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## Tobacco Regulation Review

University of Maryland School of Law  
Legal Resource Center for Tobacco Regulation, Litigation & Advocacy  
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### FROM THE DIRECTOR

Although the popularity of traditional cigars may have diminished over the last several years, small cigars, particularly when sold singly and in a variety of sassy flavors, are tremendously popular among youth and young adult smokers. For less than one dollar, a teenager can purchase one of the many popular brands that are exalted by popular rap and hip hop artists. In this issue you will learn how the Center has responded to this dynamic with legislation at the state level, local public health regulations in Baltimore City, and by educating public health advocates across the country about the problem and potential solutions. It is a new angle in tobacco control and we are working to insure that small cigars are no longer an attractive option to our young people.

Also in this issue you see that as the Center matures, so does its staff. As a result of gaining significant experience during his seven years at the Center, Deputy Director Michael Strande has been appointed as an Assistant Attorney General with the Maryland Department of the Environment. Staff Attorney Erin Smith has taken a post with the WHO's Tobacco-Free Initiative in Geneva where she works to promote global tobacco control. We are pleased that our colleagues have taken their skills and knowledge into these new positions and wish them great success.

*Kathleen Hoke Dachille*  
Director, Legal Resource Center for  
Tobacco Regulation, Litigation &  
Advocacy

## Baltimore City Health Commissioner Proposes Regulation to Reduce Cigar Consumption

On May 28, Baltimore City Health Commissioner Dr. Joshua Sharfstein proposed a regulation designed to reduce the prevalence of cigar use among youth and young adults in the City. The proposed regulation prohibits the sale of single cigars by requiring that cigars be sold in packages of at least five, excepting sales at tobacco shops and cigars with a wholesale price of more than \$2.<sup>1</sup> Much like House Bill (H.B.) 609 from the 2008 Maryland General Assembly Session,<sup>2</sup> the regulation is designed to decrease sales of a certain type of cigar that has become increasingly popular with youth and young adults, particularly minorities in urban settings. Phillies® blunts, Black & Milds, The Game blunts, and Swisher Sweets are among the most popular of these cheap, small cigars, which are offered in a variety of flavors like grape, peach, apple, cherry, and wine. By requiring that these cigars be sold in packages of at least five, the real price of the product increases from less than \$1 per individual stick to between \$3.50 and \$5.00 for a package. While a young person may be able to scrape together a dollar to buy a single Black & Mild, he or she will be less likely to come up with the approximately \$4 for a package. Also, the youth purchasing a package of

cigars is faced with having to hide the pack from parents, teachers, or other adults who might confiscate the cigars or discourage the youth from smoking. Research on cigarette sales, which must be by a minimum package of 20 in Maryland,<sup>3</sup> supports the theory that an increased pack size will decrease youth consumption.

By determining that the use of small cigars among youth and young adults presents a significant health problem rising to the level of a nuisance, Sharfstein has the power to issue the regulation. Baltimore Mayor Sheila Dixon supports the regulation, as does the lead sponsor of H.B. 609, Delegate Shawn Tarrant, who vows to pursue statewide legislation again in 2009. Although not required by law, the Health Commissioner requested that public comments to the proposal be submitted by July 1. More than a dozen entities, including the Center and the Comptroller of Maryland, submitted supportive comments. Cigar manufacturers and trade groups submitted four letters in opposition to the proposed regulation.<sup>4</sup> Sharfstein and his staff are reviewing the comments and will soon determine the best course of action for the City with respect to the final regulation.

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**(Footnotes)**

<sup>1</sup> The proposal is available at <http://www.baltimorehealth.org/info/May27.2008.SingleCigarsProposal.pdf>.

<sup>2</sup> See Legislative Wrap-Up on page 4 for more on H.B. 609.

<sup>3</sup> See MD. COMM. LAW CODE ANN., Title 11, Subtitle 5A.

<sup>4</sup> Comments are posted on the Baltimore City Health Department website at <http://www.baltimorehealth.org/cigars.html>.

## STATE AND LOCAL NEWS

### Legislative Wrap-up: The 2007 Special and 2008 Regular Sessions of the Maryland General Assembly

The Maryland Constitution requires the General Assembly to meet each year for 90 days to consider legislative priorities for the State. But as the end of 2007 approached, Governor Martin O'Malley called for a special session to consider legislative solutions to the State's structural deficit problems. While the special session was to focus on fiscal issues, the legislature also considered important tobacco control measures. The extra three weeks of legislative

activity, coupled with the regular session that began January 9, 2008, gave tobacco control advocates a unique opportunity to push for legislation that had been given little attention during previous sessions. The following summarizes each tobacco control bill and its disposition during the respective sessions.

**Special Session – House Bill 5: Cigarette Tax Increase.** This complex, 27-page bill made sweeping changes to the tax code, including increasing the state tax on a pack of cigarettes from \$1.00 to \$2.00. The bill was passed by both chambers and signed into law by the Governor. The new tax rate places Maryland in a tie for sixth highest in the nation. Advocates deemed the bill's passage a victory for public health, estimated to result in about 28,000 more adults attempting to quit and 52,000 kids never starting smoking.

**Special Session – House Bill 20/ Senate Bill 23: Little Cigar Regulation.** This bill was a first-of-its-kind attempt to capture and regulate popular cigar products that contribute to youth and young adult smoking and that may serve as cheaper alternatives to cigarettes for all smokers. The legislation focused on both Black & Mild cigars, an incredibly popular brand among youth and young adult smokers particularly in urban areas, as well as

little cigars, also known as "brown cigarettes," which are a cigarette alternative subject to a very modest tobacco tax. Advocates fear that as cigarette taxes rise, little cigars such as Captain Black® and Winchester® will become the product of choice of smokers, decreasing the cessation impact of the increased cigarette tax. The proposed legislation would have subjected these cigar products to the same tax rate as cigarettes and prohibited their sale in packages of fewer than five. Delegate Shawn Tarrant of Baltimore City was lead sponsor and dynamic advocate for the legislation.

Despite being a first-time proposal, the bill received significant support among legislators and the public health community. Yet the legislation was ultimately killed without committee action. Legislators were concerned that there was insufficient time in the special session to fully consider the bill and many expressed an interest in rehearing the bill in the regular session. With more time to consider the best approach to regulating the different types of cigars at issue, the Center and Delegate Tarrant returned to the regular session with House Bills 609 and 617.

**House Bill 609: Single Cigar Ban.** This bill would have required that cigars with a wholesale price of

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less than \$2 be sold in packages of at least five, eliminating the sale of cheap, single cigars. The restriction would not have applied to sales at specialty tobacco shops. Delegate Tarrant again served as lead sponsor, working aggressively to secure co-sponsors and leadership support. As a better version of H.B. 20 from the special session, the bill included Black & Mild cigars and also its competitors such as Phillies® blunts, Swisher Sweets, and The Game blunts. The products, legally available by the single and priced at less than \$1 per stick, are attractive to young people because of their low cost, sassy flavors, and popularity with rap and hip hop performers. Requiring that the products be sold in minimum packs of five—similar to the 20-per-pack minimum cigarette pack requirement—raises the real price at which cost-sensitive youths can purchase the products without having an impact on adult users. National studies and research conducted in Baltimore City acknowledge that availability by the single contributes to the popularity of these small, cheap cigars. Despite having 56 co-sponsors, including a majority of the members of the Economic Matters Committee, and broad-based support, including from the Black Caucus and the Attorney General, the bill received an unexpected unfavorable vote from the Committee. Delegate Tarrant will reintroduce the

bill in the 2009 session with the Center and dozens of tobacco control and public health advocates in full support. No doubt the Health Commissioner for Baltimore City, Dr. Joshua Sharfstein, will be in support as he has proposed similar regulations for his jurisdiction (see “Baltimore City Health Commissioner Proposes Regulation to Reduce Cigar Consumption” in this issue at page 1).

**House Bill 617: Little Cigars Regulation.** Also sponsored by Delegate Tarrant, this bill would have amended the definition of “cigarette” under Maryland law to include little cigars, commonly referred to as “brown cigarettes.” This change would have closed a loophole allowing these products that look, smoke, and cause illness and disease like cigarettes, to avoid the regulations and tax structure applied to their natural market competitors. Despite technically being a product reclassification, opponents painted the proposal as a tax increase; because of the innumerable tax increases passed in the special session, legislators were simply not considering any proposal that could be deemed a tax increase. Ultimately, the bill was given an unfavorable vote in the Economic Matters Committee. The bill will be pursued again in 2009.

**House Bill 686: Condominium Smoking Regulations.** This bill, sponsored by Delegate Sandy Rosenberg of Baltimore City, would have amended the Clean Indoor Air Act to clarify that condominium associations have the authority to regulate smoking on their property, including in individual units. The Center had long been advising the public that state and federal laws, including the Maryland Condominium Act, do not limit the ability of a Condominium Board to regulate smoking on any condominium property. A letter of advice from the Office of the Attorney General concurred with this assessment such that Delegate Rosenberg withdrew the bill as unnecessary. A copy of that letter is available on the Center’s website under “Resources.”

**House Bill 850/Senate Bill 829: Baltimore County Smoking Ban Exemption.** These cross-filed bills would have provided an exemption to the Maryland Clean Indoor Air Act for certain Baltimore County businesses. Under the Act passed in 2007, smoking is prohibited in all indoor public places and places of employment. “Indoor” is defined as “all space in a structure enclosed by a ceiling and four permanent or temporary sides.” Under this definition, smoking is prohibited in tents and other four-sided structures used by some businesses. The bill sought to exempt all porches, patios,

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decks, and tents located in Baltimore County from the State's ban regardless of the presence of sides. A majority of the Economic Matters Committee expressed reservations about amending the State law before its effects had been studied. Coupled with concerns that passage would prompt a patchwork of similar exemptions in other jurisdictions, destroying the level playing field the law was intended to provide, the Committee issued an unfavorable report on the bill.

**House Bill 1095 /Senate Bill 513: CRF Funding Increase.**

These cross-filed bills would have altered the amount the Governor is required to include in the annual budget for the State's Tobacco Use Cessation and Prevention Program. Under the proposal, mandatory funding would remain at the current rate of \$21 million through fiscal year 2011. Starting with fiscal year 2012, the Governor would be required to include in his or her annual budget an amount at least equal to the level recommended by the Centers for Disease Control (CDC). After the Master Settlement Agreement funds began to flow into the states, the CDC developed a system that examines a state's tobacco use prevalence and related disease and illness rates, as well as the state's tobacco control

legislation and policies. The CDC then establishes a recommended funding level at which a state will have a significant impact on tobacco use and related public health harms. Currently, the CDC recommends that Maryland's comprehensive tobacco prevention and control programs be funded at \$63 million annually. Through the hearing process, agencies and organizations that accomplish significant gains in tobacco control with current funding were able to bring to the General Assembly's attention the need for, and positive impact of, these programs. That laid the groundwork for continued attention to the funding issue despite the bill's failure in the House Health and Government Operations Committee.

**House Bill 1360/Senate Bill 785: Smoking in Cars with Kids.**

These bills would have prohibited smoking in a vehicle carrying a child under the age of six, enforced through traffic citations issued by law enforcement officers. Violators would have been subject to a \$50 fine but would not have received points on their driving record. Senator Mike Lenett of Montgomery County and Delegate Ben Barnes of Prince George's County served as lead sponsors. Despite an engaged and informative hearing, the Senate Finance Committee issued an unfavorable report. Advocates anticipate the bills will be reintroduced in the 2009 session.

**HB 1558: Flavored Cigars and Cigarettes.** This bill would have prohibited the sale of cigars and cigarettes with a characterizing flavor other than menthol, coffee, nut, or pepper flavorings. Those caught selling flavored cigars or cigarettes would have been subject to a fine of up to \$500. Studies show that young people are enticed to initiate smoking flavored products, including cherry, strawberry, and lemon zinger cigarettes, and grape, pineapple, and wine cigars. The first-time proposal, with Delegate Jon Cardin of Baltimore County as lead sponsor, was consistent with legislation passed in Maine and pending before Congress. Nevertheless, the novelty of the issue was apparent during the bill hearing, as the Economic Matters Committee expressed confusion about the definitions in and implications of the bill. In particular, the Committee expressed concern that the definitions, which were drawn virtually verbatim from the bill pending in Congress, would result in banning all cigarettes and cigars as flavorants of some sort are used in the manufacture of almost all tobacco products. With a late introduction date and a rushed hearing, there was little time to assure Committee members that the bill would not be over-inclusive. The legislation received an unfavorable vote. Ultimate passage of the Congressional bill will make passage

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of a companion bill in Maryland more likely in the future.

### **SB 383: Moist Snuff Tax Rate.**

This bill would have changed the state tax on moist snuff from an ad valorem, or price-based, tax of 15% of the wholesale price to a weight-based tax of 39 cents per ounce. Advocates considered such a change unacceptable from a public health perspective despite generally agreeing that the tax rate for non-cigarette tobacco products should be increased. The bill's proposed method of increase would actually reduce the cost of premium moist snuff (the brands most popular among adults and kids), negating the benefits of a resulting increase in the price of cheaper competitors.

Ultimately, the change would result in decreased "real" prices—and decreased tax income—because a weight-based tax would fail to keep pace with inflation, unlike the current price-based system. The bill passed through the Senate but was killed in the House. Because tobacco control advocates and some within the tobacco industry desire a change in the taxation of moist snuff, this issue will return in the 2009 session.

**Senate Bill 822/House Bill 148: Carroll and Garrett County Civil Tobacco Sales Citations.** These separate bills introduced by the Carroll and Garrett County

Delegations created substantively identical prohibitions on the distribution of tobacco products to minors as those found in Maryland State criminal law. The bills differed from the State law by establishing civil rather than criminal penalties and by providing for enforcement by the local Health Officer or the Officer's designee. This legislation will allow Carroll and Garrett Counties—each without home rule power—to enforce a law similar to that found in seven of their sister counties. Both bills were passed by the legislature and signed into law by the Governor.

## **Baltimore County Passes Youth Access Law But Weak Enforcement Program**

Advocates in Baltimore County celebrated a long-fought success on November 19, 2007, when the County Council unanimously passed Ordinance No. 79-07, a comprehensive youth access law. The law prohibits self-service tobacco storage and displays and makes the sale of tobacco to a minor a civil infraction. As a civil provision, the law will be enforced

by the Baltimore County Health Officer and prosecuted by the County Attorney's Office, eliminating the need for police or State's Attorney involvement. The coalition of advocates who had sought the bill for three years is now pressing hard for an effective enforcement program. Initially, County Executive Smith indicated that compliance checks using minors—as is done in all other Maryland counties with such a law, and by the Maryland Department of Health and Mental Hygiene during federal Synar compliance checks—would not be a part of the program. Recognizing that a laissez-faire approach to enforcement will not curtail tobacco sales to kids, the coalition continues to urge Smith to adopt a comprehensive compliance check program. The County has hired an enforcement officer and the Center looks forward to working with him to reduce tobacco sales to minors in the County that recorded the highest youth sales violations in the State in the latest Synar survey.

# INSIDE THE CENTER

## Center Staff Participate in Access 2008 Conference

Eager to share their knowledge and hone their networking skills, Center staff traveled to Washington State in late March to participate in Access Seattle 2008: Building a Tobacco-Free Future. The conference drew attendees from across the country and provided an opportunity for lawyers, advocates, medical professionals, health department staff, and many others to engage in creative discussions about how to reduce youth smoking prevalence and exposure to secondhand smoke.

Center Director Kathleen Dachille gave two presentations during the conference, both focused on preventing involuntary exposure to secondhand smoke. During her first presentation, *Interventions to Protect Children from SHS in Private Places*, Dachille examined the places in which children may be exposed to secondhand smoke even in a locality with strong smokefree laws and policies: childcare settings, foster-care placements, automobiles, and multi-unit housing. Creative approaches to securing clean air in

these settings energized attendees to take action in their jurisdictions.

Stepping more clearly into her lawyer role for the second presentation, Dachille discussed the importance of educating tenants and landlords about the legal rights and obligations they have with respect to drifting smoke in multi-unit dwellings. She explained that educated tenants and landlords are better able to prevent drifting smoke problems.

Deputy Director Michael Strande contributed to the conference by discussing the legal and policy issues surrounding hookah smoking. Strande educated the audience about hookah, an increasingly popular tobacco product that involves using a water pipe and finds its origins in Middle Eastern culture. Strande explained why hookah bars may fall outside a jurisdiction's smokefree law and how the law can be altered to insure inclusion of such establishments. He also offered creative ways to use current health codes and zoning laws to regulate hookah smoking.

On the last morning of the conference, Research Fellow Jackie McNamara gave a brief presentation on tobacco-free outdoor areas, an emerging area of tobacco regulation that raises difficult issues even within the

tobacco control community. McNamara emphasized the main benefits behind adopting tobacco-free policies in family-friendly areas such as beaches, ball fields, parks, and playgrounds: 1) reducing cigarette-related litter, especially discarded cigarette butts, which can endanger wildlife and young children; 2) reinforcing to youth the social norm that most people do not smoke or use tobacco; and 3) minimizing exposure to environmental tobacco smoke, which may be unhealthy even outdoors.

Center staff presentations from Access Seattle 2008: Building a Tobacco-Free Future are available on the Center's website, and all conference presentations are available at [www.accessconference.org/materials](http://www.accessconference.org/materials).

## Center Co-Hosts Annual Enforcement Conference with Prince George's County Health Department

Regulation of single cigar sales and how to combat the upsurge of "blunt wraps" and other tobacco products commonly used in combination with illicit drugs were among the new topics addressed at the fourth annual

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statewide enforcement conference co-hosted by the Center and the Prince George's County Health Department in April. The conference, held for state and local health department staff and police officers working on tobacco enforcement throughout Maryland, focused on emerging trends in youth access to tobacco and drew more than 30 participants from across the state.

Prince George's tobacco control officer Ron Salisbury opened the conference with a discussion of recent trends discovered during his compliance checks of tobacco retailers. Salisbury detailed the prolific use of single cigars, often referred to as blunts, presenting the results of an informal survey of 500 tobacco retailers: Sixty-four percent reported single cigars as the tobacco product most often requested by customers aged 25 and under; single cigars were the cheapest tobacco product available in all locations; and of those customers believed to be under age 18, single cigars were the product most commonly requested. Participants agreed that those results are consistent with conditions observed in other jurisdictions. Next, Salisbury stunned the crowd by detailing the rise in use among youth of "blunt wraps." These tobacco products are like cigarette rolling papers, but are made from

tobacco leaf and are primarily associated with the use of illegal narcotics. Because blunts contain tobacco, their sale to minors is prohibited. Unfortunately, it appears that many retailers are not familiar with the age restrictions on these products or choose to ignore the restrictions. Salisbury noted a dramatic increase over the last year in stores carrying these products in a myriad of candy and alcohol flavors, including vanilla, grape, cherry, apple martini, gin and juice, and mojito. Samples were passed around at the conference so that enforcement officers in attendance could become familiar with these types of products.

Turning to a review of the 2008 Maryland General Assembly Session, the conference first focused on the failed attempt to regulate the sale of cheap, single cigars (see discussion of H.B. 609 in Legislative Wrap-Up at page 3). Center Deputy Director Michael Strande explained that although legislative efforts failed at the state level, jurisdictions with local legislative power may pass such laws locally. Strande highlighted Prince George's County and Baltimore City as examples of local jurisdictions moving forward in this manner (for more on Baltimore City's effort, see page 1). Strande also spoke about legislation that would have prohibited the sale of flavored cigars and cigarettes (see discussion of H.B. 1558 in Legislative Wrap-Up

at page 5). Participants then discussed the impact of such a law on current youth tobacco use and how a similar legislative effort could be supported in the 2009 General Assembly Session.

Finally, representatives of the Comptroller's Office discussed their efforts to regulate tobacco sales and reviewed procedures for coordinating with local law enforcement concerning retailers repeatedly cited for selling tobacco to minors. The Comptroller's Office renewed its commitment to hold administrative hearings against those retailers identified by local enforcement officials as having sold tobacco to kids more than once in a two-year period, with appropriate license suspensions as a result.

During the lunch held afterward, conference attendees were able to network with their colleagues from around the state, sharing recent experiences, challenges, and successes. Many attendees expressed gratitude for the conference, confiding that they were previously unaware of some of the issues raised and that they were now better prepared to combat youth access to tobacco in their communities.



## Legislative Solutions to Increased Cigar Use Discussed in Ohio

Notwithstanding cigarettes' prominence in tobacco control policy development, other tobacco products (OTP) also contribute to the illness and death associated with tobacco use. Recognizing the need to better understand OTP and the regulatory framework surrounding OTP, the Ohio Tobacco Public Policy Center hosted a conference in April entitled *Beyond Cigarettes: Policy Responses to Other Tobacco Products*. Center Director Kathleen Dachille was invited to talk with the group about cigars—both cheap, single cigars and “little” cigars also known as brown cigarettes.<sup>1</sup>

Dachille displayed for attendees some of the most popular small cigars—Phillies® blunts, Black & Milds and The Game blunts—in delicious, fruity flavors. Dachille explained that these products have become popular for social and cultural reasons, namely, that the products are exalted by popular rap and hip-hop musicians and are available by the single for less than \$1. Potential legislative solutions that could reduce use of these cigars include increasing the OTP tax, mandating minimum pack sizes for cigars, and prohibiting the sale of flavored tobacco products. Dachille addressed the pros and cons of each.

The ubiquitous “little” cigars, or brown cigarettes, present a different problem. Showing the audience these cigarette-lookalike products, Dachille surprised everyone by pointing out that the price for a 20-pack of little cigars was less than half the price of a pack cigarettes. To close this gap, Dachille recommended raising the OTP tax, applying the cigarette tax to little cigars, or altering the definition of little cigars to be included in the definition—and thereby the regulation—of cigarettes.

Knowing that OTP are commonly in use and present serious threats to public health, attendees will be able to use the information from the conference in working on policy and legislative solutions.

### (Footnotes)

<sup>1</sup> Dachille's power point presentation is available at the Center website.

## Center Director Speaks with Russian Tobacco Control Advocates

In February, Center Director Kathleen Dachille was invited to the University of Maryland Medical Center in Baltimore to talk with Russian tobacco control advocates about federal, state, and local tobacco control policy in the United States. The Russian delegation comprised lawyers, doctors, and public health experts who are working to reduce tobacco

use and decrease involuntary exposure to secondhand smoke in that country. With simultaneous translation, Dachille discussed the lack of federal regulation of tobacco products and current efforts to change that. Of most interest to the delegation were successes at the state and local levels in adopting clean indoor air laws and restrictions on youth access to tobacco, as well as the successes in enforcing those laws. Working with international partners is proving to be as important and rewarding as the Center's more customary efforts to assist tobacco control advocates in other states.

## Erin Smith Joins the WHO in Geneva

Staff Attorney, Erin Smith (UM Law '06), left the Center in January to join the World Health Organization's (WHO's) Tobacco-Free Initiative (TFI) in Geneva, Switzerland. Established in July 1998, TFI's objective is to reduce the global public health crisis created by tobacco use. TFI provides global leadership on effective tobacco control policy development, stimulates participation by citizens at all levels of society, and encourages adoption and implementation of the global Framework Convention on Tobacco Control. As legislation officer for the WHO Report on the Global Tobacco Epidemic, Smith's duties include review and analysis of

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legislation from Member States on tobacco topics such as smokefree environments, advertising and promotion bans, and package warning labels; creating, along with the Report team, a data-collection tool and manual for the second Report; providing technical support to Member States in their efforts to develop new or amend existing legislation or regulations; and frequent travel around the world to accomplish these duties.

It is rewarding for Center staff and the University of Maryland School of Law administration to see alumni like Smith contributing significantly to global public health efforts. And it is helpful to our international work to have an enhanced relationship with TFI as a result of Smith's new position. We hope to work with Smith and TFI to increase information sharing to achieve innovative tobacco control ideas domestically and around the world.

## **Deputy Director Michael Strande Joins Maryland Office of the Attorney General**

**I**n early August, Deputy Director Michael Strande left the Center for Tobacco Regulation to become an Assistant Attorney General with the Maryland Office of the Attorney General. Strande now represents

the Department of the Environment and is assigned to the Air and Radiation Management Administration in Baltimore. His primary responsibilities include pursuing civil litigation against businesses determined to be in violation of state air quality control laws and regulations and providing advice and support to the Department.

Strande started working at the Center shortly after his graduation from the University of Maryland School of Law in 2001. The skills and experience Strande acquired through his work at the Center should serve him well in his new position. During his seven-year tenure at the Center, Strande became a well-known face in both the tobacco control and law school communities. While it is beneficial to both of these communities to have another friendly face at the Attorney General's Office, Strande's wit, charm, and spunk will be greatly missed.

## **Clinic Students Participate in Treaty Negotiation**

**I**n February, two students in Dachille's Tobacco Control Clinic, Eva Yu and Anna Kuperstein, journeyed to Geneva,

Switzerland, to take part in an international negotiation. Delegates to the meeting—called an Intergovernmental Negotiating Body (INB)—met to discuss the first protocol to the Framework Convention on Tobacco Control (FCTC), the world's first public health treaty. The protocol will address the issue of illicit trade in tobacco products, a criminal activity that generates an estimated \$50 billion per year worldwide. The INB met from February 11 to 15.

Yu and Kuperstein went to the INB on behalf of their client, the Framework Convention Alliance (FCA), a nongovernmental umbrella organization that counts over 300 public health groups from over 100 countries among its members. Accompanying the students was Chris Bostic, Clinical Law Instructor and Legal Adviser to the FCA. The FCA enjoys official relations with the WHO, and its delegates are admitted to the negotiations as observers and are allowed to participate in the proceedings.

Prior to their trip, Yu and Kuperstein prepared documents detailing the official positions of major multinational tobacco companies on various aspects of the protocol. During the INB, Yu and Kuperstein participated in a variety of advocacy, research, and drafting activities. The students' language skills came in handy for

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conversations with delegates: Kuperstein is fluent in Russian, while Yu speaks fluent Chinese. Both Russian and Chinese are official languages of the WHO, but are relative weaknesses among FCA members.

The INB was quite successful, and negotiations are on track for a strong, comprehensive protocol. It is estimated that for every ten cigarettes that leave a country legally, only seven arrive at their intended destination, meaning that three are diverted to illegal trade streams. Often, the tobacco industry itself is found to be complicit in the smuggling, which the industry sees as a vital part of its marketing efforts. Such unregulated trade greatly impedes tobacco control efforts worldwide.

The second meeting of the INB on smuggling will be held in Geneva in October 2008. It is hoped that a final text can be adopted and submitted for ratification in early 2010.

### Student and CTR Publications

**T**he Center for Tobacco Regulation is pleased to announce publication of **Current Issues in Tobacco Regulation, Litigation, and Policy** in the *JOURNAL OF HEALTH CARE LAW & POLICY* (JHCLP),

Vol. 11, No. 1 (2008), a collection of articles from the Center's April 2007 symposium, "*Safer*" *Tobacco Products: Reducing Harm or Giving False Hope?*.

Authors include esteemed tobacco control and public health advocates Cheryl Heaton, Richard A. Daynard and Christopher N. Banthin, Micah Berman, and David Swenor, with an introduction by Center Director Kathleen Hoke Dachille and Research Fellow Jacqueline M. McNamara. To view articles online, visit the "Publications" section of the Center's website. To order copies of the journal, please contact JHCLP staff at (410) 706-2115 or send an email to [jhclp@law.umaryland.edu](mailto:jhclp@law.umaryland.edu).

Congratulations to the following University of Maryland School of Law students for being published in the same JHCLP issue:

- **Rachel C. Grunberger**, Class of '08, Article, *The Basis of a Comprehensive Regulatory Policy for Reduced Harm Tobacco Products*, co-authored with David Swenor;
- **Anna R. Kuperstein**, Class of '08, Comment, *Tobacco's Weakest Link: Why Tobacco Farmers are Essential Players in the Fight Against Big Tobacco*;
- **Lindsey C. Dastrup**, Class of '09, Comment, *Tobacco Control and Snus: Time to Take a Stand*, co-authored with Jacqueline M. McNamara.



Lindsey Dastrup, UMD Law Class of 2009

## Center Staff Works with Harford County Groups

Harford County has proven to be a proactive jurisdiction, staying abreast of tobacco control issues and reaching out for assistance when necessary. As a result, Deputy Director Michael Strande spoke to a group of Harford County police officers in March regarding the State's tobacco control laws and pending legislative initiatives. Strande returned to the County in early April to speak with its Cigarette Restitution Fund (CRF) Coalition, a group of volunteer community members interested in advancing tobacco control policy.

At the police officer training, Strande addressed areas of concern for enforcement officers and school resource officers who regularly deal with tobacco-related issues. Officers received information about citation procedures, service of process, entrapment, and how to best coordinate with other State agencies, particularly the Office of the Comptroller. The officers appreciated being updated about legislative priorities, particularly the flavored cigarette and single cigar bans that were pursued at the State level during the 2008 Maryland General Assembly Session. All officers agreed that passage of such legislation would help reduce youth tobacco use in Harford County.

Officers also agreed that youth possession penalty reform was needed.

The CRF Coalition expressed a strong desire to become more active in the state and local legislative process. Those present at the April meeting determined that monitoring the recently implemented Clean Indoor Air Act for strong and consistent enforcement should be the Coalition's main priority. The group also noted that there were many other issues to be confronted regarding tobacco use in the County. Coalition members reported that the meeting with Strande had given them more concrete ways to play a role in policy formation at the state and local level.

The Center looks forward to continuing its work with Harford County and other jurisdictions throughout Maryland.

## Bethany Beach Passes Smoking Ban

On April 18, 2008, the Town Council of Bethany Beach, Delaware, voted six to one to enact a complete smoking ban for town parks, the boardwalk and bandstand, and smoking restrictions for town beaches (see "Bethany Beach is Latest Seaside Town to Consider Banning Butts on Its

Shores," *Tobacco Regulation Review*, Vol. 7, Issue 1, February 2008, at p. 10). Beach restrictions—in the form of designated smoking areas—will apply from May 15 to September 15 each year. Implementation for 2008 was delayed, however, due to a spring storm that demolished fences and large amounts of beach and dunes, necessitating repairs before smoking areas could be demarcated and signs erected. The beach restrictions ultimately went into effect in early August. The year-round smoking ban germane to the boardwalk, bandstand, parks and playgrounds went into effect in May as scheduled.

According to town communiqués, "[a] core principle of this ordinance mandates that any violator is first warned and given an opportunity to comply before any enforcement action is taken." Fines are set at \$100 for first-time violations and a steep \$500 for second and subsequent violations.

Officials in neighboring South Bethany Beach and Fenwick Island, and farther north along the Delaware coast in Rehoboth, are also considering adopting smoking bans. As with the Bethany Beach ordinance, the Center will assist these jurisdictions in their efforts if requested.