Clinic Takes New Directions: Transportation “Conformity” and the Neighborhood “Dump”

by Rena Steinzor, Director, Environmental Law Clinic

Anti-sprawl activists, Kristen Forsyth, Dru Schmidt-Perkins, and Dan Pontious meet with Clinic Director Rena Steinzor.

With a large hole in its case load following the relocation of our clients from Fairfield and Wagner’s Point, the Clinic began the 1999-2000 school year with 14 student attorneys and too little work. That situation did not last long. Before everyone found the bathrooms and fax machines in the Law School’s new building, we had agreed to represent two new clients - 1000 Friends of Maryland and the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), stepping into the complex maelstrom of efforts to implement the 1990 Clean Air Act Amendments. Those demanding projects, along with more work for our long-standing client, the Cleanup Coalition, have required everyone to become an instant technical expert, in areas as diverse as air shed monitoring, off-gassing of BTX from petroleum contaminated soil, and “mixing zones” in the Patapsco River.

Recyclable Paper
Keeping Clean Air Act Implementation Honest

Baltimore is a "severe" nonattainment area for ozone, choking on dense clouds of smog throughout the summer, much like its neighbor, Washington, D.C. Our new client, 1000 Friends of Maryland, focuses on fighting sprawl and encouraging smart growth, and sees the Clean Air Act as both the means and ends of its mission.

Bluntly put, without new or bigger roads, there can be no sprawl and there will definitely be less motor vehicle air pollution. The 1990 Amendments to this grandparent environmental statute made a concerted effort to solve one of the country's most intractable environmental problems: transportation departments are heavily influenced by road builders, and neither has any use for environmentalists or regulators. For three decades, transportation policy has developed without regard to environmental concerns, frustrating repeated efforts to reduce the millions of tons of harmful emissions released from tail pipes annually.

In gross terms, the 1990 amendments threw a figurative "net" over the road crews, forcing them to coordinate planning with the limits necessary to attain National Ambient Air Quality Standards, in Baltimore's case by 2005. Like many shotgun weddings, these two warring interests have had to learn to work together and coordinate their efforts. In Baltimore's case, this difficult task is made even more challenging because the government entity responsible for accomplishing it, the Transportation Steering Committee (TSC) operates in defiance of basic procedural principles. For example, elected officials who sit on the Committee never show up for meetings, leaving tough decisions to staff bureaucrats who are unaccountable in any immediate way to the public. Regulatory mandates are ignored routinely, and planning is haphazard.

The one message the TSC does hear, however, is that it may be sued, and so it was that one evening this fall, student attorney Jeff Herrema stood to inform the hostile gathering that its proposed actions were illegal and had to be changed. Herrema won his point that emissions must be estimated on the basis of 1999 motor vehicle fleet data -- as opposed to 1990 data that showed a significantly smaller number of cars and, especially, the increasingly fashionable but dirty SUVs. The Committee, at the urging of the Maryland Department of the Environment (MDE), backed down, and revised budgets are in the process of being written.

Of course, all of these activities are designed to be a "zero sum game" -- that is, if predicted or actual car emissions go up, pollution from other sources must be reduced, and the 1990 versus 1999 data controversy can only be described as an early skirmish in a very long war. Still, it was satisfying to know that had the Clinic, 1000 Friends, and their allies in the environmental community not been watching, this bad decision, like so many before it, would have gotten buried in the complex paperwork that makes the process so frustrating.

Dirty River, Dirty Bay

During a routine review of state permit files last year, student attorney Melanie Flynn discovered that the Bethlehem Steel plant at Sparrow's Point in Baltimore was operating on a Clean Water Act discharge permit that expired close to a decade ago. The facility, among the largest dischargers of toxic metals in the country, was insisting on a permit that sets no limits on copper and nickel, two discharges that pose a serious risk to aquatic ecosystems. Worse, the lengthy delay means that companies like Bethlehem Steel can operate under standards that were applied to the facility in 1985, when the permit was first issued.

It took Flynn and fellow student attorneys Wade Wilson and James Lichty six months to finally get to the bottom of why the permit was so long delayed, and when they did, the picture wasn't pretty. Permit writers from MDE have spent six years listening to a succession of highly technical arguments from the company without even conducting their own monitoring to determine aquatic conditions. Worse, these negotiations were not only opaque substantively, they were occurring very much outside the public view. Once again, had the Clinic not intervened, the squabbling might have gone on indefinitely.

In January, Cleanup Coalition president Terry Harris, the Clinic legal team, and two toxicologists with excellent reputations regarding water issues, Dr. Katherine Squibb of the University of Maryland's Program in Toxicology, and Jacqueline Savitz, science advisor to the Cleanup Coalition, traveled to Philadelphia to make the case for a tough permit with strong limits to EPA deputy regional administrator Thomas Voltaggio and eight members of his staff. Voltaggio promised to monitor the situation carefully, and MDE committed to issuing a draft permit sometime this spring.

Helping the Regulators Hold Their Own

In its second foray into clean air law, the Clinic has undertaken a variety of projects for the professional association that represents the administrators of state air pollution control programs across the country. Known by the hefty acronym STAPPA/ALAPCO, the group routinely intervenes in EPA regulatory decisions on behalf of the states, typically urging that standards be made stronger. While STAPPA/ALAPCO executive director Bill Becker and deputy director Nancy Kruger are committed to effective pollution control, they are also representing their members' immediate self-interest. To the extent that EPA weakens standards or does not prosecute violations actively, the air administrators face the imperatives of
Huge Dirt Piles and a Smell in the Air

Highlandtown is one of Baltimore’s oldest neighborhoods, home to long blocks of row houses many with vintage white stone stoops out front. Struggling to hold its own against urban blight, the neighborhood brought one such problem to the Clinic: an empty lot marred by towering piles of discolored dirt, as well as a stench reminiscent of a gas station on a hot summer day.

Run by a company called, inappropriately enough, Soil Safe, the facility accepts truckloads of dirt excavated from leaking underground storage tanks across the region. In theory, the company adds cement to the soil, binding gasoline residues and preventing leaching and off-gassing. It is also required to process all dirt within 90 days after it is brought to the facility. When a worker was killed in a machinery accident at 4:30 a.m. one Sunday morning a few weeks ago, the Clinic’s suspicions deepened, and we redoubled our efforts to build a compelling case against the company.

The Clinic has never managed to find the resources to afford technical support in all the forms required by its cases, from air shed modeling experts, to marine biologists, to engineers of all types, to soil and groundwater geologists. The intellectual courage it takes to comprehend the gist of the regulators’ decisions, much less their legality, is considerable, and this year’s class of instant experts deserves much appreciation.
Partnering Team with Senator Paul Sarbanes (D-MD) at a ceremony removing the former Tipton Airfield from the EPA's National Priority List.

Partnering for Success! A new buzz phrase? Maybe, but partnering has been the key to success in the environmental restoration of the former Tipton Army Airfield and beneficial reuse of the property for civilian aviation. Many readers of this publication might find the partners to be oddly suited for a partnership—the Department of the Army, the U.S. Environmental Protection Agency, and the Maryland Department of the Environment.

Fort George G. Meade, located in Anne Arundel County, was identified for partial base closure in 1988. Prior to environmental restoration, a portion of the closed property was transferred to the U.S. Department of Interior for use as a wildlife refuge. The remaining property, known as Tipton Army Airfield, was designated for transfer to Anne Arundel County for use as a regional commercial airport. This transfer was complicated by the listing of Fort Meade on the EPA’s National Priority List (NPL), for cleanup through the federal Superfund program. Before the Army could transfer the property, the land had to be cleaned up, restored and remove from the NPL.

What is Partnering?

What is partnering? Partnering can be the key to successful projects, especially environmental restoration projects. Partnering is “a process by which two or more organizations with shared interests act as a team to achieve mutually beneficial goals.” “Partners” in the environmental restoration process are often organizations that “in the past have worked at arm’s length or have even had competitive or adversarial relationships.”

Partnering is not a legally binding relationship, but a “commitment and agreement between the parties to:

- Participate in structured, facilitated team-building sessions and joint training to acquire the skills needed to work together as a team.
- Remove organizational impediments to open communication within the team, regardless of rank or organizational affiliation.
- Provide open and complete access to information (except as prohibited by law).
- Empower the working-level staff to resolve as many issues as possible.
- Reach decisions by consensus as much as possible, and when consensus is not possible, achieve resolution in a timely manner using an agreed-upon process for resolving disagreements.
- Take joint responsibility for maintaining and nurturing the partnership relationship.”

In the restoration of Tipton Airfield, the partners discussed above are the major stakeholders in the process. A key element of partnering is the realization that stakeholders can have different interests and responsibilities, but common goals developed by the team are essential. The goals established by the team were developed based on the primary interests of both regulatory agencies and the Army. The partnership’s goals included timely and cost effective transfer of the airfield to the County while ensuring protection of human health and the environment. In addition to the stakeholders which are “voting” members of the team, the process also brings in guest members such as contractors, other federal or state agencies, and others affected by the work such as Anne Arundel County. During the Tipton Airfield project, a representative from the County Executive’s office frequently attended team meetings. The community’s link with the team is the Restoration Advisory Board (RAB) which receives monthly meeting summaries from the team as well as status briefings from the team at periodic RAB meetings.

The Process In Practice

The commitments and agreement which are the basic tenets of partnering have a profound effect on the functioning and
progress of the team. Most important is the sense of project ownership by the entire team. All the members of the Fort Meade Environmental Partnership take personal responsibility for the success or failure of the team.

The structured partnering sessions lessen the impact of changing personnel on team performance. Despite several key players leaving the team in the past few years, the structured process prevented delays and kept the process moving.

Facilitated partnering is extremely beneficial to team development until the team is ready and sufficiently trained for self-facilitation. Initial team meeting included a professional facilitator who directed meetings and ensure team members “played by the rules” established by the team.

The partnering system established at Fort Meade includes two tiers: Tier I is the working level members which are empowered to make decisions for their agency and Tier II which includes stakeholder management personnel at least one level above the working level members. When a decision cannot be made by the working level, Tier II steps in and resolves the issue. The two-tiered system ensured higher management focus on the project throughout and prevented other work from taking focus away from Fort Meade.

Setting ground rules for discussion and for dispute resolution is key. Although it seems obvious that meetings are more efficient if only one person is talking at a time, I’m sure everyone has been part of a meeting where there are more sidebars than general discussion. Meeting roles such as chair, timekeeper, and chart keeper are rotated among members of the team. This allows meetings to go smoother with more issues being resolved.

The process requires open and honest communication among the stakeholders, with no “hidden” agendas allowed. Team members state their position on an issue regardless of whether that position is popular and clearly state when they do not have discretion on a particular issue. Team member’s positions are made clear without unnecessary conflict or adversarial posturing.

One of the most interesting things about team meetings was the switching of positions in discussions. While you would think members of the Army or regulatory community would always side together, individual team members often provide support to the arguments of the “other side.” Without the emphasis on open and honest communication, that probably wouldn’t happen.

Result

Partnering at Fort Meade has resulted in accelerated project completion and clean-up of contaminated sites. Before partnering was initiated at Fort Meade, the restoration process had stalled. Partnering keeps the restoration process moving and avoiding impasses. The results of partnering at Fort Meade have been impressive. The team achieved the fastest Superfund de-listing ever – 16 months from listing of Fort Meade to partial de-listing of the Tipton parcel! Since the completion of work on Tipton, the Fort Meade Environmental Partnership continues its work on restoration of the remainder of Fort Meade.

*Third year evening student Leslie M. Hill, P.E. is the Base Closure - Environmental Restoration Program Manager for the U.S. Army Corps of Engineers, Baltimore District. The opinions expressed in this article are solely the views of the author and do not constitute the official position of the Department of the Army or any other agency.

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**STEVEN SOLOW JOINS FACULTY**

Steven P. Solow will leave his position as Chief of the Justice Department's Environmental Crimes Section to become a Visiting Professor at the University of Maryland Law School, beginning this summer. Professor Solow will divide his time between the Environmental Clinic, where he will serve as co-director with Professor Rena Steinzor, and teaching courses in criminal law.

Solow is a former professor of law at Pace University, where he was also co-director of the Environmental Clinic. Under his leadership, the Clinic litigated 35 citizen-suit lawsuits in both state and federal courts regarding a wide variety of environmental and land use issues. Since 1997, he has been an adjunct professor, teaching a seminar in association with Pace University's externship program in Washington, D.C.

Before joining the Pace faculty, Solow was an assistant deputy attorney general with the New York State Organized Crime Task Force for several years. He also served as a staff attorney for the Environmental Defense Fund and clerked for United States district court Judge Harold L. Murphy. He received his juris doctor degree from New York University School of Law 1985 and is a 1980 graduate of Brown University.
Environmental Law Field Trips: Watching Justices and Judges Decide Who Can Bring Environmental Cases to Court
by Emily A. Berger*

Do read the lower court opinions and summaries of the issues raised in the petition for certiorari to the Court. In fact, I recommend taking this reading material along for the morning wait. It will give you something to do and refresh your memory as to the key players and issues in the case. It is much more interesting to listen to the arguments if you understand the issues and even choose sides.

Do watch the Justices closely. You might notice that Justice Thomas spends most of his time leaning back and staring at the ceiling in boredom or that Justice Scalia pulls himself halfway over the bench and slicks his hair back before he speaks. Similarly, the other Justices often make quips under their breath or to their neighbors.

My first exposure to the inside of the Court began at 11:05 a.m. on October 12, 1999, when the Supreme Court heard oral arguments in Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., No. 98-822. The transcript of the argument is available at 1999 WL 955378. The petitioners were environmental groups Friends of the Earth (FOE), Citizens Local Environmental Action Network (CLEAN), and the Sierra Club. They had brought an action against Laidlaw Environmental Services for National Pollutant Discharge Elimination System permit violations pursuant to the citizen suit provision of the Clean Water Act. The plaintiffs were successful in the United States District Court for the District of South Carolina, but on appeal, the United States Court of Appeals for the Fourth Circuit found in favor of Laidlaw. At the Supreme Court, Bruce J. Terris of Washington, D.C., who had argued the case in the lower courts, argued on behalf of the petitioners. His skillful presentation featured the following argument:

Six years after the suit was filed, the Fourth Circuit held, solely because injunctive relief was no longer in the case, that the case had to be dismissed as moot, and that attorney’s fees would not be payable to the plaintiff. We submit that Article III does not compel such a perverse result. The plaintiffs submit that, even though the civil penalty is payable to the United States Treasury, that plaintiffs benefited from the imposition of a penalty because penalties deter future violations.

Students, Joanna Goger, 3D, Emily Berger, 2D, and Jennifer Schwartzott, 2D, visit the Fourth Circuit Court of Appeals in Richmond, Virginia.

A Greek-style temple set atop a sweeping marble plaza and thirty-six steps, the United States Supreme Court commands the crest of Capitol Hill. If you do not live close to the Court while a law student, you are missing out. If you do live within reasonable traveling distance from the Court, and you have not yet attended oral arguments, shame on you. There is no time like the present to watch courts wrestle with fundamental questions concerning who will have access to the courts in environmental cases, as I did for three cases recently.

What follows is my advice for your first trip to the Court:

Do not be late. I showed up just before 8 a.m. for an 11 a.m. argument, and I still did not make it for the entire session. It was quite a disappointment to have to cycle through the 3 minute line. If you can make it just a little earlier, you can usually get a number equal to your place in line. Once you have a number, you can take a break and sit in the cafeteria for a bit. Justice Blackmun used to dine every morning in the Court’s cafeteria before he retired. You just might be lucky enough to catch a glimpse of one of the Supremes.

Do not take a notebook. Unfortunately, unless you are a member of the Supreme Court Bar, note-taking and taping are not permitted inside the courtroom. It is frustrating to come with pen and paper in hand, only to find yourself paying for a locker and leaving them behind.
Mr. Terris split his time before the Court with Jeffrey P. Minear, Assistant to the Solicitor General, who argued on behalf of the United States, as amicus curiae, supporting the petitioners. Mr. Minear emphasized that the district court had the discretion to request civil penalties or grant an injunction and that the court had not abused its discretion in determining that civil penalties were appropriate. Mr. Minear’s support perfectly complimented Mr. Terris’s knowledge and experience.

Donald A. Cockrill of Greenville, South Carolina, who argued on behalf of the respondents offered a less superb example of appellate advocacy. Mr. Cockrill, of course, framed the issues quite differently than Mr. Terris or Mr. Minear, as evidenced by the following excerpt:

This case comes to this Court in somewhat of an odd posture in that we are here, in the eighth year of this litigation, because the petitioners want this Court to send all of us back to the Fourth Circuit to litigate the issue of additional civil penalties for violations, some of which occurred nearly 13 years ago, ... and they ask for this relief despite two very important facts. One, they admit that at trial they completely failed to prove specific adverse effects to the environment, and secondly, whatever injuries that they may have had, they now concede were redressed by the district court’s ruling in 1997 ... [on] liability.

I found the first minute of each attorney’s presentation the most compelling. I felt compelled to avoid the “perverse result” that Mr. Terris claimed would result if the Court found in favor of the respondents. Mr. Cockrill, though, merely advocated avoiding justice because “some of” the crime occurred a long time ago. Maybe the Court heard the call of the environment and the Constitution, or maybe it just found Mr. Cockrill’s argument less persuasive, but in any event, the Court ruled in favor of the environmental groups. The decision is available at No. 98-822, 2000 WL 16307 (U.S. Jan. 12, 2000).

Last semester, I not only took advantage of the University of Maryland School of Law’s close proximity to the Supreme Court, but I also took advantage of our not so close proximity to Maryland’s regional circuit court: the Fourth Circuit Court of Appeals in Richmond, Virginia. On October 25, 1999, I watched the Fourth Circuit sit en banc to rehear Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., No. 98-1938. A three-judge panel had already decided the case on June 2, 1999. Judges Hamilton and Williams had found in favor of the defendant, Gaston Copper, owner and operator of a smelting facility in South Carolina. Chief Judge Wilkinson had sided with Bruce J. Terris, who had argued for plaintiffs, FOE and CLEAN, in a citizen suit brought against the permit violating discharge facility. Sound familiar?

This argument was enough to scare any pre-law student away from pursuing the art of oratory. While Chief Judge Wilkinson was busy making the environmental groups’ arguments for them, Judge Luttig peppered the attorneys with questions and comments that demonstrated his complete astonishment that any plaintiff would even pursue such a case. The attorneys could hardly get a word in edgewise between the judges’ war of words.

On November 29, 1999, I went back to the Supreme Court to hear oral arguments in Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, No. 98-1828. J. Wallace Malley, Jr., Deputy Attorney General from Montpelier, Vermont argued on behalf of the petitioner. Theodore B. Olson from Washington, D.C. argued on behalf of Respondent Stevens and Edwin S. Kneedler, Deputy Solicitor General, argued on behalf of Respondent United States. The transcript of the oral argument is available at 1999 WL 1134650. The case raised the following questions: (1) whether a state can be defined as a “person” for purposes of being sued under the False Claims Act. (2) whether the 11th Amendment provides immunity to the states from qui tam citizen suits brought on behalf of the federal government under the FCA, and (3) whether qui tam plaintiffs have Article III standing to sue. Just ten days before oral argument in Vermont Agency, the Court suddenly asked the parties to brief the question of whether relators have constitutional standing to sue.

During the arguments, Justice Sandra Day O’Connor and Chief Justice William H. Rehnquist referred to qui tam’s extensive history. The bounty-hunter qui tam provisions of the False Claims Act permit anyone to initiate suit on behalf of the federal government against any person who has defrauded the government. If the Justice Department chooses not to join the case, the plaintiff, or relator, has the right to litigate it on his own. The relator may receive up to 30 percent of the treble damages and the steep civil penalties imposed by the act. Justice Antonin Scalia discussed the many common-law traditions that would not comport with modern standing doctrine. When Justice Renquist suggested the actions of the first Congress “maybe show that our irreducible minimum isn’t consistent with the understanding of the framers.” Justice John Paul Stevens remarked, “maybe the framers hadn’t read Lujan.” (referring to Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), which established that allegations of a personal injury in fact were necessary to meet the “irreducible constitutional minimum of standing”). After the arguments, it appeared that not enough Justices supported striking down qui tam provisions as unconstitutional. In light of the recent Laidlaw decision, No. 98-822, 2000 WL 16307 (U.S. Jan. 12. 2000), which held that citizen suits are no longer being questioned on these grounds, the Court is especially unlikely to so hold.

I look forward to my next chance to view the drama that takes place inside the Court, to guess who will win and who will lose at the end, and to note where the Justices sided and why.

* Emily Berger is a second year law student. She has analyzed *Gaston Copper* and *Laidlaw* in an article to be published in the Maryland Law Review later this year entitled *Standing at the Edge of a New Millennium: Ending a Decade of Erosion of the Citizen Suit Provision of the Clean Water Act*. 

Environmental Law 7
Oral argument at the Supreme Court is much better theater today than it was two decades ago when I clerked for Justice White. The Justices then were not nearly as active in asking counsel questions as the Justices of today. Except for Justice Thomas, all of today's Justices are active questioners and they often use oral argument as a vehicle to debate each other.

The Justices's questions provide valuable clues as to how they will vote on a given case. As a result, it has become remarkably easy for those attending oral argument to forecast the outcome of certain cases. This was well illustrated by a pool my Environmental Law class formed last fall to predict the outcome of Friends of the Earth v. Laidlaw Environmental Services, a case raising important questions concerning the standing of citizens to file suit to enforce the environmental laws. Members of the class who participated last October in a field trip to the Supreme Court to watch the oral Laidlaw argument in were invited to predict the outcome of the case.

When the Court decided the case in January 2000, the outcome was widely viewed as a surprise by the environmental community. By a vote of 7-2 the Court upheld the standing of environmental plaintiffs in a broadly worded decision that represents a powerful rejection of Justice Scalia's crusade to limit citizens' ability to enforce the environmental laws. Justice Ginsburg wrote the majority opinion, joined by Chief Justice Rehnquist and Justices Stevens, O'Connor, Kennedy, Souter and Breyer. Justice Scalia dissented, joined by Justice Thomas.

While the decision was viewed as a surprise by many observers, it was no surprise to the members of my class who had attended the oral argument. Eighteen of the nineteen entries in our pool correctly predicted that the Court would reverse the Fourth Circuit's decision throwing out the citizen suit on grounds of mootness. Only one student incorrectly predicted affirmance. While the Court surprised most observers by expressly upholding the standing of Friends of the Earth (FOE), thirteen of the eighteen students who predicted that the Court would reverse also predicted correctly that the Court would decide both that the case is not moot and that FOE had standing. Only five predicted incorrectly that the Court would not reach both of these issues.

While no one correctly predicted that the final vote would be 7-2, nine of the eighteen correct answers predicted that the vote to reverse would be 6-3. The other nine predicted that the case would be decided by the narrow margin of 5-4. A major surprise in the case was that Chief Justice Rehnquist voted to uphold FOE's standing. Only one of our students (Catherine Whittle) predicted that the Chief Justice would vote this way. However, she did not win the pool because she incorrectly guessed that Stevens and O'Connor would vote against FOE. All nine of the entries predicting a 6-3 vote correctly guessed that Scalia and Thomas would vote to affirm, while incorrectly guessing that Chief Justice Rehnquist would join them.

Altogether, we had seven students who correctly predicted both the result and the rationale of the Court's decision (both that FOE has standing and that the case is not moot) and who also came within one vote (Chief Justice Rehnquist's) of guessing the precise voting lineup of Justices. In order to decide which of these entries was the winner of the pool, the tiebreaker focused on predictions concerning who would write the majority opinion and who would write the dissent. While all seven of these entries correctly predicted that Justice Scalia would write the dissent, only one guessed correctly that Justice Ginsburg would author the majority opinion. The student who correctly predicted that Justice Ginsburg would write the majority opinion was Jennifer Schwartzott (2D). As the winner of the Laidlaw pool, Jen receives two tickets to an upcoming Orioles game.

NOTICE TO ALUMNI
If you changed employment or have moved, please contact Laura Mrozek, Environmental Law Program, University of Maryland School of Law, 515 W. Lombard Street, Baltimore, MD 21201, or e-mail to lriirozek@law.umaryland.edu.
For the Love of the Land: A Conservation Easement Case Study

by John Cannan*

Alverta and Louise Dillon on their Garrett County farm.

There are many places from youth fixed in memory, special places from a neighborhood or scenic vista, that have become altered, transformed or destroyed as land is consumed for development. Folk singer John Prine in his song “Paradise”, for example, fondly recalled a spot he often visited in Western Kentucky before it was lost to strip mining. Each refrain following the tune’s lyrics of remembrances concludes mournfully, “Mr. Peabody’s coal train has hauled it away.”

Every once in a while, though, the special effort of those who love a place so much can protect these spaces from the ravages of rampant growth. This is the story of one such effort.

In April 1984, Alverta Dillon penned a letter to the Maryland Environmental Trust (MET), describing the love of her and her sister Louise for their Garrett County farm, “Our land is beautiful and has many treasures only biologists and conservationists would appreciate. I especially prize it when I go to Washington and see what has happened to that once open country, also when one reads about development around the Bay and its consequences.” The indefatigable Dillons could be described as true Renaissance women. The two cultivated diverse backgrounds, receiving their education in a one-room school house and later Accident High School to which they worked, study and world travel often took the sisters away from their farm located in northwest Garrett County, but they always returned to the land they treasured for its aesthetic and natural wonders. Alverta and Louise made a local reputation for keeping their land in immaculate condition. With near superlative energy, they cultivated the farm with a variety of plants including strawberries, asparagus and especially wildflowers. Hardly was there a time in the year when their land was not in bloom. The Dillons also had a passionate concern for living things. Alverta would rather take a spider outside than see it squashed, and both enjoyed the variety of animal life found on the farm. The many songbirds that visit the area drew members of the Maryland Ornithological Society whom Alverta and Louise invited for birding visits.

Concerned about development elsewhere in Maryland, the Dillons sought to protect their landscape of natural treasures. Alverta would later express this concern in a letter to MET, “We get the Sunday Baltimore Sun and there is much there to make you feel real concern for the development going on around the bay and in the eastern counties!” To preserve their land from the ongoing development found in eastern Maryland, the Dillons donated a conservation easement on their property to MET.
Conservation easements are an increasingly important tool in the quest to protect land and historic structures. Essentially, the easement is a perpetual agreement made by a landowner to limit development that can take place on his or her land. Usually, the landowner donates this easement to a public agency or nonprofit organization that then has the right to enforce the restrictions. In return the landowner can receive generous tax deductions. In Maryland, MET is one of many state and local entities that hold easements to save the state’s unique spaces. To date MET protects over 63,711 acres of farmland, woodland, and wetlands through these agreements.

Working with MET, Alverta and Louise donated an easement on the 150 acres of scenic farm and woodlands they owned, protecting the land they adored from the development they feared in 1984. Six years later, the Dillons amended the easement to forbid subdivision and logging the forest located on their lands. Over the years, the Dillons developed a close relationship with the staff at MET and other conservation groups. Former MET Director Bob Beckett recalled that they treated him as if he were a long lost grandson, feeding him with cookies and addressing him on a first name basis. In 1986, the Dillons were featured in the MET newsletter Landmarks for their efforts. They also won national attention, appearing in The Conservation Handbook published by the Trust for Public Land and the Land Trust Exchange.

Louise Dillon passed away in 1992 and Alverta died six years later. Together they bequeathed their property and most of their estate to MET to maintain their lands and further the statutory purposes of the Trust. Perhaps their most profound gift was the property that contained so many natural and manmade treasures. Originally a Revolutionary War Grant, the property had been purchased by the Dillons’ maternal grandparents in 1870. The Dillon farm, on the Maryland Historic Trust's Historic Sites Survey, is considered an excellent example of a late 19th/early 20th century farmstead. Of the outbuildings constructed on the property, one of particular note is a stone spring house built in the early 1800s. The slightly rolling ground of the farm is part of the “picture postcard” valleyscape called “the Cove” and is highly visible from Cove Road and from a scenic overlook on nearby US Route 219. The Dillons were especially aware of the part water plays in natural habitats so it is no wonder that their easement restrictions provide watershed protection of Cove Run, a secondary tributary of the Youghiogheny River.

In September 1990, Alverta Dillon wrote, “Destruction, in the name of development, is going on so fast everywhere, it is hard to know what will happen in the years ahead.” The Dillon sisters' easement with MET will protect their farm’s natural and historic place in Maryland. And some say the Dillons will be watching. Two albino deer have been seen to visit the property as if to check up on the state of the farm.

*John Caiman is a 4th year evening student at the University of Maryland School of Law with interests in historic preservation and environmental law.

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Third Edition of Professor Percival’s Environmental Regulation Casebook Is Published


The third edition provides a comprehensive updating of the casebook in a streamlined format that is more than 170 pages shorter than the second edition, which was published in 1996. At 1465 pages, the second edition was in danger of becoming “an unwieldy treatise,” according to Professor Percival, if the authors had simply added additional material to it. Instead, they adopted a more focused approach that concentrates on the most important developments in the field and the material that has withstood the test of time in the classroom. The result is a book that provides comprehensive coverage of the latest developments in the field, including a new chapter on “Land Use Regulation and Regulatory Takings.” The third edition also provides broader coverage of issues of federalism and congressional authority, new problem exercises and new cases, including the Supreme Court’s year 2000 Laidlaw decision on standing in citizen enforcement actions.

To obtain a copy of the new third edition of the casebook phone Aspen Law & Business at 800-950-5259 or send email to legaledu@aspenpubl.com. The authors also maintain a website that continuously updates the casebook at www.law.umd.edu/courses/environment
Working on “The Hill”

by Alison Rosso*

Falls, but the region still faces environmental challenges, largely a part of the industrial legacy it shares with many cities in the Northeast and Midwest. These assets and challenges have afforded me the opportunity to work on initiatives to prevent new diversions of water from the Great Lakes Basin, remediate brownfields, cleanup local sites affected by materials left from the Manhattan Project, and enhance parks, open spaces, and livability in our urban areas.

Throughout my work on these issues, I have often found that the practical experience I gained in the Environmental Law Program has been invaluable— and I am not just referring to what I learned about the nuts and bolts of environmental statutes. For instance, in representing a client in the Environmental Law Clinic, I was forced to become familiar with millirems and radio-nuclides— something someone as “science-phobic” as myself would probably never have run across elsewhere. That knowledge came in handy when, in the course of my work, I met with the U.S. Army Corps of Engineers to discuss conditions at a local site that had been used in development of the atomic bomb in the 1940’s.

Of course, few staffers in very hectic congressional offices are able to focus on just one issue, such as the environment. In addition to environmental matters, I also have handled energy, agriculture, education, and judiciary issues, and found that my working experience has been all the better for it. In a single day, you may have a meeting with other congressional staffers on dairy policy, attend a briefing on the president’s new gun control initiatives, write a memo on interstate transport of solid waste, meet with constituents lobbying for greater funding for disabled students, and discuss with your boss an amendment (which had just been introduced three minutes previously, so you barely have had time to read it, much less understand it) to pending legislation as he goes to the House floor to vote. It is seldom boring, to say the very least.

The route I’ve taken since graduation may be a bit atypical— most people who head out into the legal world after graduating from Maryland Law take clerkships or work in firms or more traditional government legal positions. But having a front row seat to observe and— at least in some limited way— participate in the policies and politics that shape our laws is certainly a unique, challenging, and rewarding way to put your law degree and interest in environmental law to good use.

*Alison Rosso is a ’99 graduate of the University of Maryland School of Law.
FACULTY ACTIVITIES

Professor Robert Percival

Publications:


Presentations:


Professional Offices:

Contributiond Editor for Environmental and Natural Resources Law, Federal Circuit Bar Journal, 1999-present.

Professor Rena Steinzor

Publications:

Steinzor, Devolution and the Public Health (accepted for publication by the Harvard Environmental Law Review, Spring 2000).


Presentations:


“Lawyers and Scientists: When the Twain Meet,” at the National Capital Area Society of Toxicology Fall Meeting, Bethesda, MD., November 17, 1999.


Professional Offices:

Member, District of Columbia Bar Association, Energy and Environmental Steering Committee, 1998-present.

Member, American Association of Law Schools, Sections on Environmental Law.
STUDENT ACTIVITIES

Michael Penders, Director of Legal Counsel of the Office of Criminal Enforcement, Forensics and Training with the EPA, spoke with the Maryland Environmental Law Society on international environmental criminal law. Evan Wolff, 3D, presents Mr. Penders with gift from the students.

We would like to pay special thanks to BarBri for contributing a free bar review course to the Maryland Environmental Law Society (MELS) for their annual fundraising. Proceeds from the fundraising go toward the EPA's SO₂ auction held in March. This is the 4th year BarBri has contributed to this cause.
The concept of "Global Environmental Accountability" embraces a broad array of policies designed to ensure that individuals, governments, and corporate bodies are held accountable for the full environmental and human health consequences of their actions. This Symposium brings experts from around the world to explore creative means for improving environmental accountability, increasing the chances that future generations will enjoy a healthy and bountiful environment. Panelists will address such issues as the nature of environmental accountability, ways in which laws are being transformed to improve environmental compliance worldwide, creative mechanisms for improving environmental decisionmaking, and the importance of citizen advocacy and information dissemination.

Karin M. Krchnak, '93 Alumna
Coordinator, Global Environmental Accountability Symposium
8:30 a.m. - 9:15 a.m.
Registration and Continental Breakfast

9:15 a.m. - 9:30 a.m.
Welcoming Remarks
Interim Dean Karen Rothenberg, University of Maryland School of Law

9:30 a.m. - 10:45 a.m.
THE CONCEPT OF ENVIRONMENTAL ACCOUNTABILITY
Moderator: Rena Steinzor, Director, Environmental Law Clinic, University of Maryland School of Law
Ruth Pell, Director, International Institutional Development and Environmental Assistance, Resources for the Future (RFF), Washington, D.C.
How to Develop Senses of Accountability and the Meaning of Law Cross-culturally
Conflicts Between Global Accountability and Natural Resource Industries: Who Should Be Accountable to Whom?
Francis Situma, Chairman, Private Law Department, Faculty of Law, University of Nairobi, Nairobi, Kenya
Global Environmental Accountability: Challenges for the 21st Century

10:45 a.m. - 12:00 p.m.
THE TRANSFORMATION OF ENVIRONMENTAL LAW AND POLICY IN THE U.S. AND ABROAD
Moderator: Diane Hoffman, Associate Dean and Acting Director, Law & Health Care Program, University of Maryland School of Law
Miranda Schreurs, Assistant Professor, University of Maryland Department of Government and Politics, College Park, Maryland
Implementing International Environmental Agreements and the Role of Environmental Law in East Asia
Linda Bailey, Associate Director, Office on Smoking and Health (CDC), Washington, D.C.
The WHO Framework Convention on Tobacco Control: Opportunities to Influence Domestic Tobacco Policy through International Treaty Making
Judy Obitre-Gama, Professor, Makerere University Faculty of Law, Kampala, Uganda
Environmental Accountability in the Ugandan Context

12:00 p.m. - 1:15 p.m.
Lunch

1:15 p.m. - 3:15 p.m.
CREATIVE MECHANISMS FOR ENHANCING GLOBAL ENVIRONMENTAL ACCOUNTABILITY
Moderator: Robert Percival, Director, Environmental Law Program, University of Maryland School of Law
Bruce Rich, Staff Attorney, Environmental Defense Fund (EDF), Washington, D.C.
Efforts to Promote Environmental Accountability in Export Finance Agencies
Alan Miller, Team Leader, Climate Change and Ozone, Global Environment Facility, Washington, D.C.
The Evolving Role of Multilateral Financing in Meeting Global Environmental Goals
David Roe, Senior Attorney, Environmental Defense Fund, Oakland, California
Making Corporations Accountable: How the Internet Changes Everything
Richard Herz, Staff Attorney, Earthrights International, Washington, D.C.
Suing Multinationals in the United States for Environmental Damages Abroad Under the Alien Tort Claims Act
David Wirth, Professor, Boston College Law School, Boston, Massachusetts
Private Remedies in Public International Law

3:15 p.m. - 3:30 p.m.
Coffee Break

3:30 p.m. - 4:45 p.m.
THE ROLE OF THE PUBLIC IN ASSURING ENVIRONMENTAL ACCOUNTABILITY
Moderator: Karin Krchnak, Director of Population and Environment Program, National Wildlife Federation (NWF), Washington, D.C.
Owen Lynch, Senior Attorney, Center for International Environmental Law (CIEL) and Director, Program on Social Change and Development, Johns Hopkins University School of Advanced International Studies, Washington, D.C.
Role of Public Interest Lawyers in Promoting Global Environmental and Human Rights Accountability
Jacob Scherr, Senior Attorney and Director, International Program, Natural Resources Defense Council (NRDC), Washington, D.C.
New Approaches to the Enforcement of Global Environmental Commitments: The Role of Citizen Organizations
Sandor Fulop, Managing Attorney, Environmental Management Law Association (EMLA), Budapest, Hungary
Making Public Participation a System
THE WARD, KERSHAW and MINTON ENVIRONMENTAL SYMPOSIUM

The Ward, Kershaw and Minton Environmental Symposium was established by a gift to the University of Maryland’s Environmental Law Program from the Baltimore law firm of Ward, Kershaw and Minton. The law firm, which was founded in 1984, specializes in complex civil litigation, including class actions and environmental litigation.

REGISTRATION IS FREE
SEATING IS LIMITED: RESERVATION REQUIRED
(continental breakfast and box lunch will be provided)

Please complete and return to:

Laura Mrozek
Environmental Symposium
University of Maryland School of Law
515 W. Lombard Street
Baltimore, MD 21201

or
e-mail registration to: lmrozek@law.umaryland.edu
or fax to: (410) 706-2184

Name

Affiliation or Employer

Address

City/State

Daytime Telephone Number

Funds for the 2000 Ward, Kershaw and Minton Environmental Symposium are administered by the University of Maryland Foundation, Inc.

Directions and Parking:
From I-95 take route 395 (downtown Baltimore) and exit on to Martin Luther King, Jr. Blvd. Turn right at fourth traffic light onto Baltimore St. Turn left at second traffic light onto Paca St. Go 1/4 block and turn right into the Baltimore Grand Garage. Lexington Market garages and lots are also on Paca St. Parking fees must be paid by participants.

Directions from Parking Garage to the Dental Museum:
Exit the garage on Paca Street. Go south on Paca towards the Camden Yards Baseball Stadium. You will cross Baltimore Street and Redwood Street. At the next street, which is Lombard Street, make a right and walk one block to Greene Street. The Dental Museum is on the corner of Lombard & Greene, with the entrance on Greene Street.

Videotapes: Videotapes of the Program can be purchased for $35.00. Make your check payable to: Thurgood Marshall Law Library, University of Maryland School of Law, 515 W. Lombard Street, Baltimore, MD 21201.