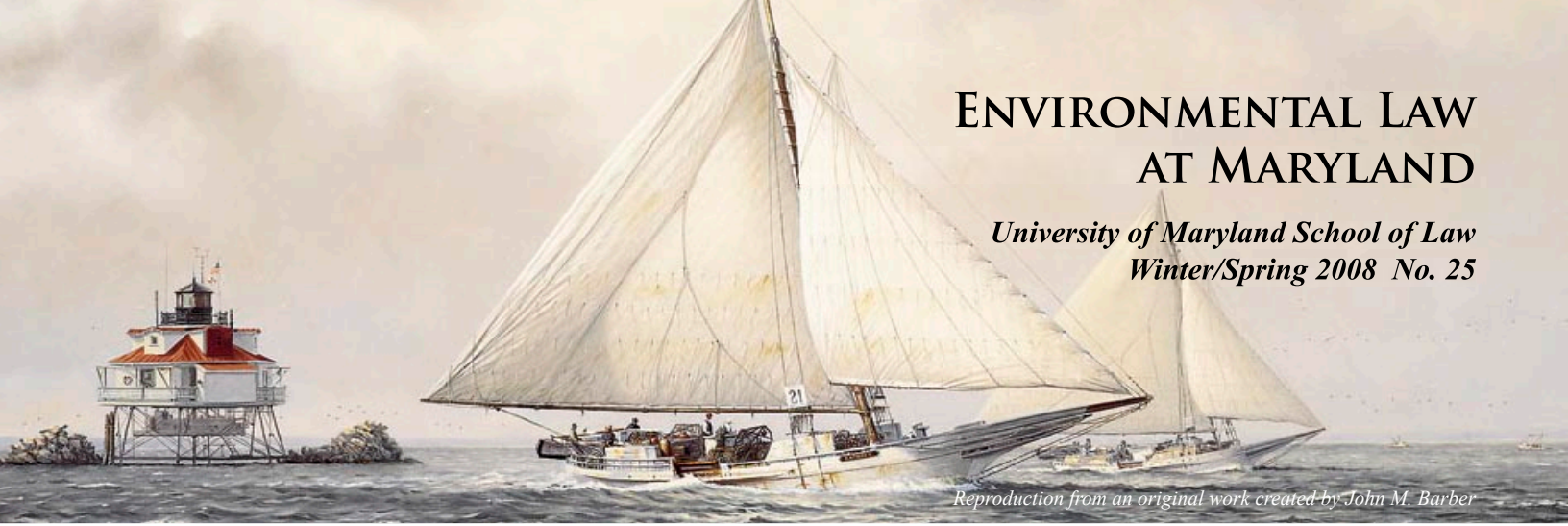


# ENVIRONMENTAL LAW AT MARYLAND

*University of Maryland School of Law  
Winter/Spring 2008 No. 25*



*Reproduction from an original work created by John M. Barber*

## ENVIRONMENTAL LAW STUDENTS VISIT CHINA

While spring break often is thought of as a time when students head to beach resorts, a group of 30 Maryland environmental law students had a different kind of spring break this year. They traveled to China to meet environmental law students and officials of environmental groups working in China. The trip was arranged by Environmental Law Program Director Professor Robert Percival, who is spending the spring semester 2008 teaching as a J. William Fulbright Scholar at the China University of Political Science and Law in Beijing. The group included not only law students, but also 17 alumni, faculty

and friends, including Environmental Law Clinic Director Jane Barrett, Program Coordinator Laura Mrozek, Associate Dean Diane Hoffmann, and Dean Karen Rothenberg and her family.

The trip combined visits to the top tourist sites in three Chinese cities — Beijing, X'ian, and Shanghai — with meetings with Chinese students, environmental groups, and government officials. In the Beijing area the group visited the Forbidden City, the Summer Palace, the Great Wall, and the Temple of Heaven. They toured a hutong and had dinner with Chinese host families living there.



*Students, faculty, alumni and friends gather together before touring the Forbidden City in Beijing.*

Many of the Maryland environmental law students and alums in the group participated in a program hosted by Professor Percival's students at the China University of Political Science and Law (CUPL). At CUPL Maryland students Tom Prevas '08, Van Hildebrand '08, and Christine Jochim '08, and alums Lolly Axley and Karla Schaffer showed the Chinese students films they had made in Professor Percival's Environmental Law class in Maryland. They answered questions about the filmmaking process to assist the Chinese students with the film projects they currently are working on in Percival's Environmental Law class at CUPL.

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## Students Visit China

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Following the film panel, Maryland student Jayni Shah '08 presented a demonstration oral argument based on the problem used in last year's International Environmental Moot Court Competition. Ms. Schaffer and five of Percival's Chinese students served as judges who asked questions of Ms. Shah. A group of environmental law students from Renmin University also attended the program. The moot court exercise was designed to assist the students from CUPL and Renmin who are preparing to become the first Chinese students to enter the International Environmental Moot Court Competition during the 2008-2009 academic year.

The Maryland and Chinese students quickly bonded, and several of the Chinese students accompanied the Maryland group as they toured Beijing. In addition to the program at CUPL, the students attended a meeting hosted by the U.S. Embassy where representatives of several Chinese environmental groups described their work. Presenters included Alex Wang, director of the Natural Resource Defense Council's Beijing office, Zhang Jingjing, litigation director of the Center for Legal Assistance to Pollution Victims (CLAPV), and David Lennett, an environmental consultant who works with a number of NGOs in China. At this program students working with CLAPV and Professor Wang Canfa's Environmental Law Clinic at CUPL described their experience investigating pollution at a copper smelter in Inner Mongolia. The students described how they successfully resisted efforts by plant officials to seize the video cameras they were using to document the smelter's pollution.

Two U.S. law firms—Hogan & Hartson and DLA Piper—hosted receptions for the Maryland group at their Beijing offices. At these receptions, lawyers from the firms discussed the Chinese legal system and the challenges of practicing law in China. Several students in the group also joined Dean Karen Rothenberg and Health Law Program Director Professor Diane Hoffmann in meetings with officials from China's Ministry of Health and the World Health

Organization's Beijing office.

The Maryland group also traveled to X'ian, where they viewed the famous terra cotta warriors, and to Shanghai, where the Maryland Center hosted a reception for them. The Maryland Center is the state's office that promotes trade and economic development with China.

Several prominent members of the Chinese legal community in Shanghai were present at the Maryland Center reception. ZeeZee Zhong, director of the Shanghai branch of Jane Goodall's Roots & Shoots organization, gave a presentation on her organization's work promoting environmental education in primary and secondary schools in China. Peking University law professor Dan Guttman gave a talk debunking some common misconceptions about the development of the rule of law in China. Ning Shao, Chief Representative of Maryland's China Office, spoke about the office's work in promoting closer ties between Maryland and China.

While in Shanghai the group visited the JinMao Building, YuYuan Gardens, the Jade Buddhist Temple, and other sites. After a farewell dinner on the last night of the trip many students gathered at chic Shanghai nightspot the Glamour Bar on the Bund. All agreed that the trip was a huge success, with some describing it as one of the "peak experiences" of their lives. A web gallery of photos from the trip is available at <http://gallery.mac.com/rpercival/100148>.



*Maryland law student Jayni Shah poses with environmental hotline at the Center for Legal Assistance to Pollution Victims in Beijing.*

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



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# PROFESSOR RENA STEINZOR ELECTED PRESIDENT OF CENTER FOR PROGRESSIVE REFORM

By Jennifer Marshall '00

*Professor Rena Steinzor was recently elected the president of the Center for Progressive Reform (www.progressivereform.org), a think tank comprised of 52 member scholars from across the United States. This article was written by Class of 2000 graduate Jennifer Marshall, who serves as the group's executive director, along with policy analysts Shana Jones '01, Matthew Shutz '07, James Goodwin '07, and consultant Paul Lang '06.*

Passion, compassion, vision, creativity, with intellectual drive and knowledge – these are the traits of a good leader. Oh yes, and don't forget to add in a good smattering of confidence tempered with humility and the ability to communicate, all the while being organized and forward-looking.

Finding some of these skills in our leaders is to be expected, but finding all of these skills in one person is a stroke of luck. An even greater phenomenon is to find one person using these skills to benefit several aspects of others' lives. Professor Rena Steinzor is such a leader.

As an educator, Professor Steinzor holds a passion for the environment, sharing it with her students creatively and with an intellectual foundation such that any student who chooses to learn can capture as much as they want. Along with this passion is her compassion for students and for learning. Professor Steinzor relates to her students so that each has an individualized experience. A testament to this is the many students she has mentored during their school years and beyond, who knew they'd hit the jackpot in meeting Rena.

As a volunteer, Professor Steinzor has devoted countless hours helping to improve our nation's health, safety and environmental laws. As an academic researcher and public advocate, she is a nationally recognized voice pressing for stronger environmental protections, unbiased science, and good government. In 2002, she co-founded the Center for Progressive Reform (CPR) to network academics across the country to create workable policy solutions based on cutting-edge scholarship. Professor Steinzor has spearheaded several of CPR's major projects and initiatives on the issue of science integrity, pollution, revamping our nation's environmental laws, and hollow government. She also participates in leading the organization in developing an affirmative progressive agenda and has edited two of CPR's books: *A New Progressive Agenda for Public Health and the Environment* and *Rescuing Science from Politics*.

What started as a few academics volunteering in the spare time they didn't have has grown to an organization with almost fifty academics and a small, full time staff. In this area, too, Professor Steinzor has shown herself as a true

leader. She recruited several graduates of the University of Maryland School of Law whose interests were working for the nonprofit sector to work for CPR. The organization owes its continued vitality to Rena's efforts and commitment. This year, CPR named Professor Steinzor to be its new President.

CPR and the students of Maryland Law are not the only ones to benefit from Rena's outstanding leadership. Her children's school PTA, the Potomac Riverkeepers, the Swann Park Task Force, and the Governor's transition committee have gained from Rena's efforts.

And this is just what she has done in the last couple of years; while not forgetting her passion for helping all children.

Professor Steinzor recently published *Mother Earth and Uncle Sam: How Pollution and Hollow Government Hurt Our Kids*, available in bookstores, at Amazon.com, and on the website of the publisher, the University of Texas Press. The book traces the failure of the government over the past 20 years to protect American children from pollution from toxic chemicals, focusing particularly on mercury, perchlorate (rocket fuel and munitions), and ground-level ozone.

I'm fortunate to have had Professor Steinzor as a teacher and advisor during law school. She continues to be important in my life as CPR's President and as a friend and mentor. It's only in stepping back and looking at these events that I realize that all of these are not phenomenal, perchance strokes of good luck, but the phenomenon of a great leader, Rena.



# A FULL DOCKET FOR THE ENVIRONMENTAL LAW CLINIC

By Jane F. Barrett

Director, Environmental Law Clinic

The Environmental Law Clinic is the only public interest environmental law clinic providing free legal services to citizen groups in Maryland and its work impacts the entire Chesapeake Bay region. The Clinic is uniquely positioned as a critical catalyst for citizen engagement in environmental enforcement, an important voice in the development of environmental policy, and a training resource for future environmental lawyers. During the 2007-2008 academic year, 9 students spent the year on a wide range of environmental issues throughout the State.

## Monitoring Clean Water Act Compliance

On behalf of the Potomac Riverkeeper, Inc., the Chester River Association, and the Baltimore Harbor Waterkeeper the Clinic is investigating individual facilities' compliance with their National Pollutant Discharge Elimination System (NPDES) permits. The Clinic works through negotiation and litigation to ensure that violators bring their operations into compliance with permit requirements. This includes reviewing public records, meeting with State regulators and local citizens, and meeting with facility representatives to discuss compliance issues. The Clinic has assisted both the Potomac Riverkeeper and the Baltimore Waterkeeper in performing "compliance sweeps" of their watersheds, a continuation of work that has been done in prior years.

## Improving Clean Water Act Permits

The Clinic submitted substantive comments to the Maryland Department of the Environment (MDE) regarding the renewal of general and individual permits under the Clean Water Act NPDES program. These comments urged MDE to issue strong permits that comply with all of the requirements of the Clean Water Act and state law. During the 2007-2008 term, the Clinic submitted substantial comments on the State General Permit for Construction Activities. These comments resulted in an extended review of this permit to address some of the concerns highlighted by the Clinic on behalf of the Waterkeepers.

Reviewing and providing input to regulators on Water and Air permits is critical because without carefully drafted and enforceable permits, there is little that can be done by citizens to drive compliance.



*From left to right: Bob Parks with Chester River Assn., Heidi Price '08, Professor Barrett, Teva Weissman '08, Todd Hesel '08 and Brent Walls with Chester River Assn.*

## Advocating for Stricter Enforcement of the Clean Water Act

During the 2007-2008 academic year, the Clinic filed three separate lawsuits on behalf of its clients.

The Clinic represents Chester River Association, a non-profit environmental organization, in litigation against a local chemical manufacturing facility that is discharging pollutants into groundwater and a tributary to the Chester River in Kent County, Maryland. The Clinic filed and argued a Motion to Intervene in Kent County Circuit Court. Despite an outstanding argument by student attorney Todd Hesel, the Circuit Court denied the Motion to Intervene. After being denied the right to intervene in the state court action, the Clinic filed a Clean Water Act citizen suit in the U.S. District Court for the District of Maryland against

Velsicol Chemical Corporation for violations of the federal Clean Water Act for discharging phosphorus and di(2-ethylhexyl)phthalate (DEHP) into a tributary of the Chester River.



*Professor Barrett speaks to participants at the Stormwater Summit.*

The Clinic also represents the Waterkeeper Alliance as well as a number of Maryland-based Riverkeepers in a lawsuit filed in Anne Arundel Circuit Court appealing the refusal of the Maryland Department of Agriculture to release nutrient management plans required to be filed by poultry operations on Maryland's Eastern Shore. The focus of the lawsuit was to increase transparency and compliance with the Maryland Public Information Act so that citizens can understand what measures are being taken by the poultry industry to manage the wastes generated by these facilities.

### **Get the Dirt Out Chesapeake: The Good, The Bad, and The Illegal: Construction Stormwater and Water Quality in Maryland.**

As is more fully described in another article in this newsletter (see page 11), the Clinic developed materials and produced a conference inaugurating a region-wide initiative of Waterkeepers Chesapeake and the Environmental Law Clinic to reduce stormwater runoff from construction sites. The one-day training session taught community volunteers how to properly identify erosion and sediment control

violations from active construction sites and poorly maintained Best Management Practices (BMPs), and how to stop violators. These materials will be used throughout the Chesapeake Bay Region to conduct training programs on this issue in Pennsylvania and Virginia.

### **Environmental Justice**

The Clinic represents an historic African-American community in Prince George's County that is fighting the construction of a new industrial plant in its community. This small neighborhood is already beset by more than its share of industrial activity with the resulting environmental issues typically associated with this type of industrial activity, including alarming levels of respiratory problems among its residents. Clinic students will be representing the community association in an appeal for a county zoning determination and will begin a systematic review of the compliance history of the existing industrial facilities surrounding the community. Supporting local communities that are confronted by environmental conditions effecting their health and local environmental resources is an important part of the Clinic's work.

### **Legislative Work**

This year, Clinic students provided legal advice and drafted legislation for a coalition of non-profit organizations working to strengthen the enforcement provisions of Maryland's Critical Areas Law. This work is an outgrowth of the Clinic's May 2006 report, *Enforcement in Maryland's Critical Area: Perception and Practice*. This report examined the enforcement of the Maryland Critical Area Act, a 1984 law that seeks to preserve the shoreline environment while accommodating growth. The report, prepared on behalf of the West/Rhode Riverkeeper and other Maryland Waterkeepers, was featured in articles in *The Baltimore Sun* and *The Capital*. The Clinic's involvement in this type of legislative and policy work makes a significant contribution to improving Maryland's environment.

As these cases and matters illustrate, the Clinic student attorneys pursued multiple strategies – participation in the regulatory process, citizen education, litigation, public advocacy – in a coordinated effort to benefit Maryland's resources and those of the greater Chesapeake Bay Region.



# A SABBATICAL YEAR FOCUSING ON GLOBAL ENVIRONMENTAL LAW

By Robert Percival

Once every seven years, a sabbatical provides professors with a unique opportunity to pursue projects that would be difficult to accomplish while performing full-time teaching duties at one's home institution. This is particularly true when one's research agenda focuses on global issues that have become increasingly important in the contemporary legal world. During the 2007-2008 academic year, I have been using my sabbatical to focus on projects related to global environmental law. This has taken me to the far corners of the globe while enabling me to become deeply familiar with environmental law in China, the country most crucial to the future fate of the planet's environment.

During the fall semester 2007, I made two three-week trips to Asia to work and lecture on a variety of environmental projects. These trips also helped me to prepare for serving as a J. William Fulbright Scholar at the China University of Political Science and Law during the spring 2008 semester. In November I gave two lectures on environmental law at Qingdao University in Qingdao, China. Qingdao is a coastal city east of Beijing that is famous for its beer. It will be hosting the Olympic Sailing Competition in August 2008.

In December I made a presentation on "China's Role in the Development of Global Environmental Law" at the International Forum on Environmental Law and Sustainable Development (IFELSD), sponsored by the National People's Congress in Beijing. This conference gave me an opportunity to meet the people who are working to reform China's environmental laws, as well as a few members of the old guard who are resisting such changes. One of the most interesting discussions at the IFELSD focused on



*Professor Percival speaks at the National People's Congress International Forum on Environmental Law and Sustainable Development in Beijing.*



*Professor Percival addresses the Indian Society for International Law in New Delhi.*

the difficulties China is having enforcing its environmental laws. Wen Yingman and Yang Zijang from the State Environmental Protection Agency (SEPA) gave particularly strong presentations, concluding that penalties for environmental violations in China are still so low that it is far more economic for sources simply to pay the small civil penalties rather than comply with the law. Fines for water pollution violations generally are capped at 100,000 RMB (\$13,500). Representatives from the Beijing office of the Environmental Defense Fund (EDF) reported that the city of Chongqing is trying to get around this ceiling by adopting legislation providing for daily fines. The legislation took effect on September 1, 2007 and it has had some immediate impact, though it is being challenged in court. EDF has been focusing its efforts in China on trying to persuade the Chinese government to adopt EPA's policy of ensuring that fines at least recoup the economic benefit of non-compliance. However, the new version of China's water pollution control law adopted in March 2008 does not include such a policy.

In December I also spoke on "The Role of the Media in Environmental Enforcement" at the Asian Environmental Enforcement and Compliance Network's regional conference in Beijing. This conference brought together the top environmental enforcement officials from 12 Asian nations. Between these two conferences I traveled to New Delhi, India where I spoke on "The Emergence of Global Environmental Law" at the annual conference of the Indian Society for International Law (ISIL). This conference was held in ISIL's headquarters building across the street from the

Supreme Court of India. It gave me an opportunity to meet some of India's top environmental lawyers who are struggling to upgrade the country's environmental standards despite stiff political opposition.

During the fall I also participated in a joint research project between China and the U.S. on the Experience of Environmental Law in Foreign Countries. The project is an effort by China's State Environmental Protection Agency (SEPA) to compare in systematic fashion the state of environmental law in the U.S. with Chinese Law. Professor Wang Xi of Shanghai Jiao Tong University is directing the project.

A sabbatical also provides an opportunity for making trips that would not be possible while teaching. In October I spent two weeks in Tibet, fulfilling a long-time dream of viewing Mount Everest from the north side. In spring 1981 I had done some mountain climbing on the other side of the Himalayas in Nepal, climbing Island Peak, a 20,000-foot mountain south of Everest. I had always wanted to visit Tibet in order to see these mountains from the other side, but until this fall I had never been able to take enough time off due to teaching obligations. I discovered that Mount Everest is indeed a more impressive sight from the north because there are no other mountains blocking the view. I was fortunate to visit it at a time when it was entirely clear of clouds for nearly two days. The night I spent near north Everest basecamp was one of the coldest I've ever experienced. But viewing a sunset and sunrise at Everest made it all worthwhile.

During my travels in Tibet, the tensions between the Chinese government and the Tibetan people seemed palpable. My Tibetan driver and guide were particularly upset at restrictions on their freedom of movement and the method of enforcing what seemed like an unreasonably low (36 mph) speed limit. Drivers are issued cards on which their times of arrival at various police checkpoints are recorded. If they arrive too early they are fined 100 yuan (approximately \$13) for each minute they are early. The result is that one sees cars and trucks pulled over to wait out the time, something that only makes the already narrow roads more dangerous. My driver miscalculated and arrived four

minutes early at one checkpoint and was fined 400 yuan. The Tibetans did agree that the one good thing that China had done for their country is to plant lots of new trees.

I returned to Beijing from Lhasa by taking the train, which was surprisingly comfortable. It takes two full days and crosses over the highest point of any railroad in the world (the compartments contain individual oxygen dispensers for passengers experiencing problems with the altitude). The trip enables one to see remote parts of Tibet and to gain an appreciation for the vastness and variety of the Chinese landscape. My photos of Tibet are available online at <http://gallery.mac.com/rperci/100023>.

On my way to New Delhi in December I stopped in



*North face of Mt. Everest from Rongbo Monastery.*

Cambodia for three days to visit the Angkor Wat area and the genocide museum and killing fields near Phnom Penh. Photos of this part of my trip are posted online at <http://gallery.mac.com/rperci/100046>. I flew to Cambodia via Singapore, where I was able to observe first hand the Singapore government's Electronic Road Pricing (ERP) system, the world's first congestion charge system launched in 1998. All vehicles in Singapore, including motorbikes, have an electronic device

that enables them to incur charges automatically when they are present on certain stretches of road at certain times of day. London modeled its recently launched congestion charge system on the Singapore program.

In between trips to Asia, I had the privilege of appearing in the U.S. Supreme Court to move the admission of 12 Maryland Law alumni to become members of the Supreme Court Bar. I also presented a paper at Georgetown's Environmental Law Research Seminar on the Supreme Court's *Massachusetts v. EPA* decision, a paper that has been published in the latest issue of the *Supreme Court Review*. I also traveled to Lansing, Michigan to be the guest speaker at Michigan State's Knightline Environmental Speaker Series. I spoke on "The Globalization of Environmental Law."

Prior to moving to China for the spring semester, I participated in the national "Focus the Nation" teach-in on

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## CHIEF JUSTICE OF ARGENTINA VISITS SCHOOL OF LAW



(from left to right:) Argentine Embassy Secretary Julio Mercado, Justice Juan Carlos Maqueda, Associate Dean José Bahamonde-González, Chief Justice Ricardo Lorenzetti, Dean Karen Rothenberg, Argentina's Ambassador to the U.S. Jose Octavio Bordon and Professor Robert Percival.

On October 4, 2007, the University of Maryland School of Law was honored to host the Chief Justice of Argentina, Ricardo Luis Lorenzetti. The Chief Justice was accompanied by Justice Juan Carlos Maqueda, and Jose Octavio Bordon, Argentina's Ambassador to the United States. All three men have played a leading role in restoring the rule of law and respect for human rights to a country with a turbulent political history. They also have been involved in extraordinary recent efforts by the Supreme Court of Argentina to force the country's government to clean up persistent pollution problems that have afflicted poor neighborhoods. Their visit was arranged by Environmental Program Director Professor Robert Percival who met Chief Justice Lorenzetti at the IUCN Academy of Environmental Law Colloquium in Brazil in June, 2007.

During their visit to the law school, the three Argentine officials spoke to a large group of law students and were guests at a luncheon in their honor attended by faculty and members of the Maryland judiciary. The Chief Justice described his strong interest in environmental law, which he views as one of the most exciting fields of law today. He authored the Argentine Supreme Court's landmark decision in 2006 in the *Matanza-Riachuelo* watershed case in which the Court ordered the city of Buenos Aires and the provincial and federal governments to clean up a heavily polluted river. In an interview in the *El Pais* newspaper, Justice Lorenzetti defended the Court's action, explaining his view that "the function of the Court is to make noise."

Justice Maqueda played a major role in helping Argentina weather the presidential succession crisis the country experienced in 2001-2002, briefly serving as interim President of the country while President of the Senate, after the

President and Vice-President had resigned. He and Justice Lorenzetti were in the majority in the landmark decision in the case of *Julio Hector Simon*, which was issued in June 2005. In *Simon*, the Argentine Supreme Court declared the amnesty for crimes committed during the military dictatorship's "dirty war" to be unconstitutional. The Chief Justice explained that the Argentine Constitution expressly incorporates and makes binding international legal norms and the decisions of the Inter-American Court of Human Rights. At the luncheon the Chief Justice also discussed the country's recent decision to reverse the court-packing that had occurred during former President Menem's administration when the size of the Court was expanded from 5 to 9 justices. The Court now has seven members, but it will revert to five when its two oldest members retire and are not replaced.

After the luncheon, the Justices and the Ambassador toured the law school and watched a demonstration of classroom technology that included viewing Professor Percival's global environmental law website, [www.globalenvironmentallaw.com](http://www.globalenvironmentallaw.com). The group also paid a visit to the grave of Edgar Allan Poe, which is located on the law school campus. Justice Maqueda explained that Poe is well known in South America because he is considered an inspiration for the magical realism in the works of Gabriel Garcia Marquez.

Maryland environmental law student Sabrina Hassanali '08 is spending the spring semester 2008 working to protect the environment in Argentina through an externship with the Center for Human Rights and the Environment in Cordoba (see article on facing page).



# THE PACE OF CHANGE IN ARGENTINA

By Sabrina Hassanali '08

*Sabrina Hassanali is a third year law student doing an environmental externship at The Center For Human Rights and Environment (CEDHA).*

The city of Cordoba is located near the geographical center of Argentina. It is a city known for its colonial architecture and a well-preserved Jesuit Block from the 1600s which is a UNESCO World Heritage site. Cordoba is also the country's second largest industrial center and in recent decades has continued to grow in size. A twenty minute bus ride away from the bustling center, the poor suffer the consequences of a growing city. Relegated to the extreme east, inside the municipal border, the barrio of Chacras de la Merced is home to one of the city's eight waste treatment plants, as well as shanty towns and government housing for the poor.

As the population of Cordoba has grown in recent years, the amount of waste taken in by the processing plant has continued to increase. The waste treatment plant operates over its intended capacity and cannot fully treat the waste that it accepts for processing. The excess waste contaminates the water sources in the area. To make matters worse, the southern border of the Chacras barrio is enclosed by the polluted Rio Suquia. The city's private water company, Aguas Cordobes, refuses to provide water to the people of the Chacras barrio, and the residents have had to use contaminated ponds as their water source.

For years, community activists have filed complaints to municipal and provincial agencies in order to improve the functioning of the waste treatment plant and the local water quality. Their complaints fell on deaf ears until Centro de Derechos Humanos y Ambiente (CEDHA), Spanish for the Center of Human Rights and Environment, stepped in to litigate in 2003.

One of CEDHA's goals is to link the debate between environmental protection and the enforcement of human rights. For those who live in poverty, the nexus between environmental conditions and human rights is all too clear.

The consequences of unsanitary living conditions are felt disproportionately by the poor. They live near polluted waterways and toxins, suffering poor health as result of these living conditions. Thus, the linking of these debates is natural for the marginalized in society. At the same time, judicial systems are generally hesitant to identify or define new obligations for the state that would result in the enforcement of environmental and human rights.



*City authorized dumping site in the Chacras barrio.*

Fortunately, for the community of Chacras, the Argentine legal system has an important tool—an action of amparo—to guarantee constitutional rights. It provides for a shorter litigation process when there is an overt violation of a constitutional right. Argentina is party to numerous international resolutions that seek to establish a right to a clean environment. These resolutions are incorporated into the Argentine constitution.

In the Chacras community, the lack of clean water laid the foundation for the use of the amparo action. In order to assist the Chacras community in receiving potable water, CEDHA worked creatively to craft a right to water through existing legal jurisprudence. The CEDHA lawyers argued that without clean water, the community was deprived of the right to health, a clean environment, and a dignified quality of life (these are enumerated in the Argentina constitution). In its amparo action, CEDHA linked the right to a clean environment and health to the right to water. Through their work in the Chacras case, CEDHA has developed provincial jurisprudence for a right to water. This sets the stage to push further litigation through the legal system and expand the right to water to a national and international reality.

While CEDHA won its amparo action, the results in the community are indicative of the layers of bureaucracy and

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# MARYLAND ENVIRONMENTAL LAW SOCIETY, SCHOOL OF LAW CO-HOST INAUGURAL "FOCUS THE NATION" PROGRAM

By Andrew Gohn '09

On January 31, 2008, the University of Maryland School of Law invited distinguished speakers from government, industry, and environmental groups to participate in an all day teach-in on climate change policy as part of the national program Focus the Nation. Over 1,750 schools, places of worship and other institutions ultimately participated in this grass-roots effort to raise awareness of climate change issues.

Coordinated through the student group the Maryland Environmental Law Society, students at the law school wanted to do their part to contribute to the climate policy debate through the pursuit of positive, constructive discussion of real action and the real sacrifices necessary to achieve it. Working on the project through the fall semester, Patience Bosley-Burke and I were able to gain significant interest from some well-respected speakers.

The keynote address was delivered by Maryland's Secretary of the Environment Shari Wilson. The day was then divided into four panel discussions concentrating on climate change and Maryland policy, national energy policy, legal issues, and environmental health. Guest speakers from NRDC, Sierra Club, MDE, BP Solar, Environment Maryland, Chesapeake Climate Action Network, EPA, National Wildlife Federation and many other groups gave presentations on topics ranging from environmental litigation strategies to Maryland climate legislation.

One particular piece of legislation received much of the attention – the Global Warming Solutions Act proposed by Maryland Senator Paul Pinsky. The bill, which aims to cap Maryland's greenhouse gas

emissions by 90% by the year 2050, would make Maryland the most progressive state in the nation on climate change issues. Other specific policy issues that were addressed at the conference included the Clean Cars Initiative (which is currently in limbo in Maryland and more than a dozen other states since the EPA under the Bush administration denied California's waiver of federal standards under the Clean Air Act), the Regional Greenhouse Gas Initiative, and the possibility of federal climate legislation such as the Lieberman-Warner bill in the

Senate, which would create a national carbon cap-and-trade regime.

The event turned out to be very successful. The speakers were very well-received. Dean Karen Rothenberg and Assistant Dean of Student Affairs Dawna Cobb both gave introductory remarks. Over a hundred students, educators, and community stakeholders attended, with many staying the whole day. An environmentally sustainable lunch was catered by Dogwood Deli in Hampden, with organic wraps and salad served on biodegradable plates and cups. It was a perfect opportunity for attendees to network or just relax.

According to most major scientific reports, the earth's inhabitants have very little time remaining to address the most significant environmental issues in human history, and the consequences of inaction are catastrophic. Yet action without deliberation is also

a risky course. Through this event, students were able to contribute to a continuing conversation on climate change policy strategies. Hopefully, law students can continue to work on this important issue and affect change in the community and beyond.



*Maryland Secretary of the Environment Shari Wilson, speaks at Focus the Nation conference.*



*Student Coordinators Andrew Gohn '09 and Patience Bosley-Burke '09 with Dean Karen Rothenberg.*



# CLINIC HOSTS STORMWATER SUMMIT AND CITIZEN TRAINING SESSION

By Jayni Shah '08

On November 12 and 13, 2007, the University of Maryland Environmental Law Clinic co-hosted and participated in the Chesapeake Bay Region Waterkeeper Alliance "Stormwater Summit," focusing on stormwater management in the Chesapeake Bay Region.

The two day summit began with a presentation on federal stormwater regulation by Jeffrey Odefey of the Waterkeeper Alliance, followed by a presentation that Clinic students prepared about stormwater regulation in Maryland. The clinic students provided a comprehensive overview

liance ended the day with a panel discussion about regional efforts that have been successful in improving stormwater management.

On the second day, the waterkeepers applied what they had learned from the first day to develop a comprehensive two-year strategy for reducing stormwater runoff from construction sites, municipalities, and industrial sources in the Chesapeake Bay region.

Following its involvement in the Summit, the Clinic was asked to train waterkeepers and citizens in Maryland on how to identify and report violations of federal, state, and local environmental protection standards. The Clinic hosted this training, "Get the Dirt Out Chesapeake: The Good, The Bad, and the Illegal: Construction Stormwater and Water Quality in Maryland," on February 29, 2008.

The citizen training began with a presentation on waterkeeper success stories by Mr. Najouks that showed steps citizens were taking to improve stormwater management. Mr. Najouks' presentation was followed by presentations on construction stormwater law, the scientific impacts of construction stormwater runoff, best management practices at construction sites, and methods of citizen field investigation. The presenters included Clinic students Sheena Flot '08, Lewis Taylor '08, and Michael Wright



*Waterkeepers and clinic students at the November 2007 Stormwater Summit.*

of the law governing stormwater regulation in Maryland, then showed how participants could use technology, such as Google Maps and industry databases, to locate facilities with stormwater discharge permits in Maryland. The morning concluded with a panel discussion on state and local implementation of stormwater regulations. The panelists were Jane F. Barrett of the University of Maryland Environmental Law Clinic, Leon Szeptycki of the University of Virginia Law Clinic, and Nancy Stoner of the Natural Resources Defense Counsel.

In the afternoon sessions, the focus turned to local and regional efforts of the waterkeepers and other citizen groups to improve stormwater management. First, Shenandoah Riverkeeper Jeff Kelbe, Baltimore Harbor Waterkeeper Eliza Steinmeier, and South Riverkeeper Drew Koslow discussed their efforts at improving stormwater management. These efforts included a construction stormwater project, an industrial stormwater compliance sweep, and the use of citizen suits. Then, Upper Neuse Riverkeeper Dean Naujoks, Mark Riskedahl of the Northwest Environmental Defense Center, and Jeffrey Odefey of the Waterkeeper Al-



*Approximately 100 citizens and waterkeepers attended the Get Out the Dirt Chesapeake Training Session.*

'08, Professor Barrett, Paul Sturm of the Center for Watershed Protection, Richard Trickett of the Maryland Department of the Environment, Bernadette DeBlander of the Center for Watershed Protection, and Mr. Koslow.

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## A Sabbatical Year

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the global climate crisis on January 31. More than 1,700 schools and universities throughout the U.S. participated in this event. Students from the University of Maryland School of Law organized one of the most comprehensive programs held at any law school in the U.S. (See related article on page 10). I served as the keynote speaker at the University of Maryland, College Park's "Focus the Nation" program. Following my keynote, the College Park program featured panels on the ecologic, economic, and political dimensions of the climate crisis, a panel on citizen action, a green fair, and a movie presentation that ran until 9 p.m.

I arrived in China on February 15 to start my semester teaching as a J. William Fulbright Distinguished Lecturer at the China University of Political Science and Law (CUPL). Chinese universities start their spring semester after the Spring Festival and celebration of Chinese New Year, which is why classes did not start until February 25.

CUPL probably has more students interested in Environmental Law than any other law school in China. This is in large measure the result of Professor Wang Canfa teaching there. He is the founder and director of the Center for Legal Assistance to Pollution Victims (CLAPV). I am teaching two classes at CUPL - Environmental Law, which meets for three hours on Monday afternoons, and Comparative Environmental Law, which meets for two hours on Thursday mornings. Video of my Environmental Law class is available online at <http://gallery.mac.com/rperci/100102>. Video of my Comparative Environmental Law class is online at <http://gallery.mac.com/rperci/100110>.

I have been very impressed with the quality of the English spoken by many of my students, though I am following the advice of former Fulbrighters and trying to speak as slowly as possible. I also was impressed with the high level of interest in environmental law expressed by students in both classes. Class discussions of environmental issues leave me with the impression that there is less understanding of the threat of global warming here than among my Maryland students, perhaps because basic pollution problems pose a much more immediate challenge in China. There also seems to be much greater concern among my Chinese students about job prospects in the environmental field. While my Maryland students are generally confident about their prospects in the environmental field, many of the Chinese students are making a leap of faith that jobs will materialize in a field that is just developing.

At the start of each class in China I engage the students in a discussion of new developments in environmental law, usually by focusing on news stories in the morning's

English language *China Daily* newspaper. The students have been particularly enthusiastic about this part of the class because it is quite different from what they normally encounter in their classes.

I am having the Chinese Environmental Law students do the same assignment I give my Maryland students – break up into small groups and choose an environmental topic to be the subject of a short film. My Chinese students have enthusiastically embraced this project and are working on making films on a variety of environmental topics including air pollution in China, the environmental impact of disposable chopsticks, and China's ban on the distribution of free



*Maryland Law students are greeted by Chinese environmental law students as they arrive at the China University of Political Science and Law (CUPL)*

plastic bags by grocery stores. Students in my Comparative Environmental Law class are planning to become the first Chinese students to enter the 2009 International Environmental Moot Court Competition in Florida.

I will be teaching at CUPL until early July. In late June I am making a trip to Chile to present my paper on "The Emergence of Global Environmental Law." The paper has been translated into Spanish for publication in a book that will be released at the University of Chile's conference on "Sustainable Development: Governance and Law" on June 25-27, 2008. The paper is a prelude to a casebook I am co-authoring with Professor Tseming Yang of Vermont Law School on "Global Environmental Law." The casebook will be the first of its kind to present environmental law in a truly global context. It will be published by Aspen Publishers in 2009.

## STUDENTS COMPETE IN INTERNATIONAL MOOT COURT COMPETITION



*Left to right: coach David Mandell '07, Jayni Shah '08, Ian Ullman '08, Heidi Price '08, and coach Karla Schaffer '07.*

Maryland's International Environmental Moot Court team (Heidi Price, Jayni Shah, and Ian Ullman) participated in the 12th annual competition at Stetson University. The team won Third Place Memorial (brief) in the North American Rounds, where they defeated Cornell, Cardozo, and Hawaii. As a result, Maryland was one of four U.S. teams to advance to the International Finals. In the International Finals, the team defeated the American University of Armenia and the National University of Advanced Legal Studies (India), but lost to the University of New South Wales (Australia) and Wake Forest University. Ian Ullman won Second Place Oralists for the International Rounds. Loyola-New Orleans defeated Ateneo de Manila University (Philippines) to win the competition.

## MARYLAND TO HOST 2009 INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

On February 6-7, 2009, the law school's Environmental Law Program will host the East Coast finals of the International Environmental Moot Court Competition. This will be the first year that the U.S. finals are held separately from the international finals, which will be hosted by the Stetson University College of Law. Maryland's Environmental Law Program is recruiting experts in international environmental law to assist in judging the competition. The program also is planning to host a symposium on International Environmental Law to be held in conjunction with the competition.

Maryland's law students, who have had great success in the international competition over the years, will compete in the West Coast finals, which will be hosted by the University of Santa Clara School of Law. The top applicant and top respondent from both the Maryland and Santa Clara regional finals will advance to the International Finals, which will be held at Stetson's Gulfport campus from March 25-29, 2009. For more information about the competition visit [www.law.stetson.edu/environmental/](http://www.law.stetson.edu/environmental/).

While teaching as a Fulbright scholar in China, Professor Percival has recruited teams of Chinese law students from the China University of Political Science and Law and Renmin University to become the first Chinese entrants in the international competition.

# MARYLAND LAW PLAYS ACTIVE ROLE IN NAELS FUTURE

By Patience Bosley Burke '09

Progress and evolution – those are the key themes driving the NAELS (National Association of Environmental Law Societies) agenda this coming school year. The progress will involve an expanded list of NAELS priorities, such as a new and extensive Clean Water program that will address major water quality and quantity issues faced across the country. In addition, NAELS will continue to advance its Climate Change program with objectives such as Campus Climate Neutral, Focus the Nation, and a new project called the Modern Industrial Revolution. Evolution will take place by way of extensive development and reorganization of the organizational infrastructure currently in place. In the coming year, NAELS will establish relationships with major professional environmental groups and add 50 state representatives, as well as one for D.C. NAELS will also reach out to undergraduate programs, in addition to establishing an alumni network.

At the helm is executive director Dan Worth, co-chair Craig Altemose from Harvard, and me as the other co-chair. The energy and excitement between the three of us, in combination with our collective organizational skills, foreshadow much growth for NAELS. We are further fueled with an amazing pool of talent made of environmental law students from across the country. These are enthusiastic and impressive individuals who want to make positive change in environmental protection. Our role is to help facilitate that goal. While thinking about that responsibility, I realized something.

I am extremely fortunate to be a student at this school. Few other environmental law students get the opportunities of which Maryland students are poised to take advantage. Our environmental law program is run by fantastic people ready to help law students find their niche and pursue their interests. The program itself is stacked with course options that allow students to focus not just on environmental law, but on more concentrated areas such as air, water, and biodiversity. Further, we are located in close proximity to D.C. where much decision making concerning environmental law takes place. But this is not the norm. Many students across the country attend schools that do not offer environmental law programs. As for those that do, few seem to be as thorough, active, and well-recognized as our own.

I attribute a lot of my success at Maryland to the resources that have been placed at my disposal by the program. Without them, I may not have acquired the confidence that I have in my area of study, nor the exposure to so many different networking and educational events. It is with these beliefs that I enter the NAELS co-chair position. While I cannot replicate those same wonderful opportunities that I have here at Maryland, I can work to create others that will help students achieve their goals. After all, we all live in the same environment, so the success of one is to the benefit of many.

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## The Pace of Change

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general inefficiencies of municipal and provincial organizations. Through the work of CEDHA, the people of Chacras received water delivered by a provincial agency. However, after a recent change in the province's governor, the agency charged with providing water ceased service due to a lack of funding. Furthermore, through the work of CEDHA the community was able to get a tap for underwater pond for in-home use. However, in order to avoid costly drilling, the pipe for accessing underground sources of water was not drilled deep enough. As a result, the water from the perforation drilled by the provincial agency has high levels of arsenic. While improvements are being made to the waste treatment plant, they are painstakingly slow. Social workers, community activists and CEDHA continue to assist Chacras del Merced in their struggle with day-to-day functioning of municipal and provincial services.

## Stormwater Summit

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The citizen training ended with a “virtual field trip” prepared by the clinic students that allowed the participants to practice the field investigation techniques they learned during the conference. Participants watched a video prepared by clinic students of three construction sites and used a site report card to grade its compliance with stormwater regulations. After reviewing each site, expert analysis of the violations was provided by Bruce Gilmore, a stormwater management consultant. Participants were given a binder compiled by the Clinic containing materials on the relevant federal, state, county, and municipality laws and procedures for stormwater management; the proper methods for implementation and maintenance of best management practices; and guidance for field investigation. The citizen training was supported by the Ward Kershaw Environmental Symposium Fund.



# GLOBAL WARMING II: HOW THE LAW CAN BEST ADDRESS CLIMATE CHANGE

June 6, 2008  
Baltimore, MD

Sponsored by the American Bar Association

Hosted by University of Maryland School of Law  
Environmental Law Program

Climate change presents an unprecedented challenge to our legal system, demanding new and creative approaches by environmental attorneys toward policy, legislation, regulation, and litigation. The global consensus that human activity has accelerated the emission of greenhouse gases and may be rapidly nearing a tipping point has sparked new governmental, industry, and citizen action at every level. The turbulence in the law, in the United States and internationally, offers opportunities and risks for business, NGOs, consumers, and political leadership. Every environmental practitioner now needs to keep abreast of these widespread changes, as the implications likely will affect everything from building codes to pollution permits.

Against this swiftly changing background, this conference addresses how environmental practitioners increasingly are major players in shaping the new legal frameworks that address climate change issues. Keynote speakers and panelists will address: (1) the prospects for federal regulatory change and its effect on state action; (2) the international paradigm “beyond Kyoto”; and (3) how state and local governments are responding to the climate change challenge, including through initiatives to regulate greenhouse gases. The conference provides an exciting, one-stop opportunity to hear from a diversity of key players who are on the cutting edge of climate change law and policy.

See next page for speakers and registration information.

# GLOBAL WARMING II: HOW THE LAW CAN BEST ADDRESS CLIMATE CHANGE

June 6, 2008

University of Maryland School of Law  
500 West Baltimore Street  
Baltimore, MD 21201

Luncheon Keynote Speaker:

Douglas F. Gansler  
Maryland Attorney General

Featured Speakers:

David McIntosh  
Counsel/Legislative Assistant to the Hon. Joseph Lieberman

Vicki Arroyo  
Director of Policy Analysis  
Pew Center on Global Climate Change

Jeffrey R. Holmstead  
Bracewell & Giuliani

Stephen Harper  
Corporate Director, Environment, Energy and Logistics Policy  
Intel Corporation


Nigel Purvis  
Nonresident Brookings Scholar on Environment  
and Development, Foreign Policy

Seth Kaplan  
Senior Attorney, Director, Clean Energy & Climate Change Program  
Conservation Law Foundation, Boston, MA

Kyle W. Danish  
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Professor John Dernbach  
Widener University School of Law, Harrisburg, PA

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Arnold & Porter, LLP, New York, NY



For more information and to register, visit  
<http://www.abanet.org/publicserv/environmental>  
or call the ABA at 202-662-1694.