some are just being launched, while others have been in operation for a considerable period of time. Several different models for structuring environmental law clinics were discussed and different ways of overcoming common obstacles were explored.

Participants at the conference were inspired by an opening keynote address from Wang Canfa, a Chinese law professor who founded the Center for Legal Assistance to Pollution Victims (CLAPV) in Beijing. Professor Canfa is China's top public interest environmental lawyer and his group responds to complaints it receives from a "hotline" that takes calls from all over China. He is a professor at the China University of Political Science & Law in Beijing where he runs an environmental law clinic. Professor Canfa has brought several lawsuits on behalf of citizens harmed by polluting smelters and factories. He has ambitious plans for expanding his operations, including the establishment of a mobile environmental law center that would travel to ru-

ral areas of China to provide legal assistance to people who currently do not realize that law can be used to improve their environment. In his keynote address, he described the immensity of China's pollution problems and his struggle to get the Chinese legal system to provide redress for them.

Three other Chinese professors participated in the conference, including Xu Kezhu, deputy director of CLAPV, Li Yanfang from Renmin University School of Law and Wei Guihong, deputy dean of the Law Department at Beijing

Forestry University. Deputy Dean Guihong met with Maryland environmental law students and showed them a film her students had made to illustrate the operation of their clinical law office. Linda Greer, a scientist with the Natural Resources Defense Council (NRDC), gave a lunchtime presentation to the conference about her work tracing the sources of mercury pollution in China to assist in efforts to reduce mercury use by various Chinese industries.

The conference generated lively discussions among the professors about clinical teaching methods. Professor Hanan

Mandel, co-director of the Environmental Practice and Policy Clinic at the Bar Ilan University in Israel, emphasized that the type of skills that clinical education should emphasize will vary from country to country, and depend upon the state of development of the legal system. He explained that teaching litigation skills is not as high a priority in Israel as it is in the United States, where lawyers rely more heavily on lawsuits to accomplish their aims.

Participants also focused on how to generate secure sources of funding for environmental law clinics. Many emphasized that few schools in developing countries are able to devote to clinical education the kind of resources that some U.S. law schools have. Many first-time visitors expressed surprise at Maryland's extensive clinical facilities where each clinic student has an office with a telephone and computer. How to balance the heavy demands of clinical teaching with expectations for scholarship was another issue that the participants explored. Deputy Dean Guihong explained that professors in Chinese clinics already are overloaded and can balance these challenges only through



Professor Canfa speaks to conference participants.

“their passion, sense of responsibility, creativity and spirit of devotion.”

The conference also discussed the future of environmental law and how private initiatives are influencing global environmental policy. The globalization of environmental concerns has spurred many business leaders to participate in voluntary initiatives to minimize the environmental harm caused by the operations of their businesses. For example, insurance companies and banks have sought to improve the environmental performance of companies that they insure or finance. Maryland law alum Jacob Scherr, director of international programs for NRDC, discussed the growing importance of private partnerships on global policy. Maryland law alum Steve Groseclose, director of global environmental health and safety for Advanced Micro Devices, discussed how companies are now taking environmental concerns into account when designing new products and contracting with suppliers. Multinational corporations are now acutely aware that the environmental consequences of their activities in the developing world will be scrutinized by global networks of environmental activists. This is making it difficult for them to justify adherence to lower environmental standards in developing countries than in the developed world.

On the final day of the conference Professor Robert Percival from Maryland and Professor Tseming Yang from Vermont gave a luncheon presentation on their project to develop a casebook on “Global Environmental Law.” The project is a product of years of effort collecting cases and other legal materials pertaining to the development of environmental law throughout the world. Using China as an example, they noted that countries seeking to upgrade

their environmental standards are eager to borrow legal and technical expertise from other countries. Now that environmental protection has become an urgent priority of the Chinese government, China has imported into its environmental laws regulatory policy innovations from other countries, such as emissions trading, effluent charges, green labeling and environmental performance grading. Several conference participants weighed in with very useful sug-

gestions on legal materials from their countries that would be good candidates for inclusion in “Global Environmental Law.”

Most participants agreed that the conference had accomplished its goals and then some. Assessing the results of the conference, Dean Guihong writes that “my harvest has been fruitful.” After returning to Uganda, Kenneth Kakuru, director of Greenwatch Uganda, announced that the conference had inspired him to make plans to launch an environmental law clinic at a local university. Professor Mandel writes that “The main theme I took from the conference is that the challenges facing environmental clinics around the world are joined, both in the pedagogical area (how to teach our students) and in the operating area (how to accomplish positive environmental work). It is not surprising, but it was astonishing to see how persons from different countries are talking in the same terms about practi-

cally the same problems, even within very different legal systems and legal framework, not to mention cultural and economical differences.”

The organizers of the conference were enormously gratified by its success. Participants in the conference strongly endorsed the notion of establishing a global network of en-



Kenneth Kakuru with Greenwatch Uganda and Subhram Rajkhowa with Gauhati University in India participate in the conference.



Participants mingle at the reception on Thursday.

continued on page 7

EXPLORING ECONOMICALLY VIABLE ALTERNATIVES FOR TOBACCO UNDER THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

By Lauren Willis '07

More than 400,000 Americans die from cigarette smoking each year. Globally, an estimated 4.9 million people die each year as a result of tobacco-related diseases. The most disturbing aspect of the global public health epidemic caused by tobacco use is not the magnitude of the harm, which is extreme, but that the harm is entirely preventable. In 2003, the World Health Organization (WHO) sought to address this epidemic by adopting the Framework Convention on Tobacco Control (FCTC), the first global public health treaty. The FCTC recognizes that tobacco has created a problem that requires international action. Not only does tobacco create many transboundary issues, but out of the 1.3 billion smokers in the world, 84% are living in developing and transitional economy countries. What makes the FCTC so unique, however, is that unlike drug control treaties, the FCTC seeks to address demand reduction strategies as well as supply reduction issues.

Prior to becoming a student attorney in the Tobacco Control Clinic, I was aware of some problems caused by tobacco due to my own personal experiences: second-hand smoke in bars and restaurants, a cigarette-ignited fire in my apartment building, and a family member struggling with nicotine addiction. As a Maryland resident, I was also familiar with strategies to reduce the demand for tobacco such as cigarette taxes, advertising bans and restrictions, and anti-smoking campaigns. It was not until I started working in the Tobacco Control Clinic, however, that I came to realize the problems tobacco poses for tobacco workers and growers.

Before embarking on our journey into international tobacco control and public health, third year student Alva Wright and I researched two issues: tobacco crop conversion and alternative uses for tobacco. Although these are obvious areas of study for economists and public health leaders alike, there is not a great deal of information developed on either issue. We explained the information

that does exist and described existing studies that are ongoing in two formal policy papers. We then honed those papers down to a one-page summary of our findings. This process helped us better understand the issues and the need for additional research.

In February 2007, Alva and I traveled to Brasilia, Brazil (the capital of the second largest tobacco producing country in the world) with Chris Bostic, a Clinical Instructor in the Tobacco Control Clinic and counsel to the Framework Convention Alliance ("FCA"), a group of 250 organizations created to support the implementation of the FCTC. Together we represented organizations in the FCA at the first WHO meeting of the Ad Hoc Study Group on Alternative Crops to Tobacco. The study group was formed as a result of a supply-side reduction strategy of the FCTC. Article 17 of the FCTC mandates that parties to the convention "promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers." Rather than focusing solely on decreasing the number of smokers in the

world to promote public health, the FCTC, among other things, also seeks to encourage tobacco growers to switch to other crops or alternative livelihoods. Tobacco growers should substitute alternative crops for tobacco or engage in alternative livelihoods not only because of market forces (basic economic principles dictate that a decrease in demand for tobacco products should result in a drop in price), but also because of the health and social issues associated with the cultivation of tobacco. Throughout a one day public hearing and two days of meetings in Brazil, I learned that smokers are not the only victims of tobacco.

The first day of the conference was dedicated to a public hearing on agricultural diversification and alternative crops to tobacco. Unlike the ad hoc study group meeting, the hearing was open to the public and was well attended by tobacco growers representing farmers groups, civil society, representatives of the tobacco industry, and



Back row (l to r): Alva Wright, '07, Lauren Willis, '07, and Chris Bostic

Front row: Ambassador Juan Martabit, President of FCTC Conference of the Parties, Chile and Dr. Samuel Ochola, Vice Chair, Ad Hoc Study Group on Alternatives to Tobacco, Kenya

FACULTY & STUDENTS TO VISIT CHINA AS EXCHANGE PROGRAM EXPANDS

thousands of viewers via a live webcast on the Internet. Although Alva and I believed we would be passive observers of the hearing, we found ourselves taking to the podium to read statements from member organizations of the FCA. With the aid of headphones and simultaneous translation (into Portuguese, English, Spanish, and Chinese), I heard different strategies and opinions regarding diversification and crop substitution. Although concerns regarding the profitability of alternative crops arose, farmers groups emphasized their desire to develop sustainable livelihoods. Some presenters discussed the health issues that arise from cultivating tobacco caused by pesticides or by Green Tobacco Sickness, a condition that develops when farmers absorb nicotine through their skin from collecting the tobacco leaves. I also learned about women and child labor issues that are a persistent problem on small family farms in developing countries. While some presenters suggested alternative crops that can be substituted for tobacco, others suggested finding alternative uses for tobacco, such as biofuels or pharmaceuticals. Ultimately, there was strong support for research and policy changes aimed at helping growers find alternative crops or livelihoods. During the next two days of meetings, I was enveloped in an international dialogue that was truly one of my favorite law school experiences.

I now have a greater understanding of the issues associated with tobacco cultivation and the inner workings of implementing a global public health treaty. I discovered that, while economics are inevitably tied to tobacco because of its cash crop status, the main priority of the FCTC is to protect public health, including the health of tobacco growers and workers. Because organizations like the WHO, the FCA and the Tobacco Control Clinic are working to decrease demand for tobacco products, I eagerly await the day when all growers can cease cultivating tobacco. Until then, I hope that more people come to realize the true costs of tobacco: healthcare costs, lost productivity, environmental damage, pain and suffering, and, above all, millions of lives lost needlessly every year.

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In the current academic year, Maryland's Environmental Law Program will broaden its collaboration with Chinese environmental educators. Professor Robert Percival will spend the spring semester 2008 as a J. William Fulbright Scholar at the China University of Political Science and Law in Beijing. He will host a group of forty Maryland law students who will tour China for 11 days during their spring break. In addition to visiting top tourist attractions in Beijing, Xian, and Shanghai, the Maryland students will meet Chinese environmental law students, professors, government officials and public interest lawyers.

Professor Percival will also serve as a Fulbright Distinguished Lecturer, teaching courses in environmental and comparative law, and will also present guest lectures at other law schools throughout China. His host institution, the China University of Political Science and Law, is the home of two of China's top public interest environmental lawyers, Professors Wang Canfa and Xu Kezhu. They operate an environmental law clinic and are the founders of the Center for Legal Assistance to Pollution Victims (CLAPV), a public interest environmental organization.

Maryland's collaboration with Chinese environmental educators started in March 2005 when Percival visited CLAPV during a lecture trip to China, and has continued with the University of Maryland School of Law hosting environmental law scholars from China for the past two years. Professor Hu Jing from the China University of Political Science and Law spent the 2005-2006 academic year as a visiting scholar at Maryland, and Professor Li Yanfang from Renmin University School of Law was a visiting scholar at Maryland during the fall 2006 and part of the spring 2007 semesters. In April 2007, four Chinese law professors, including Wang Canfa, Xu Kezhu and Li Yanfang, came to Maryland to participate in its conference, "Globalizing Clinical Education to Protect the World's Health and Environment."

During the past two years, Professor Percival has given guest lectures at four Chinese law schools and at conferences organized by China's National People's Congress and the China Council on International Cooperation on Environment and Development. He has also presented a paper on green energy development at an International Workshop on Legal Issues for Clean Energy and Climate Change organized by Tsinghua University's Center for Environmental, Natural Resources and Energy Law, and given a lecture on state and local initiatives to combat global warming to faculty and students from three Chinese law schools hosted at the China University of Political Science and Law. ✦

CONFERENCE FOCUSES ON LEGAL RESPONSES TO CLIMATE CHANGE

By Julie Grufferman '09 and Elaine Lutz '09

On June 8, 2007, the University of Maryland School of Law hosted the ABA Standing Committee on Environmental Law's 35th National Spring Conference on the Environment, "Global Warming: How Law Can Best Address Climate Change." Speaker after speaker during the conference emphasized that the global scope of the climate change problem makes it vital to take action now to reduce emissions of greenhouse gases. A plethora of options for taking such action were explored during the conference.

Lisa C. Goodheart of Sugarman, Rogers, Barshak & Cohen, P.C. described climate change as "an economic issue, a security issue, and a geopolitical issue." She emphasized the need for professionals from many fields to collaborate on crafting strategies for responding to climate change. Jeff Sterba, Chairman, President and CEO of PNM Resources, Inc., also stressed the urgency of the problem. He cautioned that the results of efforts made today will not be immediately apparent, yet it is what we do now that will pay the largest dividends in the future. While we do not have the technology to solve the problem immediately, Sterba advised adopting a "portfolio approach" that addresses the problems of carbon use and climate change from all sides, a message reiterated throughout the conference.

A panel of speakers addressed the importance of regional, state and local climate change initiatives. Jared Snyder, Assistant Commissioner for Air Resources, Climate Change and Energy at the New York State Department of Environmental Conservation, reviewed climate change initiatives at the state level. While emphasizing the need for global and national action, he noted that states are currently taking the lead in responding to the problem. One major state initiative is the Regional Greenhouse Gas Initiative (RGGI), a cap and trade program for CO₂ emissions. The RGGI program covers ten northeastern states that produce 10% of U.S. emissions, an amount that would make the group the 8th largest emitter in the world. Snyder explained that RGGI hopes to stabilize emissions through 2014, and then reduce them by 10% by 2019, which would put emissions at a level 13% below 1990 levels, and 35% below the level of a "business as usual" path.

Mindy Lubber, President of CERES, emphasized the importance of market signals to influence corporate behavior by putting a price on carbon that reflects its contribution to climate change. Based on her work with about sixty Fortune 500 companies, she believes that businesses are aware of the economic and physical risks of climate change and

are responding to them, partly to please investors, partly to be influential and forward-thinking, but mostly because it is economically important due to the demands of consumers. Laura Koslof, Senior Counsel for EcoSecurities Consulting noted that there are many markets within the voluntary market, and that companies can prevent being blindsided later by taking voluntary action now.

Another panel of speakers focused on global initiatives, their effects on the United States, and how businesses are responding to them. Christopher Carr, senior counsel



ABA Conference attendees (l to r) Stephen Humes with McCarter & English, Hartford, CT, Kruskaia Sierra-Escalante, IFC, Washington, DC, and James Heath, EcoSecurities, Ltd., NY

for Project Finance and Cofinancing at the World Bank discussed implementation of the Kyoto Protocol's clean development mechanism and various emission reduction participation agreements, as well as the use of carbon funds to help governments meet their carbon reduction goals. Kruskaia Sierra-Escalante from the International Finance Corporation spoke about her work helping local financial institutions understand the carbon market. Mike Mahoney, senior environmental counsel for Pfizer, emphasized various energy efficiency projects, such as re-lighting and "green" buildings.

The luncheon keynote speaker was Suedeen Kelly, commissioner of the Federal Energy Regulatory Commission. She forecast a promising future for alternative sources of energy due to rising prices for electricity and natural gas. Commissioner Kelly highlighted three main challenges to the integration of renewable energy sources; access, financing and siting. To overcome these challenges, policies need

to be adopted that provide for cost allocation and promotion of regional planning efforts.

The afternoon discussion focused on the role of lawyers in crafting responses to climate change. Michael Gerrard of Arnold & Porter noted that greenhouse gases are different from conventional types of pollution because of their vast distribution, cumulative effects and persistence. He advocated action to adapt to climate change by protecting buildings and infrastructure from the rising water table, and by increasing the size of water treatment plants. He also noted that there has been almost no legal response to global warming in the United States, despite the aftermath of hurricane Katrina. Professor David Hodas from Widener University School of Law argued that the U.S. must regulate emissions of carbon dioxide and that it cannot rely on the international community to address this problem without the participation of the U.S.

Leslie Lowe, Director of Energy and Environment for the Interfaith Center for Corporate Responsibility (ICCR), discussed global warming as a moral issue that disproportionately

affects the poor. Howard Hoffman, an attorney-advisor for the EPA, spoke about what law firms can do to lower their own carbon footprints. Mr. Hoffman introduced the law office Climate Challenge that encourages law firms to adopt voluntary measures to reduce their carbon footprints. Firms can choose any of three programs: Wastewise, where offices adopt “best practices” for paper management; the Green Power Partnership that allows firms to buy electricity from renewable sources; and the Energy Star program in which offices adopt a management plan to reduce energy use by 10 percent. Firms that successfully complete any of these programs will be recognized by both the EPA and the ABA.

The conference concluded with a lively debate regarding the most effective measures to control greenhouse gas emissions. The debate demonstrated that even among those who agree that something needs to be done now about global warming, there are sharp differences in what people think will be the more effective measures. †

2007 Ward Kershaw Environmental Law Conference Addresses Issues of Global Clinical Education, Celebrates 20 Years of Maryland Environmental Law

continued from page 3

environmental clinicians to foster future collaboration. They also recognized the importance of interacting with existing global networks of law professors that are not focused specifically on environmental clinical education, such as the IUCN’s Academy of Environmental Law (a network of environmental law professors that does not focus on clinical education) and the Global Alliance for Justice Education (a network of clinical law professors that does not focus on environmental law).

Professors Percival and Yang have announced plans to launch a new global environmental law website (www.globalenvironmentallaw.com), which will be available in the fall. In addition to serving as a vehicle for maintaining their “Global Environmental Law” casebook, the website

can serve as a vehicle for exchanging information among environmental clinicians throughout the world. It will include information about environmental law clinics and developments in environmental law around the globe. It also will include country-by-country links to information about environmental law, including the materials prepared for the conference, and a revival of Professor Yang’s highly popular blog about developments in environmental law that he maintained while a Fulbright scholar in China in 2005. Professor Percival will be serving as a Fulbright scholar at the China University of Political Science and Law in Beijing during the spring semester 2008, assisting Professors Canfa and Kezhu with their environmental law clinic. †

AROUND THE CLINIC

The Environmental Law Clinic is pursuing a suite of initiatives on behalf of Potomac Riverkeeper, Inc. (“Potomac Riverkeeper”) to improve Maryland’s water quality in the near term and over the long term. Potomac Riverkeeper, a Washington, D.C.-based environmental organization that is part of the national Waterkeeper Alliance, seeks to protect water quality in the Potomac River and its tributaries through citizen action and enforcement.

The Maryland Department of the Environment’s (“MDE’s”) posting of its draft comprehensive plan for protecting and improving water quality on its website in April marked a milestone for the Clinic, which has advocated for an updated plan on behalf of Potomac Riverkeeper since 2004. By opening a 30-day public comment period on the draft plan, *Maryland’s Continuing Planning Process for Water Quality Management* (“Continuing Planning Process” or “CPP”), the posting also presented a rare opportunity for everyone who cares about Maryland’s water quality to learn what steps MDE is taking to guard it, and to provide input to the State on many of its water quality management activities.

Section 303(e) of the federal Clean Water Act requires every State to have a CPP approved by the U.S. Environmental Protection Agency (“EPA”). In a CPP, a state must describe its processes for: developing effluent limitations and compliance schedules; incorporating elements of area-wide waste management plans and basin plans; developing total maximum daily loads (“TMDLs”) – pollution load limits that are designed to improve “impaired waters” that do not meet state water quality standards for particular pollutants; updating and maintaining water quality management plans; assuring authority for intergovernmental cooperation in water quality management; establishing and implementing new and revised water quality standards; ensuring controls over residual waste from water treatment processing; developing and implementing a prioritized inventory and ranking of needs for the construction of waste treatment works; and setting priorities for issuing permits. A state may include other processes in its CPP as well.

Each state must maintain and implement its CPP, and the EPA must review the adequacy of a CPP “from time to time” to ensure that it remains consistent with the Clean Water Act. The EPA approved Maryland’s CPP in 2001 pursuant to a court order issued in a lawsuit,

Sierra Club v. EPA, 162 F.Supp.2d 406, 421 (D. Md. 2001). However, MDE has not revised the CPP since then, and the 2001 CPP does not reflect important changes in MDE’s activities and those of other state and local government agencies involved in water quality management.

Student attorneys Khushi Desai, Brendan Fitzpatrick, and Amber Widmayer, along with Ed Merrifield, the Potomac Riverkeeper, and Professor Kerry Rodgers, met with MDE in February 2007 to discuss the State’s efforts to update the CPP. MDE indicated its intent to revise the document in stages, so that some sections would receive a thorough review and revision each year but the entire document would be revised in stages over a few years. MDE also outlined the sections it expected to thoroughly review in the first round of revisions this year. On behalf of Potomac Riverkeeper, the Clinic submitted comments on MDE’s planned revisions to MDE in mid-March.

The Clinic’s comments included recommendations for three areas: (1) in-depth updates to the CPP’s discussion of the CPP’s goals and TMDL development and implementation; (2) general updates to core elements of the CPP covering topics such as intergovernmental cooperation, construction needs for wastewater treatment, and public participation; and (3) presenting the revised



Students participate in an environmental clinic mock trial with Mark Gallagher, a senior attorney with the Environment and Natural Resource Division of the U.S. Department of Justice, serving as the judge.

1st row: (from l to r) Khushi Desai, Mark Gallagher, Tokesha Collins, Cori Iacovelli, and James Goodwin .

2nd row: (from l to r) Dan Orlaskey, Brendan Fitzpatrick, Jonathan Cheng, Mike McKeefrey, Amber Widmayer, and Professor Kerry Rodgers.

CPP on MDE's web site to promote public understanding of the State's water management activities. As the Clinic's March 2007 comments stated, "[t]he CPP should not only satisfy the legal requirements, but also empower citizens to understand and become engaged in the protection of Maryland's waters." To this end, the Clinic will submit comments on the draft CPP during the official comment period.

It is especially important for Marylanders to monitor MDE's plans set forth in the CPP because Maryland – unlike Delaware, Pennsylvania, Virginia, and West Virginia – is not subject to a judicially enforceable order requiring the State to develop TMDLs according to a fixed schedule. In an informal memorandum of understanding, the EPA and MDE agreed to a schedule for Maryland's development of TMDLs, but the agencies extended the original schedule and they may extend it again even as new impaired waters are identified. Public pressure to develop TMDLs and incorporate their limits into National Pollutant Discharge Elimination System ("NPDES") permits in a timely manner may help MDE and the Chesapeake Bay Program ("CBP"), which is responsible for the technical legwork involved in developing TMDLs for nearly 90 waters, to devote sufficient resources to this water quality program. Following MDE's progress in implementing its statements about TMDL development in the CPP is one way to do this.

In addition to urging MDE to update the CPP, the Clinic is promoting better NPDES permits. Student attorneys Jonathan Cheng, Corianne Iacovelli, and Michael McKeefery prepared a manual for Potomac Riverkeeper entitled *Writing for Your Watershed: A Citizens' Guide to Effective Comments on National Pollutant Discharge Elimination System ("NPDES") Permits*. They also conducted a public training session at the law school on April 18, and the audience included Maryland Waterkeepers and their staff members, representatives

of other environmental groups, an MDE staff member, alumni, and students. The Clinic also submitted written comments to MDE on "pre-draft" NPDES renewal permits for two significant dischargers in western Maryland: the NewPage Corporation (formerly Mead Westvaco) pulp and paper mill in Luke, Maryland, and the Hagerstown Wastewater Treatment Plant. MDE is working on draft renewal permits for these facilities and for the Upper Potomac River Commission wastewater treatment facility, which primarily discharges industrial wastewater from the nearby NewPage mill.

Even the most stringent permits only protect the water if polluters comply with their conditions. Thus, Potomac Riverkeeper aims to track how well industrial dischargers, wastewater treatment facilities, and power plants comply with their NPDES permits – and how often they fail to comply – over time. For the second year in a row, the Clinic has performed a "compliance sweep" of major NPDES facilities in the Potomac Watershed in Maryland. By reviewing data contained in EPA's Enforcement and Compliance History Online database and records at MDE, Student attorneys Tokesha Collins, James Goodwin, and Daniel Orlaskey analyzed compliance information for 14 facilities, including five industrial dischargers and nine wastewater treatment plants. The Clinic prepared letters for several facilities to ask for information about the violations observed, to urge the facilities to improve their practices, and to indicate that Potomac Riverkeeper and the Clinic will continue to monitor their compliance and will consider pursuing legal action if necessary.

Through all of these projects, the Clinic's student attorneys benefit Maryland's environment while giving effect to both aspects of Potomac Riverkeeper's mission – citizen action and enforcement. ✦

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

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



ENVIRONMENTAL STUDENTS PARTICIPATE IN BEACH CLEANUP, BOOK DRIVE, AND PUBLIC SERVICE



2007 Graduates receive their Environmental Law concentration certificates.

1st row (from l to r) - Jill Atencio, Karla Schaffer, Program Coordinator Laura Mrozek, Lauren Bregman, Laura Pacanowsky, Khushi Desai, Cori Iacovelli, Lauren Willis, and Dean Karen Rothenberg.

2nd row (from l to r) - Dave McMurray, Professor Rena Steinzor, Amber Widmayer, Professor Robert Percival, Professor Kerry Rodgers, Dan Orlaskey, and Evan Isaacson.

Not pictured: April Birnbaum, James Goodwin, Dan Ingersoll, Amy Major, Karen McGullam, and Alva Wright.



Students participate in the beach cleanup of the Chesapeake Bay.



With a public interest grant, law student Patience Bosley-Burke spent her summer working on land use issues in Pine Island, Florida. In this photo, Patience is shown on a boat after swimming with manatees.



MELS students collect approximately 20 boxes of law books to send to law schools in Africa and Asia.

STUDENTS WIN “BEST MEMORIAL BRIEF” AT THE INTERNATIONAL MOOT COURT COMPETITION



Khushi Desai, David Mandell, and Karla Schaffer

Khushi Desai, David Mandell, and Karla Schaffer competed in the Stetson International Environmental Moot Court Competition in Tampa and St. Petersburg, Florida. In the Qualifying Rounds, the team competed against 25 teams from the U.S. and Australia, and was one of 4 U.S. teams to advance to the International Finals. There were 12 teams in the International Finals, which was narrowed down from a field of 68 teams from around the world.

In the Qualifying Rounds, Team Maryland defeated Macquarie Law School (Australia), University of Kansas School of Law, Pepperdine Law School and University of California, Hastings College of Law. Team Maryland was victorious over Hastings in the Semifinals, advancing to the International Finals to compete against NLIU Bhopal, NALSAR University of Law Hyderabad and University of Technology Sydney. Team Maryland won the award for Best Memorial Brief in both the Qualifying Rounds and the International Finals.

Team Maryland would like to thank the Environmental Law Program for their support and specifically Professors Percival, Citron, and Danchin and Laura Mrozek. The competition was an amazing experience, allowing the team to compete against oral advocates from around the world. The 2006 team would like to wish next year's team the best of luck. †

MARYLAND ENVIRONMENTAL LAW SOCIETY PURCHASES 450,000 POUNDS OF CARBON OFFSETS



MELS Board Member Jayni Shah with certificate of CO2 offsets.

In celebration of the 20th Anniversary of the Environmental Law Program, the Maryland Environmental Law Society (MELS) contributed to the fight against global climate change by purchasing 450,000 pounds of carbon dioxide offsets. These offsets made the 2007 Ward Kershaw Environmental Law Conference “carbon neutral” by offsetting the estimated 67,000 pounds of carbon dioxide that were emitted by the airplane travel of the participants. The participants came from 12 different countries and traveled nearly 170,000 miles by air. In addition, the purchase of offsets ensured that an additional 380,000 pounds of carbon dioxide would be reduced by funding industrial efficiency and renewable energy projects such as wind farms.

For more information about carbon dioxide offsets, you can visit: <http://www.terrass.com>.

TESTIMONY SUPPORTS RESTORING BROAD FEDERAL AUTHORITY TO PROTECT WETLANDS

A year ago, the U.S. Supreme Court was sharply divided in deciding a case involving the scope of federal authority to protect wetlands under the Clean Water Act. The decision in *U.S. v. Rapanos* has created great confusion concerning when a federal permit is required to fill wetlands. In testimony presented to the Transportation and Infrastructure Committee of the U.S. House of Representatives on July 17, Professor Robert Percival recommended that Congress enact legislation to clarify the scope of federal authority to protect wetlands.

Percival was invited to testify as a legal expert by Congressman James Oberstar (D-Minn), chairman of the 75-member committee. In his testimony Percival explained why Congress should adopt new legislation restoring the long-standing interpretation of the Clean Water Act employed by the EPA and the U.S. Army Corps of Engineers. He noted that while four Justices in *Rapanos* supported this view, four others endorsed a new, more restrictive approach concerning what wetlands are protected. The Justice whose vote was decisive – Justice Anthony Kennedy – proposed an entirely new approach requiring the government to submit site-specific proof concerning the impact of filling wetlands on downstream waters.

According to Percival, the Court's 4-1-4 split "has left the most fundamental question one asks about any regulatory statute – to what does it apply – in a state of chaos." This threatens to undermine not only the Clean Water Act's program to protect wetlands, but also the Act's permit program for dischargers of water pollutants and the Act's oil spill prevention program. "*Rapanos* has produced the bizarre result that the law currently defining the scope of federal jurisdiction reflects the view of a single Justice that was rejected by each of the eight other Justices. . . . This has spawned new legal challenges and enormous uncertainty concerning the scope of federal authority." Percival concluded that the problem "can best be solved through Congressional action to clarify the scope of federal authority under the Act." Congressman Oberstar has introduced a bill (H.R. 2421 "The Clean Water Restoration Act of 2007") that would restore the scope of federal authority to protect wetlands to that which existed prior to the *Rapanos* decision. The proposed legislation has 159 co-sponsors in the House.

A copy of Professor Percival's testimony is available online at: <http://transportation.house.gov/Media/File/water/20070717/Percival%20Testimony.pdf>. ✦

FILM FESTIVAL WINS AWARD

For the past five years, students in Professor Robert Percival's Environmental Law class have had an unusual assignment: pick an environmental issue they care about and make a short documentary film about it. Working in small groups, the students have produced some truly remarkable films. Each year the films are entered into the school's own Environmental Law Film Festival, with winning films receiving the coveted "Golden Tree" awards.

Named "Best Film Contest" as part of the *City Paper's* annual "Best of Baltimore" awards, the paper observed that the student films "are creating a body of ongoing knowledge that focuses on environmental issues in the region and the greater Chesapeake Bay watershed." It also noted that "making a short movie has to be more fun than wading through yet another law casebook."

This year's Environmental Film Festival was held in April 2007. Winning the Golden Tree for Best Picture

was the film "Landfills: Turning Trash into Cash" by Carl Moore, Bob Clemons and Thomas Caso. The film examines how methane recovery can be used to generate energy from landfills. It begins with a Cynthia Nixon impersonator providing her own take on the Golden Tree awards, then features a highly educational visit to a methane recovery project.

The film winning the most Golden Tree awards was "Oh Shenandoah" by Brendan Fitzpatrick, Carrie Riedlinger, Josh Schultz, Matt Swinburne, Lewis Taylor and Ian Ullman. The film, which examines the causes of environmental degradation of the Shenandoah River, won awards for Best Interviews, Most Educational,

Best Sound and Best Cinematography. It features interviews filmed on the banks of the river with experts describing the problems facing it.

Lead poisoning in Baltimore has been a familiar theme of student's films over the years. The film that focused



Bob Clemons accepts the Golden Tree Award from Professor Taunya Lovell Banks

on the issue this year was “The Great Lead Caper” by Gwen Allen, Bob Maddox, Jason Martineau, and Amanda Schwartzkopf. The film won Golden Tree awards for Best Use of Humor, Best Acting, and Best Special Effects. It follows a team of student detectives as they try to track down the source of lead poisoning in Baltimore, ultimately doing battle with the evil Mr. Lead.

Other films nominated for Golden Tree Awards included: “CSI: Critical Area Act” by Tom Prevas, Jon Cheng, Dan Ingersoll, Mike McKeefery and Scott Mendelsohn, which examines how land use regulations to protect the Chesapeake Bay are enforced; “Westminster Is Thirsty” by John Weetman, which explores the impact of a moratorium on new construction due to limited water resources in

Westminster, Maryland; and “Mission Impossible: Nuclear Power” by Van Hildebrand, Christine Jochim, Anna Kuperstein, Thaila Sundaresan and Michael Wright, which discusses why new nuclear power plants may be needed to combat global warming.

To make the student films more widely available to the public, the University of Maryland’s Law Library has now created an online archive of them. The films can be viewed online by going to <http://digitalcommons.law.umaryland.edu/envirofilms>. The Environmental Law Program greatly appreciates the efforts of Jerri Shahverdi, Arthur Cook, and Bill Sleeman for helping to create the online archive. ✦

JANE F. BARRETT JOINS ENVIRONMENTAL LAW PROGRAM

Jane F. Barrett, a graduate of Loyola College (Baltimore) and the University of Maryland School of Law, has joined the law school’s nationally recognized Environmental Law Program as Director of the Environmental Clinic. Most recently in private practice at Blank Rome, LLP in Washington, D.C. and at Dyer Ellis and Joseph, P.C., Professor Barrett chaired the White Collar, Internal and Government Investigations Group. In addition to litigating complex criminal and civil environmental cases, she also conducted many corporate internal investigations, and advised clients on the implementation of corporate compliance programs and the effective use of audits and federal and state environmental self-disclosure programs.

Previously Professor Barrett was an Assistant United States Attorney for the District of Maryland where she tried numerous criminal cases, including several high-profile and precedent-setting environmental criminal cases. She also supervised environmental litigation within the District of Maryland and worked with various state and county Environmental Crimes Task Forces within the State. Prior to joining the United States Attorney’s Office, Professor Barrett was an Attorney General for the State of Maryland for the Hazardous Waste Strike Force/Environmental Crimes Unit and an attorney with the U.S. Environmental Protection Agency. Professor Barrett is the author of numerous articles and has served in leadership and other positions in professional organizations. ✦



PROFESSOR PERCIVAL NAMED “TEACHER OF THE YEAR”

By Danielle Sweeney

Dr. David Ramsay, President of the University of Maryland Baltimore, has announced that Professor Robert V. Percival, Director of the School of Law’s Environmental Program, has been named “Teacher of the Year” for 2007. Percival will be presented with the award on October 9 at a banquet culminating the university’s 200th anniversary celebration of Founder’s Week.

After the award was announced, Maryland magazine interviewed Professor Percival to discuss his thoughts about teaching.

How would you describe your “teaching philosophy”?

Like most other professors in professional schools, I had no formal training in teaching. When I first started teaching after six years of practicing law, I naively believed that I would quickly become a highly successful teacher because of my enthusiasm for the subject matter. Yet I soon discovered that teaching is much harder than I had anticipated. It requires a great deal of work and improves over time only through determined application of insights acquired from previous experience.

A successful teacher must know who his students are, appreciate the different ways in which they learn, and keep pace with the latest developments in teaching technology. The growth of the internet and improvements in multi-media technology have changed the way in which we access information and communicate with each other. While this should not fundamentally change what happens in the classroom, technology does enable us to do more outside of the classroom. Course websites and on-line discussion boards provide valuable advance feedback that helps me to better frame class discussions. The current generation of students seems to be more visually oriented than my generation was, encouraging me to make greater use of multimedia materials in the classroom – playing tapes of oral arguments and showing films related to the cases we study. Years of teaching have made me appreciate that different students learn in different ways. Some are not visual learners, so it is important to strike a judicious balance in the use of media in classroom presentations.

What are you trying to accomplish in the classroom?

I want students to appreciate that law is more than just words and theories. Thus, I often begin classes with a discussion of current events that demonstrate the relevance of the subjects we study in class. I try to make students understand the larger forces that shape how law is developed and applied and the full range of skills lawyers need to influence this process. Successful lawyers need to be strategic architects who know how to persuade others to accomplish their goals. Thus, I encourage groups of my environmental law students to make short documentary films translating

the complex issues we study into material any layperson can understand.

How do Maryland students compare with students at other law schools?

I try hard to motivate my students to learn. Having taught as a visiting professor at Harvard, Georgetown, and top universities in three other countries, I know that many Maryland students are just as talented as the best students at other top institutions. But many don’t realize just how good they are, so I need to challenge them to work harder to achieve their full potential.



How does your teaching relate to your scholarship?

One great feature of our law school is that it highly values both teaching and scholarship, unlike other law faculties who emphasize one to the detriment of the other. Teaching and research should complement each other. My teaching inspires my scholarship and I continually share the results of my research with my classes. My own scholarly agenda was initially shaped by my desire to improve the way law is taught. The first project I pursued, with the help of professors at three other schools, was to write a casebook that ultimately helped to reshape the field of environmental law. My current scholarship now seeks to expand our conception of law to a global scale.

Did your own law school professors influence how you teach today?

I was fortunate to have among my law school professors some of the giants in their fields, such as my mentor Lawrence Friedman who shaped the field of American legal

history. They helped inspire me to pursue a career in academia, while showing me that there can be many successful approaches to teaching. I learned from them that there is no one “correct” teaching style. To be successful a teacher must find his own unique voice.

Ironically, I also learned from what I was not taught in law school. When I started legal practice representing a public interest environmental group, I quickly discovered that there were important skills that I had not been taught in law school at a time when clinical education was still in its infancy. Thus, when I came to Maryland to start the Environmental Law Program, I made it a top priority to create an environmental law clinic that would teach future lawyers the skills I had to learn by doing.

Q. How do you know that you're being truly effective in the classroom?

This is probably the most difficult question because it is always hard to tell what effect your teaching has on students. In mid-semester I often solicit anonymous feedback from students to determine if mid-course corrections are necessary. At the end of each semester I always carefully scrutinize my course evaluations. Invariably I end up trying something a little different each year in a determined effort to do better.

Occasionally one catches a glimpse of how they have touched a student's life. Sometimes it happens when an excited student bounds into your office to tell you about the great job offer they just accepted that they never would have pursued but for your inspiration. Other times it occurs in a chance encounter with an alum eager to tell you about the great things they are able to do because of their legal education. These are among the things that make teaching so rewarding for me. †

TWENTIETH ANNIVERSARY NOTES: OUR ACCOMPLISHED ALUMNI

By Robert Percival

When I joined the Maryland faculty in 1987 to launch our Environmental Law Program, I could not envision how far we would come over the next 20 years. To me the most rewarding aspect of this journey has been to get to know the students and watch as their careers blossom over the years.

Our global environmental law conference in April highlighted the vital roles that our alumni are playing in the global development of environmental law. Important contributions to the conference were made by Jacob Scherr ('74), who directs NRDC's global environmental efforts, and Peggy Kalas ('91), who works as the UN representative for the Deep Sea Conservation Coalition. Rob Wing ('94) discussed his role negotiating environmental provisions in trade agreements as the Chief of the Environment and Trade Division of the State Department's Office of Environmental Policy in the Bureau of Oceans, Environment and Science. The director of Global Environmental Health & Safety for Advanced Micro Devices, Steve Groseclose ('94), explained his efforts to promote global environmental stewardship. Jocelyn Adkins ('96), an attorney-advisor for EPA's International Environmental Law Practice Group, lent her unique perspective as someone who has worked for an international NGO, a multinational corporation, and now the government.

Other alumni are making important contributions at the national, state, and local levels. Mike Gieryc ('97) has joined the Department of Interior's Regional Solicitor's Office in Anchorage, Alaska. Erin Fitzsimmons ('91) has been appointed by Maryland Attorney General Douglas

Gansler to be his Special Assistant for the Environment. In this position she will spearhead efforts by the new administration to strengthen enforcement of environmental law in the state of Maryland. Jennifer Bevan-Dangel ('05) has become Director of Advocacy for the Patuxent Riverkeeper. Jon Kallen ('03) has become the manager for Environmental Policy and Strategy for MidAmerican Energy Holdings Company, a national utility holding company owned by Warren Buffet, in my hometown of Des Moines, Iowa.

Many of our environmental alums are working on Capital Hill. David Thomas ('98) has left private practice to become trade counsel for the U.S. House of Representatives Ways and Means Committee while Ulka Patel ('05) has joined the legislative staff of Senator Barbara Mikulski's Office. Yvette Pena Lopes ('99) testifies frequently on the Hill on trade and immigration issues as the legislative representative for the International Brotherhood of Teamsters.

Several of our graduates were at the ABA Environment Section's conference in Keystone last March where I caught up with them off the ski slopes. They included Sriram Gopal ('06) from EPA, Drew Brought ('02) from Spencer, Fane, Britt & Browne in Kansas City, and Jeanne Grasso, a partner at Blank Rome in Washington, D.C. Jeanne congratulated us on hiring Jane Barrett ('76), a long-time partner at her firm, as the new director of our Environmental Law Clinic (see article, p. 13). These are just some of the hundreds of alumni from our Environmental Law Program who continue to make us so proud of what our program has accomplished over the last two decades.

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20TH ANNIVERSARY CELEBRATION OF THE ENVIRONMENTAL LAW PROGRAM AND ANNUAL WINETASTING

Environmental Law alumni, Ward Kershaw Conference attendees, students, faculty and staff gathered in Westminster Hall on Friday, April 13 to celebrate the 20th anniversary of the Environmental Law Program.



Geoffrey Washington, '97, and his wife, Dr. Delese LaCour, join Nicole Lacoste, '99 and her guest.



Steve Groseclose, '94, and his wife Jael Polnac, '94.



Ernest Ojukwu, Deputy Director General of the Nigerian Law School and Carlos Da Rosa from the US EPA.



Lauren Willis, '07, Alva Wright, '07, and Melissa Sviatko, '07.



About 200 guests attended the celebration!



Erica Jayne Thorson from Lewis & Clark Law School and Maria Nora Gonzalez and Valentina Duran from University of Chile.