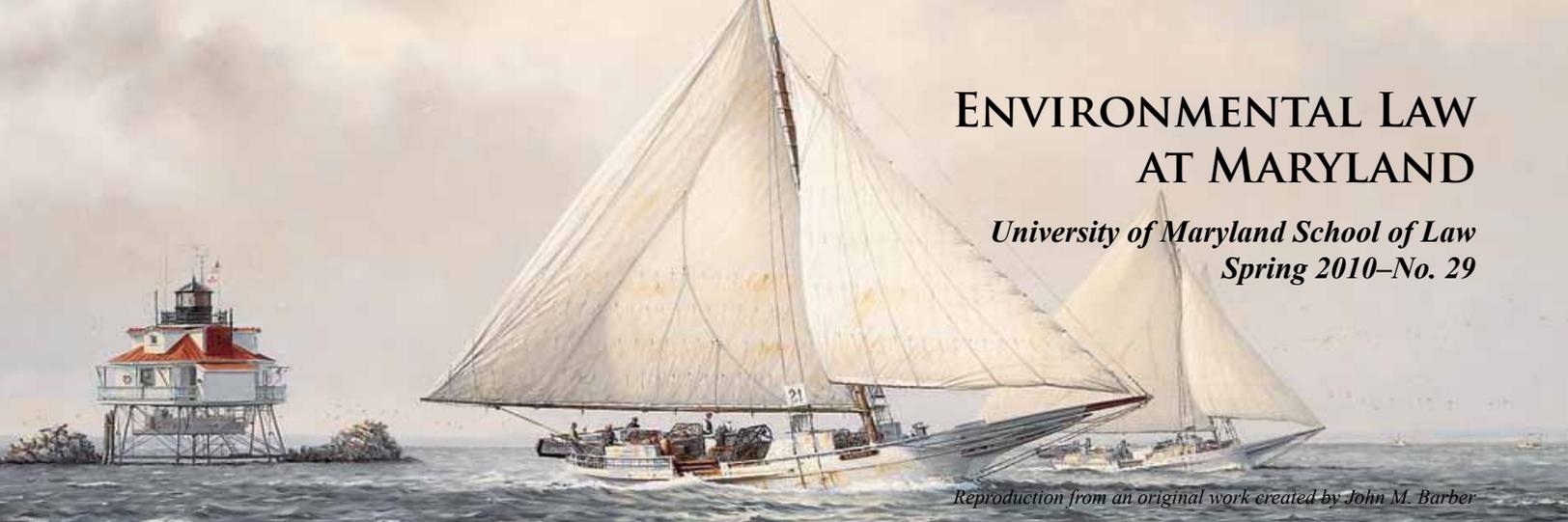


ENVIRONMENTAL LAW AT MARYLAND

*University of Maryland School of Law
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NATIONAL LEGAL COMMUNITY RALLIES TO DEFEND CLINIC AGAINST LEGISLATIVE ATTACK

By Jamie Smith, UMD Law Director of Communications

As the 2010 session of the State of Maryland's General Assembly neared its conclusion, faculty and students at the University of Maryland School of Law knew the work of its Environmental Law Clinic had raised the ire of several powerful state legislators. But nobody at the Law School realized just how much.

On March 23, amidst Senate debate over the State of Maryland's Fiscal Year 2011 budget, an amendment was introduced that would have withheld \$750,000 in university funding until all 22 of the Law School's clinics submitted a report "listing and describing each legal case in the past five years in which they participated in a court action, including the client represented, complete delineation of the expenditures for each case, and the source of funds for each expenditure."

Senator Brian Frosh, who had worked closely with the Environmental Clinic during his eight years as Chair of the State Senate's environment subcommittee, rose to challenge the amendment's sponsor, Senator Lowell Stoltzfus: "What's this about?" he asked.

Nominally, it was about a suit the Clinic had filed earlier in the month on behalf of an environmental group against poultry giant Perdue and a chicken farmer who supplies the company, contending that the defendants are illegally discharging pollution into rivers feeding the Chesapeake Bay. But it was about much more than that.

"Lawyers must be able to fulfill their professional responsibility to provide effective representation, to protect client confidentiality, and to resist pressures that compromise their judgment and integrity," said Dean Phoebe A. Haddon. "To safeguard these vital principles, as well as academic freedom, it was crucial for us to speak

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WORLD CHAMPS! MARYLAND WINS INTERNATIONAL COMPETITION



*World Champion Environmental Moot Court Team—
from left to right, Coach Karla Schaffer '07, team
members April Morton 2L, Molly Knoll 2L, William
Tilburg 2L, and Coach Dave Mandell '07 (see story
on p. 8)*

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*Big Chicken Plays
Chicken Little*

*Environmental Law
in Jordan*

*Students Awarded "Golden Trees"
for Environmental Law Films*

*Teach-In on "Climate Change
Beyond the Law"*

Lawsuit

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out.”

Before the fight over this amendment was finished, the amendment was transformed to a request for a report on public information about Environmental Law Clinic cases over the last two years, without any money being at stake. But to reach that reasonable compromise took a campaign unparalleled in the law school's history, mustering support from the American Bar Association, every national legal education association, 470 individual faculty members and deans from law schools around the country, and hundreds of letters, phone calls, and electronic mail from law school alumni and students. The story was reported in every newspaper serving Maryland citizens, including *The Baltimore Sun* and *The Washington Post*, and received national attention in *The New York Times*, *The National Law Journal*, *The Chronicle of Higher Education*, and *Legal Times*.

Frosh to the Rescue

Now Chair of the Maryland State Senate's Judicial Proceedings Committee, Brian Frosh had utilized the Environmental Clinic as legal counsel during his tenure as chair of the Senate's environment subcommittee. At his request, the Clinic's student attorneys had completed a pair of comprehensive and influential reports on the state's most pressing environmental problems. When the budget amendments regarding the Law School's clinics reached the Senate floor, Frosh was shocked. In addition to the Senate's proposed amendment, the House was going to introduce an additional amendment withholding another \$750,000 until the University System submitted a report on how clinics at other public law schools across the country select their

cases and fund their programs.

Ultimately, Frosh engineered passage of compromise language that limited the reporting requirement only to the Environmental Clinic for the past two years, with the conditional funding reduced to \$250,000. “It's better than it was, but it's still a pretty big abridgement of academic freedom,” Frosh told *The Washington Post*, likening the amendment to the threat, “If you guys are getting involved in issues that we don't like or you're bothering people that we do like, we want you to shut up.”

By the next morning, Dean Haddon had convened an ad hoc group of faculty and administrators with political experience. Their immediate goal was to convince the House to forego its two amendments, withholding up to \$1.5 million and requiring reporting on all clinics, and accept the Senate's version. Convincing the House, whose members had demonstrated greater dissatisfaction with the Clinic than their Senate counterparts, to drop the amendments entirely seemed impossible.

An Outpouring of Support

Support for the Law School and, by extension, clinical legal education, was swift and widespread. UMD Law alumni published letters to the editors in local papers and organized efforts to contact legislators. Current students drafted opinion pieces and hand-delivered letters—bearing hundreds of signatures—to every member of the General Assembly.

Carolyn Lamm, President of the American Bar Association, wrote, “I urge those who would undermine clinical law school programs to step back and remember that the rule of law cannot survive if pressure prevents



This newsletter is published by the University of Maryland School of Law Environmental Law Program. Contributors to this newsletter include faculty, alumni, students, and friends.

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lawyers from fulfilling their responsibilities to their clients. I call on lawyers in every state to remember their professional obligation to uphold the independence of their profession, and speak out against intimidation whenever they see it. Just as lawyers who represent unpopular clients are fulfilling the responsibilities of all lawyers, so too are law students who assist clients in clinical legal programs.”

“These actions demonstrate a failure to understand the professional responsibilities of lawyers and the structure of contemporary legal education,” wrote Clinical Legal Education Association President Robert Kuehn. “Unfortunately, those attacking the law clinics appear more concerned about protecting favored businesses from compliance with the law than about supporting one of their state’s flagship schools.”

Washington University in St. Louis Professor of Law Peter Joy wrote and circulated a letter that garnered almost 470 signatures from law faculty and deans, “A university’s ability to attract top students and faculty rests upon the fundamental notion that it must be free to take up controversial ideas that may be at odds with established interests within the state,” it read. “Rather than punishing the Maryland School of Law, state lawmakers should be praising it.”

Numerous legislators were at first surprised, then overwhelmed, and ultimately swayed by the outcry of opposition. A week after the Senate acted, the House voted to strike its budget amendments regarding the Clinic. Unfortunately, UMD Law’s situation is not unique. Clinics at other law schools across the country find themselves under similar scrutiny. In Michigan, a Wayne County prosecutor tried to include six University of Michigan law students on the witness list during the retrial of a man the students had worked to exonerate from criminal charges. In New Jersey, a developer sued the environmental clinic at Rutgers School of Law-Newark. The clinic had represented a group of citizens opposing an outlet mall that the developer was planning. After Tulane’s environmental law clinic raised concerns over the proposed site of a petrochemical plant, the Louisiana Supreme Court tightened restrictions on which cases the students could argue in state courts. Now, a Louisiana state senator has proposed a bill that would prohibit legal clinics that receive state funding from suing a government agency, and ban them from filing lawsuits that seek monetary damages from

an individual, business or government agency.

Professor Rena Steinzor expects such efforts to continue in Maryland and elsewhere. But she says she and colleagues will not be dissuaded. “The clinics represent people or groups that can’t otherwise afford lawyers and by definition, this work often puts the clinics on the opposite side of the government or powerful interests,” she said. “We’re willing to accept that.”

On behalf of Dean Phoebe Haddon and the Law School faculty and staff, the following have our deepest gratitude for the support they gave to the Law School and its clinical programs. For texts of their letters and statements of support, please visit: <http://www.law.umaryland.edu/about/features/enviroclinic/index.html>

Expressions of Support

National Organizations and Faculty at other Law Schools

- Association of American Law Schools
- Clinical Legal Education Association
- Society of American Law Teachers
- Law Faculty and Deans (450 faculty and 50 dean signatories)
- Law Faculty (members of SALT)
- Environmental Law Clinic Faculty
- ABA President’s Statement
- Natural Resources Defense Council
- American Association of University Professors

School of Law Community

- Faculty and Deans
- Student Body
- Members of the UMD Law Alumni Board
- Environmental Law Program alumni

Non-Profits

- Public Justice Center
- Center for Progressive Reform
- Environment Maryland
- Maryland Legal Services Providers

BIG CHICKEN PLAYS CHICKEN LITTLE IN MARYLAND WHILE ASSAULTING ACADEMIC FREEDOM AND ACCESS TO JUSTICE

By Shana Jones

The proverbial poop has hit the fan in Maryland this month after two environmental groups—the Assateague Coastal Trust and the Waterkeeper Alliance—sued Perdue Farms, Inc. and Hudson Farm, a Perdue-contract chicken factory farm in Berlin, Maryland, for violating the Clean Water Act. Water sampling from ditches next to Hudson Farm found high levels of fecal coliform and *E. coli*.

Phosphorus and nitrogen—nutrients killing the Chesapeake Bay—were also found.

The two environmental groups are represented by pro bono student attorneys at the Environmental Law Clinic at the University of Maryland School of Law (where I was once a student; I should also note that CPR President Rena Steinzor is the former director of the clinic). The groundbreaking suit not only takes on a chicken farmer, it also targets Perdue—which contracts with farms throughout the state to raise the chickens it processes.

Perdue's response? To cry "fowl," pardon the pun, of course. Instead of just fighting the lawsuit fair and square in court, Perdue also took its ruffled feathers to the Maryland General Assembly, pressing it to muzzle the student attorneys and send a message to the clinic. Perdue's claims that the sky is falling have apparently worked. Last month, budget language approved by the Maryland Senate included a provision ordering the law school to produce a list of the clients it has represented over the last two years or lose funding—\$250,000 in one version, \$750,000 in another. Students take note: this is what happens when you take on the nation's third-largest poultry company with \$4.6 billion in sales annually.

Here's why what Perdue wants to happen is so bad. First, most local environmental groups can't afford legal representation—clinics like the one at Maryland do a tremendous service by providing such groups access to justice, because they provide their services for free. And

students get extraordinary legal experience along the way. Chilling the clinic at Maryland could have the effect of blocking future suits that seek to enforce the law because environmental groups will have no attorneys to turn to when they need to take action. And if environmental clinics around the country aren't watching Maryland's situation carefully, they should be.



Aerial photo of Hudson Farm

Second, academic freedom is at stake here: is the Maryland General Assembly really going to tell its law school what cases have merit and don't?

Third, legal ethics are at stake here: does the Maryland General Assembly really think it's a good idea to require attorneys to make a list of clients publicly available?

Fourth, current agricultural practices are killing the Chesapeake Bay—and everyone knows it.

Enforcement needs to be strengthened against all polluters, of course, but agricultural polluters are notoriously under-regulated and rarely face enforcement actions. Meanwhile, agriculture is the largest source of nutrient pollution in the Bay, contributing 38 percent of the nitrogen and 45 percent of the phosphorous. Nationally, cattle, chickens, and hogs create more than 500 million tons of manure annually—three times more than the sanitary waste produced by people. Something needs to be done.

C'mon, Perdue – you've been sued by student attorneys and two environmental groups. If it's a frivolous lawsuit, you'll win. So what are you? Chicken.

Big Chicken.

Shana Campbell Jones, J.D., is the executive director of the Center for Progressive Reform. She joined CPR in 2007 as a policy analyst, and took on the role of executive director in 2009. Shana is a '03 graduate of the University of Maryland School of Law.

CLINIC'S AMBITIOUS DOCKET EMPHASIZES PROTECTION OF CHESAPEAKE BAY

This was quite an eventful year for the student attorneys in the 2009-10 Environmental Law Clinic. They were extremely busy with a number of matters involving the health and protection of Maryland's Chesapeake Bay and other natural resources, and the citizens who use those natural resources.

Advocating for Stricter Enforcement of the Clean Water Act

Dedelegation Petition

On December 7, 2009, on behalf of its clients, Waterkeepers Chesapeake of Maryland and Waterkeeper Alliance, the Clinic filed a petition asking the Environmental Protection Agency (EPA) to withdraw the Maryland Department of the Environment's (MDE's) delegation to enforce water pollution laws under the federal Clean Water Act (CWA).

The 58 page petition asked EPA to withdraw Maryland's delegated authority to administer the CWA's pollution permitting program for dischargers in the state. Under the CWA, EPA retains ultimate authority to monitor and control point source discharges of pollutants across the nation through its National Pollutant Discharge Elimination System (NPDES) program; the Agency typically delegates this authority to the states for implementation. In the petition, the Clinic requested that EPA evaluate the systematic failure of MDE to properly and effectively administer and enforce the CWA's NPDES permitting program.

To bring about an effective level of oversight, the Petitioners proposed various solutions including the enforcement of mandatory minimum penalties to help MDE acquire much needed funds and to create a true deterrent factor, as well as electronically available permitting and enforcement information to facilitate transparency and save the state money in filing costs over time.

Since filing the petition in December, clinic students were able to meet with representatives of EPA headquarters and Region III to discuss specific examples in the document as well as potential solutions and next steps.

Coal Combustion Waste Landfills

During the Fall 2009 semester, the Environmental Law Clinic, on behalf of clients Patuxent Riverkeeper, Sierra Club, Defenders of Wildlife and Chesapeake Climate Action Network, filed a notice of intent to sue against



Clinic students Kim Stefanski, Chris Montague-Breakwell and Jim Getz take a tour of Cox Creek Wastewater Treatment Plant in Anne Arundel County.

Mirant Mid-Atlantic, LLC and Mirant Maryland Ash Management, LLC for CWA violations at their Brandywine coal combustion waste (CCW or coal ash) landfill in Prince George's County, Maryland. MDE subsequently filed a complaint for these same violations in federal court. Clinic students recently drafted and filed a motion to intervene in the state's action.

In April 2008, Clinic client Potomac Riverkeeper joined the Environmental Integrity Project (EIP) and several individual citizens in filing a federal 60-day notice of intent to sue Mirant's Faulkner coal combustion waste landfill in Charles County, Maryland, over the alleged illegal discharge of toxic pollutants in violation of the CWA. In May 2008, MDE filed its own state lawsuit against Mirant. EIP, Potomac Riverkeeper, and the individual citizens then moved to intervene in the state lawsuit to stop the illegal discharges and to ensure that Mirant be held accountable for its allegedly unlawful behavior. The Charles County Circuit Court denied the motion to intervene in September of 2009. This spring, clinic students drafted and filed an appellate brief with the Maryland Court of Special Appeals to appeal that decision on behalf of their clients.

Agricultural Stormwater Pollution

Recently, on behalf of clients Assateague Coastkeeper, Assateague Coastal Trust, Kathy Phillips, and Waterkeeper Alliance, clinic students were integral in drafting and filing a CWA citizen suit against a chicken farm on the Eastern Shore of Maryland, and the farm's corporate integrator,

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Environmental Law Clinic Update

cont'd from p. 5

Perdue Farms, Inc. (see “Legal Community Rallies” on p. 1 for discussion of resulting political backlash). Almost half of all the nitrogen and phosphorous pollution delivered to the Chesapeake Bay is from agricultural sources, and rampant violations were discovered at this particular farm, making enforcement of Concentrated Animal Feed Operation (CAFO) regulations critically important in jump starting essential efforts to restore the Bay.

Environmental Justice

Since the 2008 spring semester, the Clinic has represented a civic association fighting the construction of a new concrete batching plant in its historic African-American community in Prince George’s County. This small neighborhood is already beset by more than its share of industrial activity, along with the resulting environmental and health issues that are associated with these types of industry. This year, clinic students represented the association in its appeal of the Prince George’s County District Council’s decision to uphold the granting of a special exception to the facility. In January, 2010, the Circuit Court for Prince George’s County ruled against the Civic Association, affirming the special exception based on what the Clinic believes to be an incorrect interpretation of zoning law. This spring, the Clinic appealed the Circuit Court’s decision to the Maryland Court of Special Appeals. Students are also assisting the association to ensure that existing area industries are complying with their environmental permits to decrease neighborhood exposure to harmful pollutants.

Improving Clean Water Act Permits & Monitoring State Consent Agreements

Clinic students continued to review and submit comments to MDE regarding the renewal of general and individual permits under the CWA’s NPDES program. These comments urged MDE to issue strong permits that

comply with all of the requirements of the CWA and state law. This year, Clinic students submitted comments and negotiated individual permit conditions for the Mirant Morgantown and Mirant Dickerson power generating plant (including a nutrient trading arrangement between the two facilities in the Potomac River watershed and a reopener

provision to incorporate limits for heavy metals discharged from the plants); and, the Maryland Airport in Charles County individual permit for stormwater associated with construction activity.

Also between 2007 and 2009, the Clinic submitted substantial comments on the State General Permit for Stormwater Associated with Construction Activity that resulted in an extended review of this permit to address some of the concerns highlighted by the Clinic. In spring 2009, the Clinic appealed MDE’s issuance of this permit, and successfully negotiated a beneficial settlement agreement

between the Waterkeepers and MDE. This year, Clinic students worked on ensuring the implementation of that settlement agreement, including drafting comments on behalf of its clients on proposed revisions to Maryland’s outdated technical standards for construction stormwater activities. This provided the students the opportunity to work with both clients and technical experts in the area.

The Clinic also represented the nonprofit Chester River Association in connection with water pollution emanating from a local chemical manufacturing facility that is discharging into groundwater and nearby waterways. One of the water bodies affected, the Chester River, is a major tributary of the Chesapeake Bay. During the 2007-08 term, the Clinic filed and argued a Motion to Intervene in Kent County Circuit Court, and filed a CWA citizen suit in the U.S. District Court for the District of Maryland. This year, the Clinic continues to represent CRA in commenting and oversight of a consent decree entered into between MDE and the industry, as well as in commenting on the facility’s NPDES permit.



Clinic students Kim Stefanski and Andrew Keir (center) take a tour of an abandoned mine in Western Maryland with client, Potomac Riverkeeper Ed Merrifield (right), and Clinic Fellow Tina Meyers (left).

CLINIC DIRECTOR JANE F. BARRETT NAMED OUTSTANDING ADVOCATE FOR CLINICAL TEACHING FOR 2010

We are proud to announce that this year, Jane F. Barrett, Director of the Environmental Law Clinic, received the Clinical Legal Education Association (CLEA) award for Outstanding Advocate for Clinical Teaching. Jane's receipt of this award was based on her commitment to the field of clinical legal education, her advancement of the field, and her fostering a spirit of community in the field. Jane works tirelessly to ensure that her students receive an incredible clinical experience and that her clients receive top-notch legal representation. Through her unwavering dedication to her clients, she teaches her students invaluable lessons on ethical lawyering, and sends a message that clinics across the country are not to be bullied. Congratulations to Jane, who is extremely deserving of this esteemed award.

(For examples of Jane's dedication this year and the work of the Environmental Law Clinic under her direction, see "Legal Community Rallies," on p. 1, "Chicken Manure" on p. 4, and "Clinic Docket," on p. 5.)



Jane Barrett



Clinic students enjoy an end of year boat ride with clients Bob Gallagher and Chris Trumbauer of West/Rhode Riverkeeper. (back row left to right) Kim Stefanski, Lisetta Silvestri, Limor Weizmann, Eric Hergenroeder, Dani Einik, Andrew Keir, Patrick Smith; (front row left to right) Chris Montague-Breakwell, Jim Getz, and Kevin Leslie.

MARYLAND STUDENTS WIN INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION—MARYLAND WILL HOST 2011 INTERNATIONAL FINALS

On March 14, 2010, Maryland law students Molly Knoll, April Morton and William Tilburg won the International Finals of the Stetson International Environmental Moot Court Competition. As environmental law continues to grow in importance throughout the world, this competition has become a truly global event. A total of 75 schools from five continents participated in the competition that included six qualifying rounds held around the world.

Maryland won the right to compete in the International Finals by first winning the Pacific Rounds of the North American Competition that were held at Chapman University in Orange, California on January 29-30. The Maryland team won all three of its preliminary rounds against teams from Southwestern, Hastings, and the University of Kansas, and then defeated Hastings in the finals. Maryland competed in the Pacific Rounds because Maryland hosted the Atlantic Rounds of the North American Competition.

On February 5-6, Maryland hosted the Atlantic Rounds of the North American Competition, despite the largest snowfall in Baltimore history. Most of Baltimore and the University of Maryland campus shut down on Friday afternoon, but the Law School stayed open to continue the competition. More than 70 people attended the competition's annual Fedder lecture on Friday night. Global environmental law scholar Bruce Rich made a spectacular presentation on multilateral development finance and the environment. The competitors and key personnel stayed in hotels close to school and had no trouble resuming the competition early Saturday morning despite the record snowfall that shut down most everything else. A gallery of photos from the Atlantic Rounds (including the winning University of Pennsylvania team posing in the snow) is available online at: <http://gallery.me.com/rperci/100645>.

The International Finals of the Competition were held at Stetson University Law School in Gulfport, Florida from March 11-14. Teams from India, Ghana, Kenya, China, Ireland, Ukraine, Brazil, Vietnam, the Philippines, and other countries competed against four U.S. teams—the University of Maryland team, Pacific runner-up UC-

Hastings, Atlantic Champion University of Pennsylvania and Atlantic runner-up Wake Forest University. In the Preliminary Rounds, Maryland's team defeated Taras Shevchenko National University of Kyiv, Ukraine; Amity Law School, New Delhi, India; Faculdade de Direito da Universidade Federal de Minas Gerais, Brazil; and the University of Pennsylvania Law School.

Maryland lost one preliminary round—to a group of Professor Percival's former environmental students from the China University of Political Science and Law (CUPL). CUPL had become the first Chinese school to enter the competition in 2008 when Professor Percival taught there as a Fulbright scholar and its team reached the international quarterfinals in 2009. Despite the loss to CUPL, Maryland was one of the top eight teams to advance to the 2010 Quarterfinals, where they defeated the University of California, Hastings College of Law. In a Semifinal rematch against China University of Political Science and Law, Maryland won and advanced to the Finals, where they prevailed against the Law Society of Ireland, Cork, the defending champions from 2009.

Molly Knoll was the Best Oralist of the Final Round and the team took home the award for Second Place Memorial. Maryland's success is a tribute to the hard work of alums David Mandell and Karla Schaffer who coach the team and teach the school's Environmental Advocacy course.

Maryland to Host 2011 International Finals

Maryland is particularly proud of Molly Knoll, April Morton, and William Tilburg for winning the 2010 International Finals because the school will be unable to enter a team in the 2011 Competition. The reason is because Stetson University has agreed to let Maryland host the International Finals in 2011. No, this is not like the America's Cup where the winner gets to host the subsequent competition. Instead, it is part of a new cooperative arrangement with Stetson University where we hope to rotate responsibility for hosting the International and North American Finals in subsequent years. We are looking forward to hosting a record 24 teams from around the world for the International Finals from March 17-20, 2011.

ENVIRONMENTAL ADVOCACY COURSE PREPARES STUDENTS FOR COMPETITIONS

Adjunct Professors David Mandell and Karla Schaffer hosted a panel on behalf of their Environmental Advocacy course and the Environmental Law Program entitled “How to Succeed in Moot Court Competitions and Appellate Advocacy.” The panel brought together four advocacy experts with a diverse range of experiences: The Honorable Robert A. Zarnoch of the Maryland Court of Special Appeals; Andrew Baida, a partner with Rosenberg Martin Greenberg, LLP and former Solicitor General in the Maryland Attorney General’s Office; Associate Professor Kathleen Dachille, Director of the Legal Resource Center for Tobacco Regulation, Litigation, and Advocacy; and Ian Ullman, a 2008 graduate and award-winning former student advocate. Mr. Mandell introduced the panelists, and Ms. Schaffer moderated the session.

The Environmental Advocacy course is a full-year course that explores the subjects of appellate advocacy and negotiations and provides instruction and practice with individualized feedback. The course prepares teams of selected students to attend three competitions: the Pace University Law School National Environmental Law Moot Court Competition, Stetson University College of Law International Environmental Moot Court Competition, and the University of Richmond School of Law National Environmental Negotiation Competition. The Fall semester focuses on building advanced advocacy skills, and the students selected for enrollment in the Spring semester continue to conduct research, refine their arguments, and practice their oral advocacy skills before attending their competitions.

The goal of the Environmental Advocacy course is to assist students in becoming more effective advocates. Mr. Mandell and Ms. Schaffer introduced the panel as an opportunity for students to learn effective strategies from the experts on how to excel at brief-writing and oral advocacy, and to serve as a forum where students would be able to receive answers to their advocacy questions. All law students were invited to attend the panel, which emphasized how to succeed both in law school competitions and in real world situations.

The panelists provided students with valuable insights on how to develop advanced advocacy skills. Judge Zarnoch and Andrew Baida stated that it is absolutely crucial for advocates to be fully prepared with their cases, to anticipate questions from judges, and to know the record backwards and forwards. Professor Dachille and Ian Ullman recommended that students take care to avoid underestimating the importance of the brief component in appellate advocacy competitions. They noted that although oral advocacy constitutes much of the focus of law school competitions, the quality of the brief is always a strong factor in determining whether a team will have the opportunity to compete in advanced rounds. Professor Dachille stated that a poorly written brief sometimes prevents a team with highly effective oral advocates from achieving success at a competition.

Students benefited from the panelists’ knowledge of the intricacies of maneuvering past challenging oral advocacy situations. When asked how an advocate should respond to a hostile or very active bench, Judge Zarnoch responded that the most important point for advocates to remember is to maintain composure and not become angry or flustered. Ian Ullman stated that competing students should treat every question as an opportunity to demonstrate their command of the arguments. He also explained that advocates should maintain awareness of the amount of time remaining in each round and make decisions accordingly as to which arguments they should raise. Panelists further addressed a number of other issues including how advocates should seek to handle difficult facts and losing arguments, the benefits of using a roadmap both in the brief and during oral arguments, the components of an effective rebuttal, and the importance of style of delivery as compared to the substance of arguments.

The advocacy panel was a tremendous success, attracting 40 students, only 15 of whom are in the Environmental Advocacy course. Many students stated that they attended in order to help them prepare for the Moot Court Board’s Fall Competition. The video of the advocacy panel is available online at [mms://media.law.umaryland.edu/enviro_law/mandell_panel_edit9-16-09.wmv](https://media.law.umaryland.edu/enviro_law/mandell_panel_edit9-16-09.wmv). Thank you to the expert panelists for providing the students with such a valuable learning experience.

ALUMNI PROFILE

JOEL FEDDER '58—GIVING BACK TO THE LAW SCHOOL AND THE GLOBAL ENVIRONMENT

Interview by Alexandria Millard 2L

As the law school prepared to host the International Environmental Moot Court Competition, we spoke with Joel Fedder '58, founder of the Fedder Environmental Fund, about his experience with environmental law and his contribution to the Environmental Law Program. The Fund has significantly enhanced our environmental law program, and it will enable us to host the IUCN Academy of Environmental Law Colloquium in 2012, a week-long gathering of more than 200 environmental law professors from throughout the world. We are most grateful to Mr. Fedder for his generosity and his support of our program.

Q: How did you become interested in environmental law?

A: I have always been an outdoors person. When I was young, I hunted and fished, and I loved the environment. When I was in law school, environmental law courses were not available—I specialized in tax law and real estate. I spent 27 years practicing tax law, and also worked as an accountant. I actually became interested in environmental law through the Sierra Club. I joined them on a trip to the Arctic National Wildlife Refuge in Alaska—we camped for a week, sleeping on an icy reef in the ocean. After the trip, I was inspired to study ANWR wildlife and the Indian tribes in that region. I saw the importance of protecting subsistence livelihoods, which the drilling would destroy. I now study and give lectures on climate change.

Q: How did you conceive of the idea of the Fedder Environmental Fund?

A: I created the Fund to train young lawyers and encourage them to get into the environmental arena. This way, they can take on the bad guys—the polluters. I wanted to help attract the kind of people to the school who are keen to take advantage of those opportunities and make a difference. I also felt I owed something back to the law school. The school enabled me to build my career in law.



Joel Fedder with his wife Ellen at the Great Wall of China during the Maryland Environmental Law Trip in March 2010

Q: What advice do you have for law students interested in environmental law?

A: I advise them to pursue their passions. Think about what makes you want to get up and hit a home run every day. For me, I wanted to go out and be my own person. Money is not the only thing in life—it is important to think about public service; your contribution to society. Incorporating these considerations in your work will lead to a very satisfying career. Some good places to look for employment are the state and federal government, as well as non-governmental organizations such as the Natural Resources Defense Council, the Sierra Club, and Earth Justice. One last thing: remember that your passions may change, and be open to that. Try different things, find out where your interests lie and pursue them.

THE FEDDER LECTURE: BRUCE RICH, “INTERNATIONAL FINANCE AND EMERGING GLOBAL ENVIRONMENTAL LAW”

By Helena Mastrogianis 2L

On February 5, the School of Law was honored to host students, alumni, and friends to the Fedder Lecture, featuring top environmental lawyer and author Bruce Rich. The Fedder Lecture was supported by the Fedder Environmental Fund, established in September 2007 through the generosity of Joel D. Fedder, Esq. '58, and his wife, Ellen S. Fedder.

Bruce Rich is an attorney who has published extensively on the environment in developing countries and development in general. He is the author of a major critique and history of the World Bank, and was awarded the United Nations Global 500 Award for environmental achievement for his research and advocacy concerning multilateral development banks. Since the 1980s,

Rich worked as an attorney at the Natural Resources Defense Council and the Environmental Defense Fund, and currently is advising the Sierra Club on a prospective program on international finance and climate. In his lecture titled “International Finance and Emerging Global Environmental Law,” Mr. Rich discussed the evolving impact of multilateral banks and financial institutions on global environmental law. Rich began his discussion by describing the development of global environmental law as a moral, philosophical, and legal concept, concluding that this is a field whose “time has come.” Rich described the increased recognition among international leaders of the impact of trade and finance on the global environment, as well as the conflict between true democratic principles and unwavering submission to market principles. Harkening back to Adam Smith’s “The Theory of Moral Sentiments,” Rich stressed the underlying fundamental ethical and social values of society that markets must serve, as stated by Smith himself—justice, prudence, and beneficence.

Rich emphasized the significance of these values in the context of our global economy and its impact on the global environment today.

Mr. Rich then described the evolving recognition of these principles in the global environmental context among international institutions, such as the World Bank and its adoption of environmental and social safeguard policies in response to outside pressures. Rich emphasized the

importance of transparency and public access to information as well as accountability to the public. Although the private sector has for the most part followed suit in adopting these aims, according to Rich, financial institutions are lagging in achieving the twin aims of transparency and accountability, and the voluntariness of adopting any such standards lends to general insufficiency.

Moreover, Rich described the modern problem of national

export credit institutions supporting projects rejected by international organizations or developed countries on environmental or social grounds. Rich stressed the need for establishing synchronized project finance and trade standards, otherwise considerations of global market competitiveness will stifle global environmental protection. Mr. Rich also emphasized the continuing tension between developed and developing nations on economic and global environmental matters, particularly in the context of global climate change and project finance, and the need for coherent policies and synchronized standards.

Mr. Rich concluded his lecture by harkening back to the importance of justice and prudence as the underpinnings of sustainable societies and efficient economic markets, and encouraging everyone in the audience to question the nature of law itself in the context of modern global economic and environmental issues and to take action. It was clear from the audience’s standing ovation that they were inspired by his charge.



From left to right, Terri Morse 2L, Megan Marzec 1L, Bruce Rich, Professor Bob Percival, Yewande Agboola 1L and Katie O'Malley 2L

STUDENTS AWARDED “GOLDEN TREES” FOR LATEST ROUND OF ENVIRONMENTAL LAW FILMS

For the past eight years, students in Professor Percival’s Environmental Law class have enjoyed an unusual assignment: to split up into small groups and make a short film about an environmental issue that concerns them. The purpose of the ungraded assignment is to make students think about how to communicate complicated regulatory policy issues to the public. With the rise of *You Tube* and other new media outlets, digital videomaking has become a valuable tool for influencing public opinion.

Students in the fall 2009 Environmental Law class made a record 13 environmental law films. As in past years the films demonstrated their enormous creativity. On April 7, “Golden Tree” awards were presented to the best films in a dozen categories as voted by an independent panel of judges.

This year’s top award-winner was “Environmental Injustice” a film that examined environmental problems in Baltimore’s impoverished Cherry Hill neighborhood. Produced by Nancy Lineman, Elsa Clausen Michels and Holly Devaser, the film won “Golden Trees” awards for Best Picture, Most Educational Film, Best Cinematography, and Best Narration. Dean Phoebe Haddon capped off the awards ceremony by presenting them with the “Golden Tree” for Best Picture.

Three “Golden Tree” awards were garnered by the film “Just a Reminder,” a solo effort from Paul Huntington. The film explored the difficulty of choosing a topic about which to make an environmental film. It won awards for Best Acting, Best Screenplay, and Best Sound, with Huntington delivering an impressive vocal performance on a clever title track whose lyrics he composed himself.

The film “Believe,” a parody of the notion of clean coal, won the “Golden Tree” for Best Use of Humor. Produced by Taggart Hutchinson, Shauna Stringham, Beth Grasso and Will Tilburg, the film featured Tagg showering with coal-based soap, using a coal lightbulb, and cooking with coal.

Adam Sharpe and Blake Baron won the “Golden Tree” for Best Interviews for their film “Environmental Awareness.” The film quizzed law students about a variety of environmental issues, demonstrating that their knowledge of current events often is laughably deficient.

The film “Six Stages in the History of Environmental Law” won the “Golden Tree” for Best Use of Special Effects. Nat Keller, Sasha Millard, and Emily Rohm used moving stick figures against a backdrop of historic photos to illustrate the history of environmental law as described in Professor Percival’s casebook.

Kevin Lee’s animated film “The Tale of Corn” offered a hard-hitting critique of the environmental benefits of corn ethanol. It won the award for Best Use of Animation, as an animated book turned its own pages to explain problems with use of the fuel.

The film “Bike Club” that extols the environmental virtues of biking to school or work won a Special Judge’s



Dean Phoebe A. Haddon presents the Golden Tree award for “Best Film” to Elsa Clausen Michels and Nancy Lineman

Award for having the best end credits. The film was produced by Charlie Friedman, Liz Shaner, Greg Simmons, and Dan Stringer.

Other films included: “Somebody Call 911: Windmills Are Killing Our Birds,” which examines the impact of wind power on avian life; “Rats Are Rotten,” which explores pest control techniques in Baltimore; “Baltimore Urban Gardening,” highlighting the benefits of locally grown produce; “Red Rocks,” which explores congressional efforts to create a new protected area; “Scrap Tires,” which

discusses the problem of used tire disposal; and “Solar Homes,” which interviewed contestants in the Department of Energy’s solar home design competition. A complete list of the films, their producers, and links to access them online is listed below.

The Environmental Law Program would like to express its sincere appreciation to all those who served as judges for the “Golden Tree” awards, including Professors Taunya Banks, Kathleen Dachele, and Katherine Vaughns, environmental law fellow Tina Meyers, Zhenxi Zhong from Shanghai Roots & Shoots, and aspiring art educator Marita Percival.

Below is a list of the films, their student producers, and links for viewing the films online. Previous years’ environmental law films can be viewed online at: http://www.law.umaryland.edu/about/features/filmfestival_10.html

1. “Baltimore Urban Gardening” (By April Morton, Betty Franky, Emily Fisher, Erin Doran, and Heather Sites)
<http://video.law.umaryland.edu/OpenPlayer.Asp?GUID=BAC76794-1945-45A6-B7DE-A0C827A9D79D>
2. “Believe” (By Taggart Hutchinson, Shauna Stringham, Beth Grasso and Will Tilburg)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=D735E29E-AF78-4A77-BE80-876E6B5FB942>
3. “Bike Club” (By Charlie Friedman, Liz Shaner, Greg Simmons, and Dan Stringer)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=53723F4F-EF7D-4759-9948-A74AB985DD96>
4. “Environmental Awareness” (By Adam Sharpe and Blake Baron)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=B419FF92-4746-4D0A-A7F6-C7C1940BE91F>
5. “Environmental Injustice” (Nancy Lineman, Elsa Clausen Michels and Holly Devaser)—a film about the Cherry Hill neighborhood of Baltimore and its environmental problems
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=590E68C0-333F-4A2E-B0A8-2CBF53985371>
6. “Just A Reminder” (By Paul Huntington)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=52218644-647B-4864-AB6D-CEAC6E-F91A1D>
7. “Rats Are Rotten” (By Irene Hantman, Katie O’Malley and Jessica Rozali)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=152B7DDE-2E39-4D4A-9BB6-EA6056F42630>
8. “Red Rocks” (By Tom Grillo, John Sipple, and Ethan Weitzman)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=6D18A692-8ADE-4AE5-9189-25833A196B31>
9. “Scrap Tires” (By Jacquin Milhouse and Terri Morse)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=2712F68F-D0FE-46E2-8417-E924EFE263C6>
10. “Six Stages in the History of Environmental Law” (By Nat Keller, Sasha Millard, and Emily Rohm)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=D50A4290-AAD6-4BE7-A728-1B343E20B103>
11. “Solar Homes” (By Cheryl Cortemeglia, Jim Getz, Molly Knoll and Cara Shepley)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=81121994-F2E0-416C-AF94-966321B2398C>
12. “Somebody Call 911: Windmills Are Killing Our Birds” (By Jessica Raba and Bryan Ebert)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=9C8CF7FB-5CB8-4AF8-A931-7DFA971A5270>
13. “The Tale of Corn” (By Kevin Lee)
<http://video.law.umaryland.edu/OpenPlayer.asp?GUID=E26C131B-620D-4E24-B8E6-382B2471F1F4>

GLOBAL SEMINAR PROMOTES DEVELOPMENT OF ENVIRONMENTAL LAW IN JORDAN

Students in Professor Percival's Global Environmental Law seminar had an unusual first class assignment this spring: split up into small groups to draft proposed problems for the Jordanian National Moot Court Competition. The assignment was the result of Professor Percival's work with the American Bar Association's Rule of Law Initiative in Jordan. Faced with growing interest in environmental law, Jordanian law schools had approached the ABA for help in developing teaching materials for the subject. Jordan has twelve law schools, but only two of them offer a single course in environmental law—an introductory environmental law course at Yarmouk University and an international environmental law course at Amman University. A major obstacle has been the lack of available teaching materials in Arabic.

The ABA asked Professor Percival for help in developing such materials and in December 2009 Percival spent a week in Jordan to assist with the project. After meeting with Jordanian deans and law professors, Percival came up with the idea of using an environmental law problem for the country's prestigious National Moot Court Competition. For the last three years the Competition, which has been so hard fought as to generate complaints from some schools, has used a commercial law problem.

Percival argued that using an environmental law problem would create a completely level playing field between the schools because none of them had any special expertise in the area. The schools quickly embraced the idea with the proviso that Percival's students be responsible for developing the problem.

Environmental law is developing rapidly in Jordan, as illustrated by the fact that the country's Ministry of Environment is now responsible for administering 19 laws, including many that initially were not considered environmental laws. Percival obtained English translations of these laws, which he provided to his students, who then embarked on a crash course to learn about environmental conditions in Jordan, aided by what Percival had learned

during his December visit there.

During his visit to Jordan, Percival met with Jordan's Minister of Environment Khalid Irani in his office at the Ministry of Environment. He learned that enforcement of Jordanian environmental laws remains a major problem as penalties for environmental violations are very low and often do not recoup the economic benefit of noncompliance. To increase interest in environmental issues in Jordan, the Ministry of Environment plans to host a film competition next year, including a competition for student films, and Minister Irani was particularly interested in the environmental law films made by Maryland students.

Percival also went to the Palace of Justice to meet with Judge Abdullah Abu Ghanem, a Jordanian judge interested in developing environmental law training programs

for the judiciary. Judge Abdullah had helped arrange for officials from U.S. EPA's Environmental Appeals Board and Office of Administrative Law Judges to conduct a three-day Environmental Litigation Training Workshop for Jordanian judges. EPA faculty for that workshop included Chief Administrative Law Judge Susan Biro, James McDonald, Director of Management for EPA's Office of Administrative Law Judges, and Timothy Epp, Counsel to EPA's Environmental Appeals Board. At the workshop Adnan Zawahreh, director of



Bob Percival with Jordanian Minister of Environment Khalid Irani

the inspectorate for Jordan's Ministry of Environment, showed a video of himself uncovering a secret pipe that had been concealed underneath another pipeline in order to hide pollution violations. After being caught red handed, the company needed two more warnings before agreeing to come into compliance. Mr. Adnan explained the importance of using videos to document environmental violations.

Percival also met with Yehya Khaled, Director General of the Royal Society for the Conservation of Nature (RSCN), and Chris Johnson, Director of Wild Jordan, at the RSCN offices in Amman. Their groups are NGOs who have been given responsibility by the Jordanian government for managing the country's six protected areas. They discussed

the difficulties of enforcing the country's relatively good laws governing protected areas and local resistance to land use planning regulations. Wild Jordan, which is a subsidiary of the RSCN, emphasizes the importance of melding environmental protection efforts with the economic needs of local communities, something they are doing by promoting eco-tourism. RSCN and Wild Jordan are starting their own school that will be used to train the Royal Rangers, the country's environmental police, and they plan to locate it in an abandoned quarry.

Percival visited the University of Jordan and met George Hazboun, the Dean of the law school, and several other law professors. He also has a lunch meeting with Jordanian Justice Minister Ayman Oodeh and Lawrence Mandel, Deputy Chief of Mission for the U.S.

Embassy. They discussed severe water supply problems in Jordan and the shrinking Dead Sea that has raised property law questions that seem to be the flip side of those raised by beach replenishment programs in the U.S.

Percival gave guest lectures on environmental law at Yarmouk University in the town of Irbid, Jordan, near the Syrian border, and at Philadelphia University, a private university with 6,000 students located in the town of Ayn al Basha al Badida. Following the lectures, there were spirited question and answer sessions that included questions about the potential liability of the U.S. military for environmental damage in Iraq. Percival also gave a lecture on "The Emergence of Global Environmental Law" at the King Hussein Club in downtown Amman. Photos of his December 2009 trip to Jordan are available online at: <http://gallery.me.com/rperci/100629>.

After studying Jordan's situation, students in Percival's Global Environmental Law seminar developed five proposals for environmental law problems that could be used in the Jordanian National Moot Court Competition. Recognizing that environmental problems do not easily translate from one country to another, the students put a lot of effort into developing problems that would be

particularly relevant to Jordan. One of the five proposed problems was selected for use in the 2010 Competition and another was selected for use in 2011. The problem used in 2010 involves a conflict over the use of water resources

between agriculture and forestry protection interests. The other three problems proposed by the Maryland students also have been translated into Arabic. They are being incorporated into the environmental law materials that the ABA is developing for Jordanian law schools, including an Arabic translation of part of Professor Percival's best-selling casebook.

Professor Percival returned to the Middle East in May 2010. After presenting a paper on "Liability for Environmental Harm and Emerging Global Environmental Law" on May 4 at the University of Tel Aviv, he traveled

overland to Jordan to participate in the opening of the Jordanian National Moot Court Competition on May 5. Percival spoke at the opening briefing for judges of the competition, who included 18 Jordanian judges and 8 lawyers. He explained the problem drafted by his students and the growing global importance of environmental law. The Jordanian competition was held in actual courtrooms at the Palace of Justice in Amman. A total of 165 law students signed up for the competition, which ultimately featured 14 teams from seven Jordanian law schools.

After a preliminary round on May 5, eight teams advanced to the quarterfinals on May 8. Teams from Al Al Bait University, Jordan University, Mutah University and Philadelphia University won the quarterfinal rounds and advanced to the semifinals. The teams from Al Al Bait and Jordan University then won the semifinal rounds and advanced to the championship round. After a terrific argument before five judges in the final round, the team from Al Al Bait prevailed. Jordanian Minister of Justice Ayman Odeh presented cash prizes of 500 JDs (\$700 USD) to the first place team, 350 JDs (\$500 USD) to the second place team, 250 JDs (\$350 USD) to the third place team



Jordanian Minister of Justice Ayman Odeh presenting trophy to Noura Saleh and Niveen Abdel Rahman, team from Al Al Bait University, champions of the Fourth Jordanian National Moot Court Competition. To the left of the Minister is Jay Knott, US AID Mission Director, and Maha Shomali of the ABA Rule of Law Initiative.

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ENVIRONMENTAL LAW STUDENTS TOUR CHINA DURING SPRING BREAK

By Bob Percival

During spring break in March 2010, a group of 37 Maryland environmental law students and alums returned to China for nine days, repeating a trip first conducted in 2008 when I was teaching in Beijing as a Fulbright scholar. Our group toured Beijing, X'ian and Shanghai, visiting tourist sites and meeting with prominent Chinese environmentalists, students and professors.

On their first full day in China a surprise blizzard hit Beijing as our group toured the Temple of Heaven, the Summer Palace, the Forbidden City, and Tiananmen Square. The forecast had been for snow flurries changing to light rain, but the snow started out fairly heavy and just intensified throughout the day. Fortunately it was warm enough that the snow melted as it hit the roads so transportation was not greatly impeded, but there was a substantial accumulation of snow everywhere else.

Maryland Professor Shruti Rana, who was in China to help set up a microfinance clinic, joined our group for a day, along with one of the Chinese alums of our joint business law exchange program with the Central University of Finance and Economics in Beijing. We also were joined by Huang Jing and Wang Jing, two of my former environmental law students from the China University of Political Science and Law (CUPL).

On Monday morning, March 15, we visited the Great Wall, which was covered in snow as a result of the surprise blizzard the day before. This made climbing the wall rather difficult, particularly coming down some of the steepest sections. But the blue sky and snow-covered wall provided terrific scenery. On Monday afternoon we visited the Center for Legal Assistance to Pollution Victims (CLAPV) on the downtown campus of CUPL. CUPL law professor

Wang Canfa founded CLAPV in 1999 by setting up a hotline to field complaints about environmental conditions in any part of China. Professor Wang showed us the hotline and his offices and then we adjourned to a classroom where he gave a terrific lecture on the development of public interest environmental law in China. Our group learned a lot from Professor Wang and we were most appreciative of his taking the time to meet with us. Professor Wang described his vision for the next phase in the evolution

of public interest environmental law in China, which includes the development of private law firms that will represent victims of pollutions.

Following dinner with the group in a Beijing hutong, I met with former CLAPV lawyer Zhang Jingjing who is now with the China



Environmental Law Group at the Forbidden City

office of the Public Interest Law Initiative (PILI). She noted that the public interest law movement in China is still in its early phases of development with the key players easy to identify. Jingjing mentioned that she and Professor Wang had posed for a photo spread for the March 2010 Chinese edition of Esquire magazine that was devoted to the theme of "Green China." I managed to obtain a copy at the Beijing airport and found that it included more than a dozen pages of photos of China's top environmentalists. One page featured environmental lawyers, including Jingjing and Professor Wang, but most of the people pictured were the leaders of grassroots environmental groups.

Prior to departing for X'ian on Tuesday morning, March 16, our group made an early morning stop at the Beijing offices of the Natural Resources Defense Council (NRDC). NRDC-Beijing director Alex Wang graciously agreed to open the office at 7:30AM so that our group could visit. He



Jacquie Milhouse (on telephone) poses with CLAPV's environmental "hotline"

said that our group was the largest group ever to visit the offices. Alex gave a terrific presentation about the work NRDC is doing in China and its multi-prong strategy for improving energy efficiency, greening supply chains, and combating air and water pollution.

In X'ian we visited tourist sites, including the Shaanxi Provincial Museum, the Big Wild Goose Pagoda, and the famous site where thousands of terra cotta warriors buried by Emperor Qin Shi Huang were discovered by a farmer digging a well in 1974. I had been to the latter twice before, the first time in 1981, shortly after the site was opened to the public. On Thursday, March 18 we had a very early morning flight to Beijing, so early that our luggage was checked in prior to the group, resulting in one student being stranded in X'ian after he discovered that his passport was in his checked luggage. Chinese security would not let him board our plane without a passport so he had to make a 16-hour journey by overnight train in order to rejoin the group in Shanghai.

In Shanghai we visited the Nanjing Road shopping area, the Jade Buddha Temple, and Yu Yuyuan Gardens prior to attending a Friday evening reception in our honor at the

Maryland China Center. At the reception we heard terrific presentations from Zhenxi Zhong, who described her work with Jane Goodall's Roots & Shoots office in Shanghai, and former Fulbright professor Dan Guttman, who discussed differences in the meaning of law and legal policy in China and the U.S. We also were joined in Shanghai by Mary O'Loughlin who is doing environmental policy research at Wuhan University sponsored by the Fulbright program and Michael Jean, a third year Maryland law student who recently moved back to Shanghai after her partner was transferred there.

On Saturday morning, March 20, we visited the World Financial Center where we had a panoramic view of Shanghai from the 100th floor observation deck. We then stopped at the Mag-Lev Terminal in order to be whisked to the airport in seven minutes on a train that reached speeds of more than 430km/hour using magnetic levitation technology. We then flew back to the U.S., clearing customs in San Francisco.

The trip was a huge success despite a very tight schedule and we hope to repeat it in future years. An album of photos of the trip is available online at: <http://gallery.me.com/rperci/100660>.



Group at the Yu Yuyuan Gardens in Shanghai

FOCUS THE NATION TEACH-IN ON “CLIMATE CHANGE BEYOND THE LAW”

By Emily Estrada 2L

On Wednesday, April 14th, the Maryland Environmental Law Society held its third annual Focus the Nation teach-in on “Climate Change Beyond the Law: A Look at Business, Health and Political Influences.” Co-sponsored by USGA and the Environmental Law Program, the event featured a panel comprised of several distinguished speakers who addressed solutions to climate change on a local, state, and national level. The panel was moderated by Adjunct Professor Michael Walker, who currently serves as the Senior Enforcement Counsel in the Office of Enforcement and Compliance Assurance at the U.S. EPA in Washington D.C. Professor Walker has taught several courses at the law school concerning federal environmental regulation and natural resource law, and plans to teach federal commercial chemical regulation next fall. Panelists included Delegate Jon S. Cardin, distinguished alum and member of the Maryland House of Delegates since 2003; Charles Garlow, Air Enforcement Attorney at the U.S. EPA; and Robert Rowan, Senior Associate VP of Administration and Finance for the University of Maryland, Baltimore (UMB) campus and chair of the Campus Sustainability Committee.

Mr. Rowan spoke about climate change initiatives at the UMB graduate campus, describing the local level as “where the legislation rubber hits the road in terms of implementation of energy issues.” In particular, he emphasized the importance of taking a big-picture approach to fighting climate change by reducing emissions at the source, which UMB has done through the creation of its Climate Action Plan in 2008. As part

of this approach, UMB is in the process of signing power purchase agreements with solar and wind companies. Once completed, 20 percent of the campus’ energy will be derived from renewable sources. Mr. Rowan also mentioned other UMB initiatives, such as increasing recycling efforts from 30 to 50 percent participation and installing high technology lighting systems.



from left to right, Michael Walker, Delegate Jon Cardin, Charles Garlow, and Robert Rowan

In regards to climate change initiatives at the state level, Delegate Cardin stressed, “It is just absolutely essential for us to think about how we can change people’s behaviors in the macro sense.” He discussed several recent pieces of important environmental legislation aimed at encouraging Maryland residents to make such changes, like installation of green technologies in the home through incentives such as solar renewable energy

credits. In addition, Delegate Cardin talked about creating a safer environment for bicycle riders to commute, recreate and exercise in order to reduce carbon dioxide emissions from automobiles.

Finally, Mr. Garlow outlined the effects a new EPA announcement could have on federal climate change policy. Specifically, the agency plans to come out with a new best-available control technology for greenhouse gas emissions before the year’s end. While this announcement won’t have any effect until January 1, 2011, Mr. Garlow acknowledged that it will raise several issues for facilities required to comply with federal regulations, such as the meaning of “best-available.” Regardless, he called this “a new day in Clean Air Act enforcement.”

Special thanks to MELS, USGA and the UMD Environmental Law Program for co-sponsoring this event.

ASSIGNMENT APPALACHIA: TRIP TO THE COAL FIELDS

By Jesse Iliff 3L

Over spring break five Maryland Law students traveled to the small mining town of Williamson, WV to volunteer with a plaintiff's firm litigating cases against Big Coal. With generous support from the school's Annual Fund and the Maryland Environmental Law Society (MELS), the students rented a car and made the seven hour trip to Williamson and got to work with the Thompson-Barney law firm. The variety of cases the students assisted with range from flood cases similar to that depicted in the Buffalo Creek Disaster, to the poisoning of residents' well water by coal slurry contamination, to blasting, to a coal company's construction of a primary school on a toxic waste dump that has caused a slew of cancers and other health problems. Specifically, the students' work consisted of interviewing clients in flood cases to inventory their property and health damages, sifting through thousands of dusty old school records to determine who may have been exposed to toxins at the school, assisting in the filing of complaints as new plaintiffs employed the firm, and compiling information about clients' health problems into useful spreadsheets.

One of the primary defendants being brought to task by Thompson-Barney is Massey Energy Co., whose perennial disregard for human safety and the environment recently came to the forefront of national attention with the explosion of their Upper Big Branch Mine that killed twenty-nine miners on April 5, 2010. While many of Thompson-Barney's clients have suffered severe (but often latent) injuries from Massey's reprehensible conduct, the

subsequent horrific explosion at the Massey mine highlights the importance of the students' efforts.

Despite the productivity of the students' work, there remains much important environmental law work to be

done in the coal fields. MELS has agreed to make a volunteer trip to West Virginia a regular event and will add a position to their executive board to facilitate planning and expansion of the volunteer effort. To that end, and in addition to his valuable legal work, 3L Joseph Stovall did an excellent job chronicling the trip in a short video teaser which can be viewed on YouTube by searching "Assignment Appalachia" or using this URL: http://www.youtube.com/watch?v=yMa_Cm vbhfl.



Jesse Iliff and Hannaleah Lyon at Coal Processing Facility in Logan County, WV

The full length video should be completed this summer. It is hoped that current and future environmental law students at Maryland will take this special opportunity to expand their skills and knowledge of environmental law while performing this critical public service.

Special thanks to this year's participants: Holly Devaser 1L; Emily Estrada 2L; Jesse Iliff 3L; Hannaleah Lyon 1L; and Joseph Stovall 3L.

AN EXTERN'S PERSPECTIVE: A DAY IN THE LIFE OF A DEPARTMENT OF JUSTICE ATTORNEY

By Aminah Famili 3L

In late August 2009, I arrived at the Department of Justice's (DOJ) Main Building with the expectation of witnessing something extraordinary: marble floors lined with flags, pictures of our newly appointed President and his Attorney General hanging on every available wall, and an aura of justice that consumed the halls. At first, this idealistic view of the DOJ seemed real. The floors of 900 Constitution Avenue were, in fact, marble and the halls were lined with a plethora of flags and pictures of our President and Attorney General. Nonetheless, the realities of a typical day working at the DOJ set in once I received my ID badge from the Main Building and heading to my actual work location, a few blocks away, in the Patrick Henry Building.

I externed in the Environmental Enforcement Section (EES) of the DOJ's Environment and Natural Resources Division (ENRD) during the fall of 2009. EES, which is one of eight sections within ENRD, is responsible for bringing civil suits for violations of federal environmental laws, including the Clean Air Act, the Clean Water Act, the Oil Pollution Act, and Superfund. Each claim originates at the government agency level, where an agency, such as the Environmental Protection Agency (EPA), refers a case to DOJ for litigation in federal court.

My work at EES gave me substantial insight into the daily work that consumes a DOJ attorney. Although I began the externship expecting that the typical day for a DOJ attorney would always be exhilarating and fast-paced, I quickly learned that a DOJ attorney's daily work is very similar to the work of any civil litigator. In fact, apart from the pictures of our President and Attorney General lining the hallways and the intense security that awaits you at the building's entrance, a typical day at DOJ mimics that of a private law firm.

Many of the daily issues that face a private litigator also face a DOJ attorney, such as working long hours to meet court deadlines, appeasing clients, working within organizational hierarchies, and, of course, a fair share of humdrum legal research.

I also learned over the course of my externship that even though EES cases are brought under federal environmental laws, many of the daily tasks that go into working as a DOJ attorney do not involve environmental issues, but instead focus on the basic issues that may arise in any civil litigation.

Whether you work for a private firm or the government, civil litigation still requires the same work, including developing facts to support a claim, assessing litigation risks, and conducting discovery. In turn, the variety of assignments I received provided me an excellent overview of the daily work of a litigator. For example, my first assignment at EES involved researching and writing a motion to extend the discovery deadline in a pending Superfund case. This first assignment gave me a realistic perspective of the typical work of a DOJ attorney. Indeed, writing a discovery-related motion is not exhilarating and does not involve a cutting edge environmental issue. Nonetheless, I realized that the process of conducting discovery is a necessary

and integral part of the litigation process, even for a DOJ attorney, and as such, must be completed with the same zeal as any other assignment.

Another assignment I worked on at EES involved assisting an attorney in developing a case to impose penalties and recover the costs that the EPA and U.S. Coast Guard spent in cleaning up an oil spill. Although the claims in the complaint were brought under various environmental laws, including the Oil Pollution Act and Clean Water Act, the majority of my assignments involved basic litigation issues unrelated to these environmental laws. These assignments ranged from finding and compiling cost documentation to support the damages the U.S. sought in its complaint to researching the feasibility of bringing an additional state law claim against the defendant's parent corporation.

Although many of my assignments at EES led me to believe that a DOJ attorney's daily work is very similar to any other litigator, I ultimately realized that an aura of excitement and authority still exists when all of the work



Aminah Famili

is put into perspective. Indeed, each complaint, brought on behalf of the United State of America, is where the true sense of justice lies. For example, a sense of justice will arise after the EES attorney files and litigates her complaint to recuperate damages caused by the defendant's oil spill because the appropriate parties will be held accountable for their various environmental violations and the substantial sums of money that the U.S. spent in responding to the spill. To me, this complaint, and those like it, represents the unique abilities of a DOJ attorney. These attorneys are

not just representing another client with a legal issue, but are enforcing the law of the United States of America to protect our public health and the environment. For me, this work is far removed from the mundane and usual, but instead seeks a common end of justice that is something truly awe-inspiring and meaningful to have as one's profession. If you are interested in environmental litigation, I highly recommend applying for an externship in EES. The sense of justice and accomplishment that accompanies the work you will perform is truly without comparison.

Promoting Environmental Law in Jordan

cont'd from p. 15

and 150 JDs (\$210 USD) to the fourth place team. US AID Mission Director Jay Knott awarded free English language courses at the American Language Center to the eight law students who made the semifinals. A gallery of photos of the competition can be viewed online at: <http://gallery.me.com/rperci/100676>.

Percival was very impressed with how poised the students were and how aggressively they pressed their cases. He also was impressed by how eagerly the students and judges tackled an environmental law issue even though most of them had little previous experience with this area of law. Percival hopes



Competitors and coaches for the Jordanian National Moot Court Competition

that a Jordanian law school will become the first in the Middle East to enter the International Environmental Law Moot Court Competition next year (see article on p. 8).

While the legal profession in Jordan has been dominated by men and nearly all the judges and attorneys who judged the competition were male, seven of the eight law students who made the semifinals and all four of the students in the championship round were women. This year 18 of the 40 law graduates who were selected for Jordan's judicial training institute to become future judges were women,

so women are making inroads in the Jordanian legal profession.

The problem drafted by Percival's students for the Jordanian moot court competition involved a conflict over water use between an environmental group seeking to restore a forest area and growers of date palms. Water

is the premier environmental issue in the Middle East, as illustrated by a study by Friends of the Earth Middle East. The study, "Towards a Living River Jordan," warns that large stretches of this historic river could soon dry up unless steps are taken to reduce the diversion of

98% of its flow. Ironically, the study noted that efforts to clean up the river by requiring treatment of wastewater dumped into it actually have reduced the river's flow because the treated wastewater is then used for irrigation rather than being pumped into the river. The study, written by Jordanian, Israeli, and Palestinian experts, proposes specific conservation strategies each government could take for restoring the river, which also could help halt the precipitous decline in the level of the Dead Sea. A copy of the study is available at: http://www.foeme.org/index_images/dinamicas/publications/publ117_1.pdf

USING ENVIRONMENTAL LAW TO PROTECT GLOBAL PUBLIC HEALTH: REPORT FROM THE WORLD HEALTH ORGANIZATION

By Briana Wagner 3L & Kristen Weiss 3L

During the spring semester 2010 we worked as interns in the Public Health and Environment Department at the World Health Organization (WHO) in Geneva, Switzerland. Recognizing the growing importance of global environmental law to protection of public health, Dr. Carlos Dora, director of the Interventions for a Healthy Environment division within this department, sought our help on a project to explore legal remedies developing countries can use to redress harm to public health caused by pollution from extractive industries. The project originated when Dr. Dora approached Professor Robert Percival whose current research focuses on liability for global environmental harm. In mid-February 2010, Professor Percival visited the WHO where he gave a lecture on “How Safe Is ‘Safe’? The Emerging Global Law of Environmental Health Protection” that reviewed the history of risk regulation and the growing links between environmental and public health law.

Working with Dr. Dora, a world-renowned epidemiologist, and technical advisor Michaela Pfeiffer, an expert on environmental policy in emerging economies, our research explored the environmental and public health impacts of mining and forestry operations on individuals and communities. Our research analyzed ways in which the law can help redress harm from these activities in developing countries. We analyzed a wide variety of cases that illustrate the promise and limitations of using different legal approaches in developing countries.

We considered efforts to use common law, constitutional provisions, and the public trust doctrine to ensure protection of natural resources. We also examined contract-based approaches and the factors that influence courts in enforcing agreements to share the benefits of

development with local communities. Two cases in Ghana are illustrative. The *Ghana Timber Association v. Forestry Commission* case, which settled out of court, provides a classic example of how the Forest Commission is typically subservient to industry interests. On the opposite end of the spectrum is the case of *Aowin-Suamin District v. Samartex*, where a Ghanaian court mandated the renegotiation of Social Responsibility Agreements with individual communities to give them a greater voice in the choice of development projects.

In the *Nigeria/Ogoni v. Shell* case of 2001, a court ordered that “appropriate environmental and social impact assessments be prepared for any future oil development” and directed the company to “provide information on health and environmental risks and meaningful access to regulatory decision-making bodies to communities likely to be affected by the oil mine operations.” The Niger

Delta Development Commission was created to address the environmental and social problems of oil production in the Niger Delta of Nigeria. We explored the benefits and problems with such approaches and also the controversy over local content and hiring regulations recently imposed on oil and gas industries in Nigeria, Indonesia, and Brazil.

Our research project will culminate in a report outlining an overall framework assessing how different legal tools can be used to influence land use patterns, employment, and environmental protection and their links to public health. The report will use country case studies to illustrate its conclusions. Our overall goal is to demonstrate how environmental law can be used to integrate public health considerations more directly into the decision-making processes relating to extractive industry project development, at the overall sector level and all the way down to the individual project level.



from left to right, Kristen Weiss, Bob Percival, and Briana Wagner at a Geneva restaurant

This externship has been an extraordinary experience for both of us. We have had access to the spectacular library resources of the WHO and the ability to consult directly with the world's leading experts on the impact of development on public health. We have savored this time, immersed in a truly international, multicultural community. As public health and environmental law continue to grow closer together we hope that our work will be the beginning of a long and fruitful collaboration between Maryland's Environmental Law Program and WHO's Public Health and Environment Department. For more information about the work of the Department see: <http://www.who.int/phe/en/>.



from left to right, Dr. Carlos Dora, Bob Percival, Michaela Pfeiffer

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