Lawyers practice in many ways, and in many different settings. As a 1L, you might begin to believe that practice is primarily about case law, and precedent. The reality in modern day practice is that much of what we do is primarily governed by statute, whether at the local, state, or federal level. While administrative law classes open the door to understanding how to read and interpret statutes, learning to draft and advocate for new or changed laws is an art in itself. Several of the clinics at the School of Law are actively involved in legislative activity every year. We are delighted to highlight some of those activities in this issue.

Our Drug Policy and Public Health Strategies Clinic has, since its inception, been working to advocate for the rights of its clients in legislative arenas, as well as in the courtroom and in the larger arena of public discourse. Understanding the difficulty of the topic, students led by Professor Ellen Weber have engaged hard questions raised by legislators and concerned citizens. Providing opportunities for treatment and recovery is essential for the health and well-being of all of the citizens of our city and state. Baltimore City alone estimates that there are 65,000 people who struggle with addiction here, and access to services that support their recovery is essential.

Our Environmental Law Clinic also includes legislative work as part of the core set of skills necessary to learn to become an environmental lawyer. This is true not just because environmental law itself is primarily a statutory creation, but also because many of the problems addressed are created by new elements and problems. Students leave clinic with a deep appreciation that lawyers not only challenge and defend existing law, but that they also create laws. The story of the work done by the students in the 2009 Maryland Legislative session is a wonderful example of students learning how to work within this challenging arena.

Professor Kathleen Dachille has been leading the Tobacco Control Clinic and Legal Theory and Practice class since the
The Tobacco Control Clinic, taught by Professor Kathleen Dachille, continues to focus on legislative policy designed to reduce the prevalence of tobacco use, with a particular emphasis on reducing youth access to tobacco products and minimizing nonsmokers’ exposure to secondhand smoke. During the 2009 session of the Maryland General Assembly, students worked on several tobacco control bills; students also pursued legislation in Baltimore City and Prince George’s County. As a result, students learned to draft legislation and to create and implement an advocacy plan for that legislation. Clinic students prepared written testimony in support of legislation, testified before legislative committees and local legislatures, persuaded advocacy organizations to join the effort, met with individual legislators, and reached out to the media for coverage via news, commentary and letters to the editor. Students gained an understanding of the role that lawyers play as lobbyists and legislators and how different advocacy skills and styles may be used to make policy changes.

A central issue for the Clinic in 2009 was the increasing prevalence of cigar smoking among young people in Maryland; specifically, youth and young adults are increasingly drawn to cheap, sweet cigars. Available by the single for less than $1 and in enticing flavors like cherry, watermelon, green apple, and chocolate, these cigars are attractive to young people. Unfortunately, young people fail to appreciate the health risks associated with cigar use and often become cigarette smokers as a result of becoming addicted to nicotine through cigar smoking. One step to reducing youth access to these products is increasing the price of access by requiring a minimum pack size. During the 2009 session, students Adrianna Verleysen and Byron Marshall worked with Delegate Shawn Tarrant on House Bill 238, which would have required cheap cigars to be sold in a minimum package of four. Adrianna and Byron met with key committee members to advocate for the bill, prepared written testimony and gave oral testimony and responded to questions at a hearing before the House Economic Matters Committee. At the same time, Adrianna and Byron worked on minimum packaging legislation at the local level, testifying before the Prince George’s County Council and the Baltimore City Council’s Public Safety and Health Committee. Although the statewide bill failed in committee, the Prince George’s County Council passed the country’s first local ordinance imposing minimum packaging for cigars. The City Health Commissioner’s cigar packaging regulations will go into effect in October 2009 but the Council has not yet passed the complementary legislation that will enhance the enforcement efforts of the Commissioner. Currently, Professor Dachille is assisting Prince George’s County in defending a lawsuit challenging the cigar ordinance, work-
ing with the City to secure passage of the ordinance and assisting other interested counties that have inquired about securing such a law. This work should continue for the 2009-2010 Tobacco Control Clinic.

Another ongoing project of the Tobacco Control Clinic concerns legislation that would prohibit smoking in a motor vehicle when a child is present. Students Keith Shebairo and Deborah Scop worked with lead sponsor Senator Mike Lenett on Senate Bill 288. Keith and Deb worked tirelessly to organize advocates in support of the legislation and met with key legislators to address individual members’ concerns about the legislation. The students’ in-depth research on the health consequences of childhood exposure to secondhand smoke, particularly in a vehicle, enhanced the arguments in favor of this common sense legislation. Keith and Deb testified to the Senate Judicial Proceedings Committee, handling difficult questions with poise, and to the House Environmental Matters Committee on the same day. Although favorable votes were picked up over the 2008 session vote, Senate Bill 288 failed to pass. Tobacco Control Clinic students will revive the effort for the 2010 session and will benefit tremendously from Keith and Deb’s thorough and effective research and writing.

Again with a focus on young people and tobacco, students Rajni Sekhri and Joshua Pensak advocated for Senate Bill 80, which would have required retailers to check identification of any tobacco customer who appears to be under age 30. Senate Bill 80 also provided local jurisdictions enhanced powers to punish retailers caught selling tobacco to minors. Raj and Josh testified to the Senate Finance Committee in support of the legislation and they received praise from the Committee Chairman about their effective—and concise—testimony. This first-time bill passed the Senate but died in a House Committee on the final day of session. Recent federal legislation will enhance efforts for the identification check provisions in 2010 as federal law will soon require such a check for consumers under age 27.

During the course of the 2009 session, several students supported the legislative work of the Center for Tobacco Regulation, directed by Professor Dachille. Those efforts resulted in successful opposition to several bills, including a bill to allow for exceptions to the Clean Indoor Air Act (which prohibits smoking in virtually all public places and workplaces), a bill that would have resulted in lower cigarette prices and a bill that would have limited the appeal bond a cigarette manufacturer would have to post if unsuccessful in a class action lawsuit in state court.

There is much work to be done in the development, pursuit and implementation of sound tobacco control policy and legislation in Maryland. With severe cuts to state and local health departments’ tobacco control budgets, the excellent, pro bono work of the Tobacco Control Clinic will undoubtedly be in high demand for the 2010 session of the General Assembly and at the local legislatures. The Clinic is prepared to meet the community’s needs.

Clinic students prepared written testimony in support of legislation, testified before legislative committees and local legislatures, persuaded advocacy organizations to join the effort, met with individual legislators, and reached out to the media for coverage via news, commentary and letters to the editor. Students gained an understanding of the role that lawyers play as lobbyists and legislators and how different advocacy skills and styles may be used to make policy changes.
Systemic change is often needed to effectively address the health and social consequences of drug addiction and to protect the rights of individuals who struggle with this disease. For this reason, the Drug Policy and Public Health Strategies Clinic has developed a legislative practice to resolve the legal problems its clients face. Working with its community partners, the Drug Policy Clinic has advocated for legislative changes on both the local and state level to expand access to drug treatment services and to ensure that those who seek treatment are not subject to discrimination. A legislative practice is an indispensable tool for progressive change. It has the added benefit of allowing the individuals most affected by an illegal or unwise practice to become personally involved in educating decision makers and crafting a solution. This is a role that clients often do not have in other dispute resolution processes.

One of the Drug Policy Clinic’s longest-running and most multi-faceted legislative efforts has focused on creating fair zoning standards for drug treatment programs in Baltimore and cities across Maryland. Many jurisdictions create barriers to the operation of treatment programs through their zoning authority. Zoning standards, such as distance requirements, special approval procedures and hearing requirements, often lead to the exclusion of treatment programs. In Baltimore, a zoning standard enacted in the mid-1960’s required all treatment programs to obtain community approval and enactment of legislation through the City Council to locate in any community. The standard has contributed to a shortage of treatment for one of the city's most devastating health problems. It also violates the Americans with Disabilities Act (ADA) and the Fair Housing Act.

Beginning in 2002, the Drug Policy Clinic worked with Baltimore’s publicly-funded treatment providers to advocate for the enactment of a fair zoning standard. Although the Clinic initially thought that litigation would be the most efficient way to achieve its client’s goal, it followed its client’s direction to seek a legislative solution. Advocacy with the City’s Planning Department and former Mayor Martin O’Malley resulted in the introduction, in 2004, of two administration bills that would have eliminated the discriminatory standard for both outpatient and residential treatment programs. Treatment providers and citizens who were in recovery presented testimony and met with City Council members to win approval of the bill. City officials and agencies lined up in support of the bill, but it faced stiff opposition among many City Council members and some vocal constituents and never came up for a vote in the Council.

Committed to reforming the city’s discriminatory zoning standard, the Clinic turned to state lawmakers to craft a statewide legislative solution while pursuing the reintroduction of the bills on the local level. Two bills crafted by the Clinic and introduced in the General Assembly’s 2005 session would have required all jurisdictions to ensure
Although the Clinic initially thought that litigation would be the most efficient way to achieve its client’s goal, it followed its client’s direction to seek a legislative solution. Advocacy with the City’s Planning Department and former Mayor Martin O’Malley resulted in the introduction, in 2004, of two administration bills that would have eliminated the discriminatory standard for both outpatient and residential treatment programs.

That their zoning standards for drug treatment programs were comparable to the zoning standards for similarly structured medical practices. Clinic students testified at multiple bill hearings in Annapolis about the civil rights laws that prohibit the enforcement of burdensome zoning standards against drug treatment programs and their patients, and providers and their former clients offered testimony about the critical need for such services. Although the bills did not pass in the General Assembly, these efforts helped educate lawmakers about the value of drug treatment in improving the health and welfare of their constituents and the civil rights protections that bar discriminatory treatment.

The Clinic resumed its legislative advocacy on the local level in late 2005 with the reintroduction of its two zoning bills in the Baltimore City Council. After nearly a year of hearings, individual meetings with City Council members, advocacy by providers, clients and other community partners, the Clinic scored a victory. In October 2006, the City Council overwhelmingly passed a bill that eliminated its discriminatory zoning standard for outpatient treatment programs. As a result of this legislation, outpatient treatment programs in Baltimore are now permitted to locate under the same zoning standards as all other medical clinics.

With one victory in hand, the Clinic and its client focused again on the enactment of a bill to create a fair zoning standard for residential programs. Recognizing that legislative strategy might not succeed, the Clinic’s client filed an ADA discrimination complaint with the Civil Rights Division of the Department of Justice seeking its assistance to persuade the city to fix the problem. In May 2007, the Justice Department opened an investigation and informed Mayor Sheila Dixon and City Council that its zoning standard violated the ADA.

Mayor Dixon agreed to resolve the matter through the enactment of legislation and entered negotiations with the Clinic and Justice Department to craft a bill. The threat of litigation and DOJ oversight provided the Clinic with the opportunity to improve the standards that had been included in the previous residential zoning bill. The Mayor agreed to introduce a bill that would permit residential treatment programs of varying sizes to locate in residential communities with like-sized single and multi-family dwellings.

Beginning in January 2008, the Clinic and its client advocated for enactment of the bill using every organizing strategy possible. Clinic students and providers met with and responded to questions from Council members, developed educational materials describing the structure and regulation of residential treatment services and successful outcomes of those services, and testified at public hearings. The team demonstrated widespread community support by collecting petitions with over 1,100 signatures of individuals who supported the bill’s passage and held a Rally for Zoning Reform at City Hall with over 500 people. Editorials in The Baltimore Sun and The Daily Record also urged enactment of the legislation.

Despite all efforts, the City Council has refused to enact the bill. Years of legislative advocacy has proven that litigation—while not the first or most desirable strategy—may be essential to resolve certain legal problems. The DOJ and the Clinic have now filed litigation in federal district court to invalidate the City’s discriminatory zoning standard. When all is said and done, however, the parties will ultimately return to the legislative process to craft a permanent solution that will allow residential drug treatment programs to locate in communities that sorely need those services.
For 20 years, environmental organizations and community associations repeatedly attempted to broaden the State of Maryland’s property-based standing requirements to enable citizens to challenge environmental permits. Finally in April 2009, Maryland lawmakers passed an important bill that will expand standing requirements to challenge certain environmental permits and Critical Areas variance decisions. The bill, titled “Standing - Miscellaneous Environmental Protection Proceedings and Judicial Review,” was signed into law on May 19, 2009 and will streamline the permitting process in exchange for adopting federal standing requirements for individuals and associations to challenge inadequate permits and other environmental decisions.

Environmental Clinic students, working on behalf of Waterkeeper Alliance Chesapeake, a group of Riverkeepers and Waterkeepers committed to protecting Maryland’s rivers, streams and the Chesapeake Bay, were the primary researchers and drafters of this legislation. Students worked countless hours researching standing laws in the other 49 states, attending coalition work group sessions, and quickly responding to research questions posed by various delegates and senators. Students also drafted testimony for coalition witnesses who attended and testified at the hearings. The coalition was comprised of the individual Riverkeepers and other environmental organizations including Chesapeake Bay Foundation, 1000 Friends of Maryland, and the Maryland League of Conservation Voters.

Michele Merkel, Chesapeake Regional Coordinator for the Waterkeeper Alliance recently stated that “the University of Maryland Law Clinic students deserve special kudos for the countless hours spent in drafting and researching the provisions of this legislation. Without their help, in addition to all the stakeholders involved, passage of this bill would not be a reality.”

“Standing” refers to an individual or association’s ability to bring an action in court. Federal courts and the vast majority of states require a potential plaintiff to demonstrate an injury-in-fact, a causal link between that injury and the relief sought, and that the injury can be redressed by the court.

Maryland common law, however, uses a stricter standard, generally requiring plaintiffs to show a property interest separate and distinct from the general

By passing this bill, Maryland legislators agreed to adopt the federal standing requirements that have also been adopted in 44 other states for certain permit challenges. As a result, more individuals and various community and environmental associations will be able to challenge defective permits.
public. It also does not recognize an association’s ability to assert standing on behalf of its members. In the past, these requirements have proven to be a nearly insurmountable hurdle for environmental associations seeking to challenge regulatory actions in the state.

By passing this bill, Maryland legislators agreed to adopt the federal standing requirements that have also been adopted in 44 other states for certain permit challenges. As a result, more individuals and various community and environmental associations will be able to challenge defective permits. While the federal test for standing is still a very high threshold to overcome, it does not require potential plaintiffs to own adjacent property. Now more concerned citizens and associations can have a say in the effectiveness of environmental permits issued to industries in their neighborhoods. This is a huge victory, especially from an environmental justice standpoint.

For instance, a Kent County Circuit Court judge ruled last year that the Chester River Association lacked standing to challenge the alleged dumping of phosphorus and other pollutants in the Chester River by an Eastern Shore chemical plant because the association did not live within “sight or sound” range to be considered “aggrieved.”

Likewise, members of the Cedar Heights Community Association have been largely powerless to challenge permits issued to industries in their neighborhood because the facilities are located approximately 500 feet across the road. A number of residents in this predominantly African-American community have complained for years of respiratory problems and issues with dust from the facilities coating their cars and clogging their home air filters.

As Delegate Maggie McIntosh, chairwoman of the Environmental Matters Committee and chief sponsor of the House bill explained, “The heart of this issue is environmental justice. Neighborhood organizations, environmental groups and others should have the same legal right to challenge state issued environmental permits that impact their communities, in the same venue, and at the same time as, a company or permit applicant arguing in favor of the permits. This bill allows both sides to finally be heard in Maryland State Courts.”

Senator Brian Frosh, chairman of the Judicial Proceedings Committee and chief sponsor of the Senate bill stated, “Maryland for years has nearly barred the court doors when it comes to the public’s right to challenge state environmental decisions. This bill helps bring us into the 21st century.”

Senator Frosh and Delegate McIntosh deserve special thanks for sponsoring this bill and working hard to make federal standing for these permits possible. The General Assembly has shown that it is ready to bring Maryland into line with the majority of states regarding these permits. Passage of this bill is a giant step forward for the state and will allow greater citizen involvement in certain permitting processes.
For some time now, the Community Justice Clinic has been partnering with local neighborhoods and Baltimore City Housing Neighborhood Conservation Attorneys to create a bridge of mutual respect and trust with regard to the enforcement and monitoring of local building codes on properties that create a nuisance for sustainable Baltimore neighborhoods. While working closely with Baltimore City Housing to prioritize and advance the goal of improved quality of life in local neighborhoods through the legal system, the students have taken on the challenge of working with residents to identify nuisance properties and design appropriate property enforcement strategies.

**Background**

During the past four months, the students have been working closely with Blair Griffith, Managing Attorney of Baltimore Housing Neighborhood Conservation, to respond to an appeal of an order appointing a receiver to the property located at 1500 Barclay Street. The receiver was appointed after the owners of record failed to comply with a consent order to raze, rehabilitate, or renovate the property within a designated period of time. The appeal challenges the constitutionality of the Baltimore City Vacant Building Receivership Code, and the placement of the property into the hands of a receiver has been stayed pending appeal.

This property has a storied history. Referred to as the “Lebow” building, the vacant property is located in a developing area and is a clear nuisance to the neighborhood. Decades ago, the building was home to a clothing factory, but it has been vacant and dilapidated for over 20 years. Public records include accounts of falling debris, mold and mildew, pests, and nefarious criminal activity occurring in and around the building. Interestingly, the many harmful nuisances associated with the property have not kept adventurous artists from invading the property and utilizing the space as an urban canvas for photography and other forms of artistic expression. These photos, taken during trespass and widely published on the Internet, are intriguing and inspiring from an artistic point of view. However, when viewed in light of the health and safety needs of the larger community, the invasive nature of the nuisance property crystallizes in the mind of the observer. Imagine living and having your children attend school in a neighborhood where for nearly two decades you have watched chunks of concrete and window panes fall into the streets, endangering nearby children and other pedestrians. Imagine living amidst the mold, mildew, trash, and pests endemic in and around the vacant structure.

The Lebow Building, 1500 Barclay Street
The Lebow building occupies a block equal in size to the block on which the School of Law rests and is surrounded by residential housing and schools. It is estimated to be worth several million dollars and sits directly adjacent to an apartment building inhabited mainly by local artists. The owner, through East Oliver Street Limited Partnership, is a notorious purchaser of vacant buildings up and down the East Coast, and has a reputation for promoting commercial toxic wastelands. The City initiated a receivership action in late 2008. Initially, the City entered into a consent order with East Oliver Street Limited Partnership in which the owners agreed to pay a monetary penalty and rehabilitate the building to eliminate the nuisance (i.e., board all windows, provide legitimate fencing, clean the property, etc.). East Oliver did not comply with the consent order, and the court appointed a receiver in early January 2009. East Oliver appealed several times to no avail, and the court-appointed receiver, One House at a Time, Inc., sought to put the building up for auction. In early March, the law firm of Shapiro, Sher, Guinot & Sandler entered their appearance and filed a motion to dismiss challenging the constitutionality of the City’s receivership action on its face and as applied. Trial is currently scheduled for August 25, 2009.

Consensus Building and Trial Preparation

Consensus Building
During the summer of 2009, the students worked hard to identify and engage individuals and groups within the community with an interest in either 1) remedying the Lebow nuisance and/or, 2) protecting the larger Baltimore community from nuisance properties. Working with groups that are both local (surrounding the Lebow Building) and city wide coalitions, local residents, artists, business owners, and environmental activists are focusing on obtaining letters of support in anticipation of amicus briefs that may need to be written if the case is appealed to the Court of Special Appeals. Regarding the August 25 court date, the hope is that representatives from all groups will attend the proceedings as a show of support for both the rehabilitation of the 1500 Barclay property and the receivership process as a whole.

Trial Preparation
Since March 2009, the students researched the constitutional issues surrounding the appeal, assisted with the development of the theory of the case, provided organizational support to the City, drafted discovery requests, identified potential witnesses and evidence, mooted the City for the hearings, and engaged in other litigation support.

Conclusion
This case, like all nuisance abatement cases, is not so much about winning a legal victory as it is about participating in Baltimore neighborhoods’ attempts to grow and thrive. The end goal is always to abate the nuisance and improve the quality of life and safety of the people living, working and schooling in the community. The Barclay case has given students valuable experience both in and out of the courtroom setting. Students have had the opportunity to participate in the rigors of trial preparation and legal research, but also have had the chance to see first-hand the potential for live clinic work to positively impact the people who comprise the Baltimore we all love.

The following Community Justice and Summer Clinic students have been engaged in the Barclay Matter: Anne Blackfield, James Bragdon, Justin Callaway, Ornella Fecanji, Abram Fisher, Jason Foltin, Bill Ferguson, and Andrew Olen.
Publications & Presentations
Spring 2009

Barbara Bezdek
“Putting Community Equity in Community Development: Resident Equity Participation in Urban Redevelopment,” in Law, Society and Property (Robin Paul Malloy and Nestor Davidson, eds.) (Ashgate 2009).


Brenda Bratton Blom

Douglas Colbert
Panelist, “Professional Identity in the 21st Century,” Clinic Anniversary, University of Maryland, School of Law, Baltimore, Maryland (March 6, 2009).

Panelist, “Right to Counsel as a Fundamental Human Right,” National Lawyers Guild Regional Conference, University of Maryland, School of Law, Baltimore, Maryland (March 28, 2009).

Kathleen Dachille
Testimony Before the Maryland General Assembly, Senate Finance Committee, in Support of Senate Bill 80 (Youth Access to Tobacco) and Senate Bill 697 (Tobacco Distribution) (February 26, 2009).

Testimony, Maryland General Assembly, Senate Budget and Taxation Committee, in Opposition to Senate Bill 825 (Altering tax on moist snuff) (March 11, 2009).


Testimony, Maryland General Assembly, Senate Finance Committee, in Support of Senate Bill 813 (Health Care for All; change in tax on non-cigarette tobacco products) (March 18, 2009).

Testimony, Maryland General Assembly, House Economic Matters Committee, in Opposition to House Bills 1483 (Cigar bar exception to Clean Indoor Air Act) and 1237 (Altering tax on moist snuff) (March 24, 2009).

Susan Leviton

“Preventing Schools from Becoming the Pipeline to Prison,” co-author, 42 Maryland Bar Journal 3 (May/June 2009).

Michael Pinard


Shruti Rana
Panelist, “Integrating Issues Regarding the Financial Crisis into Teaching,” University of Maryland Business Law Roundtable on Early Reflections on the Financial Crisis, University of Maryland School of Law, Baltimore, Maryland (April 17, 2009).

Ellen Weber
“Protecting Civil and Health Privacy Rights of Patients: The Americans With Disabilities Act and Confidentiality of Patient Records,” Maryland Society of Addiction Medicine, Baltimore, Maryland (March 7, 2009).

Award, 2009 Public Citizen Award, National Association of Social Workers – Maryland (March 27, 2009).
creation of the School of Law’s Legal Resource Center for Tobacco Regulation, Litigation & Advocacy. The core focus of the clinic is to work with local and state governments to create, draft, and advocate for legislation that limits the effects of tobacco.

In all of these cases, we learn that it is possible to include a legislative component in clinics; taking the work that might start as a simple case all the way through to a law reform initiative. From the legal pedagogy perspective, students learn the ways that law can be engaged for their clients. These clinicians urge their students to think about a problem from all angles, and engage the most effective way to advocate for and support their clients.

The last article is a story about an ongoing case that is important to Baltimore City and other cities that have a large problem of vacant buildings. Led by Clinical Instructor Leigh Maddox, students have had a very busy and productive summer defending the right of cities to hold property owners accountable for the nuisance created by vacant buildings. Students have had the chance to learn first-hand about the intersection of constitutional protection and local code enforcement.

As the economic downturn continues to create difficult conditions for our clients, and constraints in the resources we can bring to bear for them, we work to provide the highest quality legal education for our students. That, of course, is contingent on providing the highest quality representation for our clients. It will be a good year, building on the great work we share with you today. Have a great 2009-2010 academic year and we hope to see you next spring in Baltimore for the 2010 AALS Clinical Legal Education Conference!
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