BELEAGURED COMMUNITIES OF FAIRFIELD AND WAGNER’S POINT ON THE CUSP OF A BUY-OUT

Environmental Law Clinic’s Most Vulnerable Client

by Rena I. Steinzor

At 6:20 p.m. on Tuesday, October 13, 1998, an explosion at the 70-acre Condea Vista chemical plant rocked South Baltimore. Heard for miles, the blast knocked people off their feet, shattered windows, and caused panic in the four-block neighborhood of Wagner’s Point, located a few hundred yards from the plant and home to some 270 people. The 15 people in nearby Fairfield, fared even worse, as winds blew a large, dense cloud of unidentified black smoke across the area.

On Leo Street, Crystal Hindla, age 5, scampered upstairs in search of her suitcase, muttering that it was time to move to Florida, that very night. Scores of neighbors ran into the street and some, with the presence of mind developed by several decades of living in the industrial zone, began to videotape what they could see of the three-alarm fire that followed the explosion. Some mothers loaded their small children into cars and tried to escape along the only road affording access into - and out of - the neighborhood. A leukemia victim who routinely uses oxygen was rushed to the hospital, along with his middle aged daughter suffering an asthma attack.
The police established a perimeter of sorts along the road, but were unable to give residents any concrete information about the cause of the explosion, much less the steps they should take to protect themselves. It was not until nearly an hour after the explosion that residents had their first official contact with the Baltimore City Fire Department officials responsible for containing the accident. When all the smoke settled, Fairfield and Wagner’s Point had much to be thankful for; if an acutely toxic chemical had been involved in the incident, it was clear that many would be dead.

The Condea Vista incident is the third, and by far the most serious, accident to occur in the two neighborhoods since December 1996. Dwarfed by huge petroleum storage tanks holding thousands of gallons of volatile fuel, and completely surrounded by half a dozen large chemical manufacturing facilities, Wagner’s Point has been described as the “hole in the doughnut” of Baltimore’s largest industrial park.

The neighborhood began at the turn of the century as a company town, home to workers at a nearby cannery. On their days off, people strolled on a bucolic peninsula overlooking the harbor. Life was peaceful, even sweet. World War II and the industrialization that followed gradually put an end to all that. As new factories were built, Fairfield and Wagner’s Point gradually shrank in size, taking on the appearance of a strange accident, as if some angry Greek god had hurled a handful of row houses into the midst of the oil tanks and reactors.

In the late eighties, recognizing the folly of allowing people to live in such close proximity to hazardous chemicals, the City of Baltimore offered a buy-out to the primarily African American residents of Fairfield, eventually reducing the population down to about 15 people. But Wagner’s Point was not included in this deal, and faded slowly into the background, becoming, for all intents and purposes, invisible to both government and industry.

During the summer of 1996, Jeannette Skrzecz, a grandmother who had lived in the neighborhood since she was born, was offered a lease to obtain space for a community center at one of the petrochemical facilities. Excited at the prospect of a place for the community to gather — Wagner’s Point has no schools, churches, recreation centers, grocery stores, or restaurants — Mrs. Skrzecz called the Clinical Law Office at the University of Maryland for help. Professor Brenda Bratton Blom, executive director of the newly-formed Empowerment Legal Services Corporation, drove to South Baltimore to meet Mrs. Skrzecz and was shocked by what she found. Long conversations about the community’s history and needs ensued and Professor Blom soon realized she needed help in answering Mrs. Skrzecz’s many questions about environmental hazards. The Environmental Law Clinic signed on as co-counsel, and the two groups began a campaign to make Fairfield and Wagner’s Point visible again.

Two and a half years later, through a combination of diligent investigation, careful organizing, and the reemergence of the community’s will to improve its collective circumstances, Fairfield and Wagner’s Point stand at the brink of another buy-out. Federal, state, and local governments have pledged funds to support the project, pledging to move residents to comparable housing in safer neighborhoods.
UPDATE ON OTHER CLINIC PROJECTS

MTP v. Browner

Unfortunately, the Clinic did not prevail in its lawsuit on behalf of the Military Toxics Project challenging EPA’s Military Munitions Rule. The Court of Appeals for the District of Columbia Circuit upheld the rule as a legitimate exercise of EPA’s discretion, and MTP decided not to seek certiorari. Although we were very disappointed by the loss, it was far from unexpected. Deference to the Agency, especially in areas that are technical and involve such powerful factors as the national security are common in this court.

Utility Deregulation and Other Legislative Adventures

Clinic students once again are providing support to Senator Brian Frosh, in his capacity as Chair of the Maryland Senate Environment Subcommittee. At the top of his agenda this session is a comprehensive bill to deregulate the utility industry, an effort that has significant implications for the environment. In addition to reviewing and summarizing the new state laws that address this complex subject, the Clinic has assisted Senator Frosh in developing a renewable energy portfolio requirement, as well as a Public Benefits Fund proposal to assist low-income consumers and fund energy conservation measures.

Saving a Wilderness Park

Gwynns Falls in West Baltimore is home to the second largest wilderness park in an American urban setting. An anomaly of zoning dating from use of a portion of the park as a quarry has raised new threats to its integrity. Under a loophole in the state law, one of the City’s largest developers has requested permission to use this “industrial” parcel as a dumping ground for excavated building materials. The permit covers 27 acres and would allow ten years of dumping on the basis of a one page “grade and fill” permit that is not subject to public comment. Representing a coalition of African American civic associations and a conservation group, the Clinic is pursuing every available legal and legislative avenue to cut off this abuse of the park.

Mark Your Calendar

The 1999 Ward, Kershaw and Minton Environmental Symposium
SMART GROWTH: THE PATH TO LIVABLE COMMUNITIES
Friday, April 23, 1999
Westminster Hall

For more information, call Laura Mrozek at (410) 706-8157 or send e-mail to lmrzek@law.umaryland.edu. More information on page 5 of the Newsletter
AFRICA ENVIRONMENTAL LAW WORKSHOP PLANNED

As part of its continuing collaboration with the American Bar Association’s African Law Initiative, the University of Maryland Environmental Law Program is co-sponsoring a workshop for environmental law professionals in Africa. The workshop, which will be held at Makerere University in Kampala, Uganda on March 10-12, will focus on the theme of “Environmental Accountability.” Participants in the workshop will include law professors, government officials and representatives from environmental and citizen groups working on environmental issues in Africa. Professor Robert Percival, director of Maryland’s Environmental Law Program, and Maryland alumna Karin Krchnak of the ABA’s environmental law program, will conduct the workshop in collaboration with Makerere University’s law faculty.

Professor Robert Percival and Professor Judy Obitre-Gama meet Lithuanian President Vladamurs Adamkus at the Environmental Law Institute annual dinner.

The workshop is part of Maryland’s continuing efforts to assist law professors in Africa who are developing environmental law curricula. During the summer of 1997, Maryland hosted Professor Enoch Mulembe of the University of Zambia Law School. In November 1998 Maryland served as host for environmental law professor Judy Obitre-Gama of Makerere University Law School (see article below). The focus of these visits and the upcoming workshop is to develop mechanisms for ensuring that environmental statutes are translated into workable and enforceable environmental protection programs.

Ugandan Environmental Law Professor Visits

by Evan Wolff & Nicole Bowles

Judy Obitre-Gama from Uganda visited the University of Maryland School of Law to work with Professor Percival on planning an upcoming environmental law workshop in West Africa, sponsored by the ABA (see article above.) During her visit, many students were fortunate enough to meet with her and attend her talk on environmental issues in Uganda. The Professor described the current problems relating to environmental laws in developing countries, pointing out the many difficulties encountered with these laws and regulations. Currently, Professor Obitre-Gama is a lecturer with the Department of Public and Comparative Law at Makerere University in Kampala. This school offers the only law curriculum in Uganda with approximately 300 students studying law, graduating 60 students every year. She began her legal career as a clerk for the Chief Magistrate Court and also worked as an environmental lawyer for National Environmental Management Authority, which is the equivalent to the U.S. EPA. Professor Obitre-Gama is very interested in environmental law, as there are not many lawyers practicing in that field in her country. She estimates there are approximately twenty environmental lawyers in Uganda. Her future plans include continuing her education in the environmental field, perhaps while visiting another country.
BIODIVERSITY PROTECTION SEMINAR DEBUTS

William Robert Irvin, Vice President for Marine Wildlife Conservation and General Counsel at the Center for Marine Conservation in Washington, D.C. is teaching a new seminar at the law school on Biodiversity Protection during the Spring Semester 1999. Employing a combination of lectures, videos, case studies, and policy and legal readings, the seminar examines legal efforts to protect wildlife and their habitats in the U.S. and around the world.

At the Center for Marine Conservation, a science-based advocacy organization committed to protecting the world's oceans and the wildlife that depend on them, Irvin oversees programs to conserve endangered marine wildlife. Irvin holds a B.S. degree in Forest Science from Utah State University and a J.D. from the University of Oregon. After law school, Irvin was in private practice in Portland, Oregon; a trial attorney with the U.S. Department of Justice in Portland and Washington, D.C.; counsel to the Fisheries and Wildlife Division of the National Wildlife Federation and director of the division; senior counsel for fisheries and wildlife on the Democratic staff of the Senate Environment and Public Works Committee; and deputy vice president at the Center for Marine Conservation.

In addition to his practice, Irvin has been a member of the summer faculty at Vermont Law School since 1991, where he taught Federal Wildlife Law and now teaches Biodiversity Protection. He has published a number of articles on endangered species conservation in various legal and policy journals. Irvin also serves as co-chair of the D.C. Bar's Environment, Energy and Natural Resources Section.

Irvin's Biodiversity Protection seminar focuses on law and policy issues surrounding conservation of biological diversity. Utilizing the writings of conservationists such as George Perkins Marsh, Aldo Leopold, and Edward O. Wilson, together with key environmental cases and statutes, and current case studies, the seminar challenges students to think strategically and creatively in devising new solutions to the growing problems of protecting global biodiversity.

Irvin was born in Hazard, Kentucky and grew up around the world as an Air Force brat. He is married and has two children. He lives in Olney, Maryland and is a devoted fan of both the Orioles and the Ravens.

1999 ENVIRONMENTAL SYMPOSIUM TO FOCUS ON "SMART GROWTH" ON APRIL 23

The severe consequences of urban sprawl have made efforts to influence development patterns among the most important of environmental concerns. Federal, state and local governments are now focusing on how their zoning, tax, and transportation policies can be reformed to preserve open space and to ensure that growth does not place undue burdens on the existing infrastructure of schools, sewers, and other public investments. These efforts will be examined when the University of Maryland Environmental Law Program holds its annual Ward, Minton & Kershaw Environmental Symposium on "Smart Growth: The Path to Livable Communities" on April 23, 1999.

More than 150 state and local initiatives to preserve open space and to improve future growth policies were adopted by voters throughout the country last fall. The Maryland General Assembly enacted landmark "smart growth" legislation designed to discourage urban sprawl by channeling state spending toward designated growth areas. In January Vice President Gore announced the Clinton administration's new "Livable Communities" initiative which is designed to ensure that federal policies promote smart growth. At the symposium, which will be held in Westminster Hall at the University of Maryland School of Law, these initiatives will be addressed by panels of experts including representatives of federal, state, county and local governments, citizen groups, environmentalists and developers.
EPA's MSW Settlement Policy Survives First Major Challenge

by Stephanie P. Brown* and Wm. Roger Truitt**

A new U.S. Environmental Protection Agency ("EPA") settlement policy that seeks to limit the cleanup liability of municipalities and certain other parties has withstood its first judicial test. Because the policy has the potential to significantly impact the liability of other responsible parties, however, further judicial challenges appear likely.

In February 1998, EPA promulgated its Policy for Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites ("MSW Policy"). See 63 Fed. Reg. 8197 (Feb. 18, 1998). The MSW Policy provides mathematical formulas that EPA's regional offices may use to determine the financial responsibility of certain local governments and other parties who enter into settlements with EPA to resolve their liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq. (a/k/a Superfund).

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States (or any person) may bring a cost recovery action against a potentially responsible party ("PRP") to recover an array of site response costs. Liability under Section 107(a) is strict, retroactive, and joint and several. Joint and several liability may result in a PRP being assessed financial liability in excess of its “fair share” of site cleanup costs, possibly including the “orphan share” of liability chargeable against impecunious PRPs. The proper method for determining the “fair share” allocation of Superfund response costs among PRPs continues to be the subject of intense debate among PRPs, in Congress and among other stakeholders.

Under Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), any person (including a PRP) may bring an action for contribution from any other person liable under Section 107(a). Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), however, bars contribution claims against parties that have resolved their liability to the United States (or a State) in a judicially- or administratively-approved settlement.

EPA’s new settlement policy is important because, by settling with EPA, eligible PRPs obtain Section 113 (f)(2) protection from private third-party contribution actions. Furthermore, the mathematical formulas established by the policy may result in settlors being assessed financial liability significantly less than that otherwise achievable, including avoidance of orphan share liability.

The MSW Policy applies to any party that generates or transports municipal sewage sludge and/or municipal solid waste (collectively, “MSW”) deposited at a “co-disposal” site on Superfund’s National Priorities List (“NPL”). Co-disposal sites are those at which both hazardous and non-hazardous waste have been deposited. The policy also applies to municipal -- but not private -- owners and operators of such sites.

The MSW Policy allows MSW generators and transporters to settle by paying $5.30 per ton of MSW contributed to a site. Notably, EPA generally does not enforce against MSW generators/transporters. See e.g., EPA Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes (Dec. 12, 1989)(“1989 Settlement Policy”). Hence, these PRPs typically risk CERCLA liability only through private, third-party actions -- and settlement with EPA would minimize that risk.

Unlike generators and transporters of MSW, however, EPA views municipal owners/operators as being subject to enforcement under Superfund. See e.g., EPA 1989 Settlement Policy. The MSW Policy, however, allows municipal owners/operators of co-disposal facilities to settle at a presumptive baseline amount of 20 percent (20 %) of the total estimated site response costs. An EPA region may increase this percentage, generally not above 35 percent (35%), based upon site-specific facts such as where a municipality exacerbated environmental contamination or exposure, or received operating revenues substantially higher than the owner/operator’s presumptive settlement amount. A region also may adjust the percentage downward if a municipality voluntarily made specific efforts to mitigate environmental harm.

During the 1997 public comment period for the proposed MSW Policy, industry groups complained that the policy unjustifiably offered preferential treatment to municipal waste parties. In EPA’s view, however, the MSW Policy is justified because it is typically much less expensive to respond to conditions caused by MSW at a Superfund site than to the effects of industrial wastes. Responding to these and other comments, EPA adjusted its proposed MSW per-ton settlement value upward, from an initial $3.05 to $3.25 per ton to $5.30 per ton in the final policy.

EPA also believes the policy will reduce transaction costs and encourage global settlements. Administrative policies to minimize transaction costs, including legal expenses incurred to avoid the statute’s severe liability, respond in part to criticism by an array of stakeholders that PRPs spend too much on transaction costs and too little on actual cleanup.
Still dissatisfied with the policy, an industry coalition -- comprised of the Chemical Manufacturers Association, American Petroleum Institute, United States Chamber of Commerce, American Automobile Manufacturers Association, National Association of Manufacturers, and Electronic Industries Alliance -- challenged the MSW Policy in the federal district court and the U.S. Circuit Court of Appeals for the District of Columbia. See Chemical Manufacturers Ass'n v. United States, D.D.C. No. 98-CV 01255 LFO (May 18, 1998); Chemical Manufacturers Ass'n v. United States, No 98-1243, D.C. Cir. (May 18, 1998). Industry sought a declaration that the policy was unlawful, and a permanent injunction barring its application.

In essence, industry fears the MSW Policy, as applied, will saddle non-MSW parties with a disproportionate share of site response costs, and give MSW parties unfair leverage in private party negotiations because the MSW PRPs can opt for a more favorable settlement with EPA. In its complaint, industry alleged that the MSW Policy: (i) was unreasonable in adopting the $5.30 per ton value for MSW generators/transporters because that value bears no realistic relationship to the actual costs of responding to MSW at co-disposal sites; (ii) creates a cap on municipal owner/operator liability that bears no realistic relationship to historic settlements, past allocations of liability, or equitable share issues; (iii) exceeds and conflicts with CERCLA Section 122 (which authorizes EPA to issue non-binding liability allocations) in that EPA has usurped the federal courts' role in making equitable allocations of Superfund liability; and (iv) creates a new municipal solid waste orphan share by allowing MSW generators/transporters to cash out at an amount less than an allocated fair share.

In November 1998, after the court of appeals case had been dismissed by stipulation, the Federal District Court for the District of Columbia dismissed industry's suit. Chemical Manufacturers Ass'n v. EPA, No. 98-1255-LFO (D. D.C. Nov. 16. 1998). The district court found that EPA's policy did not constitute final agency action and was not ripe for review. The ruling, however, leaves open the opportunity for industry to challenge specific settlements entered under the policy -- and such challenges are expected.

The Superfund statute authorizes EPA to expedite settlements with de minimis waste contributors. See 42 U.S.C. 9622(g). See also, e.g., Memorandum from Bruce Diamond & Wm. White, Streamlined Approach for Settlements With De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A)(July 30, 1993); 52 Fed. Reg. 43393 (Nov. 12, 1987). EPA also has issued guidance to facilitate settlements with "de micromis" waste contributors. See Memorandum from Jerry Clifford & Bruce Gelber. Revised Guidance on CERCLA Settlements with De Micromis Waste Contributors (June 3, 1996). Thus, at least with respect to MSW generators and transporters, EPA's MSW Policy appears to be consistent with the apparent Congressional intent and agency practice to limit the Superfund liability of parties that have contributed only small amounts of hazardous substances to sites.

By way of support for its MSW Policy, EPA points out that municipalities may own and/or operate NPL co-disposal landfills in connection with their governmental function to provide necessary sanitation and trash disposal services to residents and businesses. It is the agency's position that this factor, along with the nonprofit status of municipalities and the unique fiscal planning considerations that they face, warrant a national settlement policy that provides municipal owners/operators with settlements that are fair, reasonable, and in the public interest. Moreover, EPA views its MSW Policy as consistent with what municipalities have historically paid in settlements at comparable sites. Finally, the MSW Policy's deference to municipalities reflects the approach taken in recently proposed Superfund reauthorization legislation whereby MSW parties and local governments would receive partial immunity from CERCLA liability.

EPA's regional offices have begun to implement the new MSW Policy. Shortly after the district court's November ruling, the U.S. Department of Justice lodged a proposed consent decree in United States v. Allied Signal and Amphenol Corp., No. 97-CV-0436 (TJM/DHN)(N.D. N.Y.). See 63 Fed. Reg. 64521 (Nov. 20, 1998). This settlement resolves the liability of four New York municipal governments in a third-party cost recovery action filed against them by industry PRPs. Reportedly, the settlement applies the MSW Policy, assessing the towns a total of approximately $63,000, based upon $5.30 per ton of MSW -- whereas the industry PRPs had sought a total of $2.7 million from the towns.

*Stephanie P. Brown, a 1991 graduate of the University of Maryland's Environmental Law Program, is an Attorney-Advisor in the U.S. Environmental Protection Agency's Office of Site Remediation Enforcement, in Washington, D.C. Ms. Brown may be reached at (202) 564-2596 or brown.stephanie@epamail.epa.gov. (The views expressed herein are those of the author and do not represent the views of U.S. EPA.)

**Wm. Roger Truitt is a partner with Piper & Marbury L.L.P. in Baltimore, Maryland. Mr. Truitt's environmental law practice includes representation of municipalities and other governmental entities. He may be reached at (410) 576-2380 or rtruitt@pipermar.com.

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SLOW PROGRESS AT CLIMATE CHANGE CONFERENCE

by Robert Percival

When representatives from 180 nations met in Buenos Aires in November to consider further steps to combat global warming, they continued a process set in motion at the 1992 Rio Earth Summit. In Rio the nations of the world adopted a Framework Convention on Climate Change. This convention established a process for negotiating future actions to reduce emissions of greenhouse gases that contribute to global warming and climate change.

Although the Framework Convention did not itself set any emission limits, in December 1997, 38 developed countries agreed to accept such limits when the Kyoto Protocol to the climate convention was adopted. But developing countries refused to accept any emissions limits, which set the stage for controversy in Buenos Aires.

Two issues dominated the Fourth Conference of the Parties (COP-4) to the climate convention: developing country participation in emissions limits and tradeable emissions permits. Arguing that the developed world is primarily responsible for the buildup of greenhouse gases, representatives of developing countries objected to the notion of even discussing the question of their participation in voluntary emissions limits. However, one important breakthrough at COP-4 occurred when President Carlos Menem of Argentina addressed the conference and pledged that Argentina would become the first developing country to commit to make voluntary reductions in its emissions of greenhouse gases.

Developing country participation in the Kyoto Accord is particularly important because emissions in these countries are increasing rapidly and eventually they will more than offset reductions in the developed world. The U.S. Senate has taken the position that the U.S. should not ratify the Kyoto Protocol until after developing countries also have made commitments to reduce emissions.

The United States has been a principal advocate of using tradeable emissions permits to reduce the cost of controlling greenhouse gases. By allowing countries to buy and sell emissions allowances, these permits would help ensure that emissions are reduced where it is cheapest to control them. However, there is considerable skepticism about the emissions trading concept by those who argue that it will enable the United States to avoid making genuine emissions reductions by purchasing allowances from other countries. They note that Russia and other countries could sell allowances simply because their economic decline has reduced emissions, a phenomenon called “hot air.”

At COP-4 opponents of trading paid for ads that appeared throughout Buenos Aires denouncing “More Hot Air From the U.S.” and demanding that the U.S. "State Cutting Air Pollution Now!" The United States sought to reassure its critics by formally signing the Kyoto Protocol during the Buenos Aires conference, though it is still unlikely to be submitted to the Senate for ratification any time soon.

For the last two years, students in my Comparative Environmental Law and Politics seminar have closely followed the climate change negotiations. Each student in the seminar is assigned to research the positions of two countries and to represent one of them in simulated negotiations. During the fall semester 1997, the students conducted a simulation of the Kyoto Conference that came remarkably close to predicting the final shape of the Kyoto Accord. During fall 1998, the seminar conducted a simulation of COP-4 that produced results that mirrored what later occurred in Buenos Aires.

Meeting through the night on what was to be the final day of the conference, delegates in Buenos Aires postponed decisions on many issues, but stuck to the process established in Kyoto. The ultimate result can be described as slow progress that keeps the Kyoto Protocol intact despite sharp splits between developed and developing countries. While some believe that the Climate Convention may become “the Law of the Sea of the next millennium” — referring to the long and tortuous history of that agreement — in light of the unprecedented challenges posed by global warming, slow progress may be the best that can be expected for now.
A Different Kind of Summer Job: Environmental Law in Vladivostok

by Nicole Bowles*

If you have heard of Vladivostok before, I congratulate you. Your geography skills far surpass mine. When my husband informed me that we were moving to Vladivostok, I had no idea where it was. I had to turn to my atlas to see what part of the world would be my new home for the next couple of years. The city has been called the Timbuktu of Asia because of its remote location and mysterious aura. Now that I am back in Maryland to finish my law degree this semester, I find that I spend a considerable amount of time explaining to people where Vladivostok is and what life is like there. In hopes of facilitating further enlightenment on the city that has become my new home, the following is a brief sketch of the jewel of the East.

History of Vladivostok

Vladivostok rests on a collection of steep hills and is surrounded by the naturally deep harbor of the Golden Horn Bay. The history of the city dates back only 138 years. In 1860, the Russian government decided to establish a military outpost in the southeastern tip of Russia. This settlement, populated originally by only 40 soldiers, was christened Vladivostok, Russian for "to rule the East." By 1871, Vladivostok had become the main Navy port and administrative seat for the Russia Far East. Throughout the latter part of the nineteenth century, the population of Vladivostok grew, particularly in 1889 after the czarist government declared the city as a fortress. At that time, thousands of workers from China, Korea, and within Russia migrated there to work on the construction of the Trans-Siberian Railroad. Vladivostok was to become the end-terminal for this impressive railway spanning eight time zones and 9289 kilometers from Moscow to the eastern seaboard. Five years after the 1917 Russian Revolution, Stalinist forces took control of Vladivostok and either executed or deported the majority of non-Russians. The Soviet government eventually closed the city entirely to foreigners and Russians without government permission in 1958. Not until President Gorbachev’s perestroika did the city finally reopen to the world in 1992.

Today, remnants of Vladivostok’s history as a military fortress as well as the Communist era still exist. Fortifications constructed almost 80 years ago remain intact with firm concrete walls showing no signs of crumbling. Municipal art celebrating the socialist worker still adorn apartment buildings and public squares. The Naval Pacific Fleet sits idle in the harbor, rusting away from lack of government funds to support this collection of once impressive ships.

My Russian summer experience

This summer, I worked as a summer associate for an American law firm in downtown Vladivostok. The firm is the only American one in the city and provides client support services including environmental law, labor law, contract negotiation, and securities law. I must have placed a jinx on the office when I was hired because the first American associate that was supposed to supervise me quit one week before I started. Funny thing, but no one ever called to tell me this. So my first scheduled day in the office arrives and unbeknownst to the only other American associate in the office, he now has summer help to manage. Perhaps this responsibility was too much to handle, for he quit within my first month there. (Actually, his reason for leaving included another job offer in Moscow.) With no more Americans left in the office, the Russian staff remained intact for the remainder of my summer there. Two Russian attorneys still work there and the main office of the firm, based in Washington, D.C., is still actively looking to hire an American attorney to run the Vladivostok office.

The main project that I worked on throughout the summer was a study of the environmental components of the Russian Civil Code, determining the proactive and reactive language
used throughout the text of the civil code and how such language affects environmental protection efforts. I also researched the impact of the timber cutting quotas issued by the Russian government on the timber industry in Siberia. Throughout my time spent at the office, I always enjoyed watching the women in the building socialize and sing traditional folk songs. I feel that I learned more about Russian culture than about Russian law from this experience. Fulfilling as it was, my work experience in Vladivostok was not as fast paced as a typical American law firm experience by any means.

**Beyond the office**

Life outside the office was exciting. Vladivostok experienced an unusually dry summer which allowed many weekend trips to the local beaches. After office hours on the weekdays, my husband and I typically strolled around the downtown area or shopped in the outdoor market for fresh produce. The markets consist of a collection of lively babushkas selling their homegrown produce and flowers to the public on a paved area, similar to what Americans would consider a parking lot. Throughout the summer, ripe red tomatoes, eggplant, green lettuce, and strawberries are in rich supply. However, the produce section of the outdoor market is divided into two parts: on the left side, merchants sell Russian grown produce; on the right, imported Chinese produce. I learned from a Russian friend that Chinese produce sells for a lower price at the markets in Vladivostok because the common perception is that Chinese farmers use harmful pesticides on their crops. This belief, whether it is accurate or not, is based in the anti-immigrant stance that perhaps is left over from the Communist years. Once the summer produce is gone, the market becomes much more barren during the winter months with mainly bread, sausages, and cheese for sale. Of course, Russian chocolate and vodka, two of the county’s most famous exports, are always in rich supply.

Our housing consists of a standard four-room Russian apartment on the third floor of a typical Communist style building. In eastern Russia, a four-room apartment usually houses two families. Whenever Russian friends visit our apartment, never fail, they comment on how large our place is for just two people! We have a balcony that overlooks the main thoroughfare that is always congested with bumper-to-bumper traffic. We typically keep the windows closed because of the heavy smog that lays over the city throughout the day.

The apartment buildings in the city are nondescript, some with remnants of Communist art on them, others with nothing to differentiate them from any other apartment building. With the exteriors looking in such poor condition, I was surprised to see just how elaborately decorated the insides of the average apartment are. A Russian friend explained to me that under the Communist regime, residents did little in regards to neighborhood improvements for fear of attracting suspicion from Big Brother. Therefore, the hallways and entrance ways of apartment buildings crumbled and parks and gardens deteriorated while residents decorated their private indoor living quarters. Today, a sense of civic pride is resurfacing, as evidenced by the new public murals painted by school children in a downtown park and the creative landscaping occurring throughout the city.

Other than the recent city beautification efforts, the environmental conditions in Vladivostok are not good. Recent disclosures by the Russian government revealed that the Russian Navy had been secretly dumping nuclear waste, including the used reactors from submarines, off of the coast of Vladivostok. In the downtown and residential areas, piles of trash are scattered behind buildings, in vacant lots, and down slopes leading into waterways. Programs for the recycling of plastics, aluminum, and glass do not exist there.

I return to Vladivostok in December 1998, which will be a quite different place than the one I left in August. Stores are not as well stocked with imported goods and prices are increasing with the economic uncertainty on the horizon. With the devaluation of the rouble, life will be much different there. But I have a good pair of thermal long-johns and a trusty long wool coat to keep me warm!

Historical information based on readings in: 

*Nicole Bowles is a third year law student, who will be spending her last semester doing an externship with Idasa, a democracy watchgroup in Cape Town, South Africa.*
Book Review

International Environmental Law and Policy
By David Hunter, James Salzman, and Durwood Zaelke
Reviewed by Jocelyn Adkins*

International Environmental Law and Policy effectively captures the essence of what is increasingly recognized to be an independent body of law fundamentally different than any other. Cogently written and thoughtfully organized, this book will prove a valuable resource to academics, practitioners, and policymakers alike.

Designed to serve as both a text book and a reference source, International Environmental Law and Policy discusses the myriad of moving parts, the "nuts and bolts" if you will, associated with what is often characterized as an abstract and murky field of law. Substantially adding to the value of the book is the authors' choice to move away from traditional focus on State actors and multilateral institutions to discuss the strong and growing influence of non-governmental organizations, citizens, business and the scientific community. In taking this approach, the authors succeed in presenting to the reader the diversity of interests and the manner in which these interests affect the development and implementation of international environmental legal mechanisms.

The book is extremely broad in scope and succeeds in presenting an almost encyclopedic amount of information in a clear and concise manner. To accomplish this feat, the authors divided the book into three parts: The Creation and Development of International Environmental Law, International Environmental Protection, and International Environmental Law and Other Regimes. The first section of the book focuses on the problems, processes, players, and principles driving the evolution of international environmental law. Section one, for example, begins with a discussion of the "wild facts." or challenges, impacting the state of our global environment (e.g., poverty). Section two of the book, addresses specific global problems and the legal responses to those problems and does so within the economic, scientific, and political environment within which they are addressed (e.g., global climate change). Finally, as is implied in the title, the third section of the book deals with the interdependence between international environmental law and other legal fields, such as trade and investment and human rights.

The thoughtful organization of International Environmental Law and Policy provides a user-friendly textbook from which professors can readily tailor courses to suit their specific needs. Adding to its utility as an academic tool, each section within a chapter is followed by "Questions and Discussion" providing provocative and insightful questions and comments. Additionally, accompanying the book is a Treaty Supplement which provides excerpts from over twenty international environmental agreements and declarations. A website has also been established and includes updates and additional related materials.

Especially important to note is the diversity of resources from which materials for the book were gathered. In addition to the expected "green" resources, information was also drawn from: for example, Robert J. Fowler's "International Environmental Standards for Transnational Corporations" and the World Business Council on Sustainable Development (WBCSD). Further adding to the credibility of the text is the choice by the authors to steer clear of the common portrayal of business as the proverbial "bad guy." sole destroyer of the environment. While not minimizing the
impact of business, the book is comprehensive in its discussions of environmental problems and the multitude of factors contributing in varying degrees to the world’s current state of environmental crisis.

Adding particular value to the book is the manner in which it portrays both the theoretical and practical aspects of international environmental issues and the legal framework in which these issues are addressed. This knowledge and perspective is no doubt drawn from the authors’ experience as both academics and practitioners. Durwood Zaelke is the founder and President of the Center for International Environmental Law, a ten-lawyer public interest environmental law firm with offices in Washington and Geneva. Zaelke also created the specialization in international environmental law in the LLM Program at American University’s Washington College of Law, where he serves as adjunct professor and co-director of a joint CIEL/American University research program. (This is where the book began more than eight years ago.) Before CIEL, Zaelke spent nearly a decade as an environmental litigator with the Sierra Club Legal Defense Fund’s Alaska and Washington, D.C. offices, and another two years with the Department of Justice during the Carter Administration. David Hunter, Vice President of CIEL, has worked and taught for seven years in international environmental law both at CIEL and as an adjunct professor and co-director of the joint CIEL/AU International Environmental Law Program. Previously, Mr. Hunter spent three years with the Washington, D.C. office of Skadden, Arps, a year at Waterwatch of Oregon, and a year as an independent environmental consultant in Prague before joining CIEL. Finally, James Salzman, associate professor with AU, previously served as Environmental Director for Johnson Wax Europe and prior to that worked for the Organization for Economic Cooperation and Development (OECD) in Paris. As attorneys who have experienced the international environmental legal arena from both a theoretical and practical perspective, the authors are well equipped to capture and ground the floating pieces of the international environmental puzzle in a manner which provides professionals in this field with a valuable tool of understanding.

It is critical to note the need for the field of international environmental law to continue to develop, and at an accelerated rate, if it is to catch up and keep pace with the number and complexity of global environmental problems. *International Environmental Law and Policy* will promote this development by assisting lawyers and other concerned professionals in becoming more familiar and comfortable with available international tools. This book should be recognized as a significant environmental tool and used accordingly by all that aim to find solutions to present and future environmental challenges.

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BELEAGURED COMMUNITIES
cont’d from page 2

Condea Vista has initiated negotiations with the Clinical Law Office to contribute to the buy-out, and is trying to interest other companies in contributing voluntarily to the project. Unfortunately, Jeannette Skrzecz did not live to see this long-awaited day: she succumbed to cancer last winter, and most residents believe that her death was a direct result of exposure to toxic chemicals.

Four generations of law students have represented Fairfield and Wagner’s Point. Each is initiated in the dog days of late August, returning to the Law School a week early for the clinical program’s annual “boot camp” skills training. On the last day of those sessions, students pile into a van for their first tour of two communities. In the months that follow, images of the overgrown playground set against a skyline dominated by huge tanks and belching smokestacks persist in the students’ minds, spurring them on as they wade through air, water, and solid waste permit files for the major facilities in the area in order to determine compliance. They review the latest draft of an emergency response plan produced by the City, formulating recommendations for its improvement, and they interview residents regarding the Fire Department’s reaction to the Condea Vista incident, producing the first comprehensive report from the community’s perspective. They research possible causes of action based on the City’s violations of their clients’ civil rights, and they prepare for negotiations with Condea Vista attorneys.

It is likely that they will never again have such vulnerable and needy clients. Yet the value of this perspective on environmental law is likely to stay with them throughout their careers.

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NOTICE TO ALUMNI

If you changed employment or have moved, please contact Laura Mrozek, Environmental Law Program, University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, MD 21201, or e-mail to lmrozek@law.umaryland.edu.
THE POLICY DIALOGUE: SEARCHING FOR ENVIRONMENTAL SOLUTIONS

by Jocelyn Adkins*

For more than three decades, society has struggled to find answers to a myriad of scientifically complex and politically controversial environmental problems. Agencies have been created, laws enacted, and precedents set, yet in the eyes of many a state of environmental crisis persists. As public awareness of the number and variety of environmental issues increases, so too does the pressure on decision-makers to find solutions to these problems. This pressure, combined with growing dissatisfaction by many regarding traditional, adversarial approaches, has led to the increased popularity of dispute resolution mechanisms as a means of addressing critical environmental issues.

One type of dispute resolution increasingly employed by government and other groups to address environmental issues is the policy dialogue. Due to the political divisiveness and scientifically challenging nature often characterizing these issues, in addition to the diversity of stakeholder interests involved, environmental issues are particularly conducive to resolution through the dialogue process.

Increased recognition concerning the utility of dispute resolution mechanisms has led to growing pressure on policy makers to engage in consensus-building exercises. For example, in May of this year President Clinton ordered all executive departments and federal agencies to develop dispute resolution programs and subsequently established an Inter-agency Working Group to ensure the order is followed. Additionally, the Environmental Protection Agency (EPA) is currently in the process of reviewing proposals for a five year, multi-million dollar dispute resolution contract, one of the largest federal contracts of this type. The current EPA dispute resolution contract is due to expire in 1999 with as much as $18 million.

Policy Dialogue

The term "policy dialogue" is a broad term used to define processes designed to facilitate voluntary, interactive exchange among diverse interests for the purpose of working towards consensus solutions to policy issues. The goal of policy dialogues is to provide participants with a "safe" environment within which to engage, face-to-face, in an open and candid exchange of information and perspectives for the purpose of developing a consensus-based report including policy recommendations. One critical aspect of these processes is the replacing of historically prevalent zero-sum (i.e., win/lose) attitudes with collaborative ones.

Although dialogues generally involve large, formal, long-term processes, they vary considerably regarding the issue or range of issues addressed, intended final outcomes (e.g., informational document versus consensus recommendation report), number and role of facilitators, and source of funding (e.g., government, industry, foundation). For example, one form of dialogue commonly used by the government is the Federal Advisory Committee (FACA)(5 U.S.C. App. 1 (1972)). Federal Advisory Committees, as the name indicates, are convened to serve an advisory role to government agencies and, as a government-sponsored process, are open to the public.

An example of a Federal Advisory Committee is the now concluded, two-year, Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) created in 1996. Although convened by the Environmental Protection Agency (EPA), the EDSTAC was facilitated by The Keystone Center, a non-profit, consensus-building organization specializing in the facilitation of policy dialogues. Two primary factors led to the EDSTAC's creation: growing public concern regarding the potential endocrine disrupting effects of chemicals and pesticides; and the passage of the Food Quality Protection Act (FQPA) and amendments to the Safe Drinking Water Act (SDWA) both of which mandated that the EPA develop a screening program designed to evaluate the endocrine disrupting effects of certain substances. The formal charge of the Committee was to provide advice to EPA as to how to design a screening program for potential environmental issues.

Stages of a Dialogue Process

Dialogue processes typically involve three phases: assessment, dialogue, and implementation.

Stage 1: Assessment

The first phase of a dialogue process involves assessing the viability of a potential project. In other words, answering the following two questions: will convening a dialogue assist in resolving the issues to be addressed? and is there the requisite level of interest to do so? The primary means of ascertaining the answers to these questions is interviews with interested parties regarding their perspectives and interest in participating in dialogue. Additionally, ongoing throughout the assessment phase, the conveners of the dialogue are designing the process and inviting potential participants.

The design of a process and the choice of participants will depend on a variety of factors including: the objective(s) of the dialogue, number and diversity of interests, issues to be discussed, and the manner in which these issues are to be addressed. Formation of the EDSTAC, for example, required The Keystone Center to work closely with EPA staff to identify the wide range of interests to be included in the effort. Keystone Center
facilitators, through a three month convening process, identified the key interest groups to be included to ensure that the Committee's work has the best chance to succeed. Identifying participants to participate in the EDSTAC was particularly difficult, as it required individuals who could effectively engage in the deliberations at the necessary level of both policy and scientific understanding in the context of an emerging body of scientific knowledge regarding endocrine disruption. Selection criteria were set to ensure the right mix of participants was achieved. Another major aspect of the convening process was the identification of the goals and scope of issues to be initially addressed by the Committee, though the Committee eventually expanded their scope.

Stage II: Dialogue

During the dialogue phase of the process, participants, with the aid of a third party, neutral facilitator, convene to explore the issues. As was noted earlier, the dialogue phase usually consists of a series of meetings for the purpose of developing policy recommendations. It is useful to note, however, that one-time meetings or meetings convened for the exclusive purpose of exchanging information are also sometimes characterized as policy dialogues.

In many situations, although the general topic of the dialogue is determined prior to the first plenary meeting, how a topic is defined, prioritized, and addressed is decided by the full plenary group. In other instances, the scope of the dialogue is fairly well determined prior to convening the full group. In the case of the EDSTAC, the focus of the Committee was, in essence, defined by the Congress through legislation. However, during the first two Committee meetings, members decided to expand their scope based upon their sense of the state of the science (from a focus on estrogen effects alone to one that also included androgen and thyroid effects) as well as the recognition that endocrine disruption was an issue of concern for not only human health but ecological effects as well. While this expansion resulted in additional complexity for the Committee, the participants felt the change was necessary to have a credible product at the end of the process.

After convening nine plenary meetings and numerous work group sessions, facilitated by a team of Keystone facilitators and in consultation with EPA, the EDSTAC reached final agreement on a two volume final report setting out its consensus recommendations for a screening and testing program. In the context of a policy dialogue, "consensus" is achieved when all participants in the dialogue agree they can "live with" the recommendations, not necessarily that each recommendation is ideal from their perspective. The particular value in achieving consensus lies in the weight of the recommendations. A final consensus report reflects agreement by a balanced and diverse set of interests and as such can carry significantly more force than a report prepared by a less representative group or the agency alone.

Stage III: Implementation

The implementation phase of a dialogue focuses on collective and independent efforts to promote the adoption and implementation of the dialogue group's recommendations. In most cases, the group will include in its final report an implementation plan identifying potential implementation activities such as distributing the report to various government, industry, and public interest organizations, as well as briefing key policy makers.

The formality of implementation activities is often, though not necessarily, in direct relationship to the formality of the actual dialogue process. For example, regarding the implementation of the Endocrine Screening and Testing Program (EDSTP) recommended by the EDSTAC, some formal mechanisms were already in place prior to the conclusion of the dialogue. The EPA was required by law to develop a screening and testing program by August 1998 and to implement that program by August 1999. The EDSTAC's final report was submitted to EPA in August 1998 and will form the basis of the program eventually developed by EPA. To supplement these efforts, the EDSTAC also included in its report recommendations regarding Communication and Outreach strategies aimed at keeping the public informed as to the progress of the EDSTP.

Conclusion

In order to temper the environmental impacts associated with increased human economic activity and population growth, society must continue to apply environmental resolution mechanisms of all types. It is critical this be done in a strategic manner. When reviewing available options for addressing environmental problems, decision makers and other influential players (e.g., citizen groups, corporations) must carefully analyze the specific elements of the problem to determine the most practical and effective tool to be used. Upon conclusion of such analysis, the final result, as is increasingly the case, will be to engage in a policy dialogue.

*Jocelyn Adkins, a '96 graduate of the University of Maryland School of Law, is an attorney and facilitator for the Keystone Center, an environmental conflict resolution organization in Washington, D.C.*
When I decided to attend the University of Maryland, I knew that I wanted to practice environmental law. In fact, the highly ranked Environmental Law Program was the primary reason I chose Maryland. But, knowing one's destination, does not prescribe an effective route. Before I decided to participate in the externship program at the Environmental Protection Agency, I was deciphering the same conundrum that all first years students face—how to spend the summer break productively. I knew of the myriad of unpaid opportunities, but I was unsure how to choose an option that would provide valuable practical experience and would also look good on my resume. I weighed my choices. Finally, I decided that as a budding environmental lawyer, I couldn't go wrong by working in the trenches of what I considered to be the ultimate environmental enforcement agency—the EPA’s Office of Enforcement and Compliance Assurance (OECA for short).

I first learned about the externship opportunity when a Maryland alumnus, Jonathan Libber, spoke at an informational breakfast organized by Laura Mrozek for the Environmental Law Program. I was immediately impressed with the structure of OECA’s program. Approximately fifty law students throughout the country participate each summer in what OECA refers to as its internship program. I learned that the intern coordinator, a full time OECA attorney, organizes lectures and teaching exercises for the interns throughout the summer or semester. Additionally, each intern is designated a mentor who assigns legal research and writing projects related to his or her area of work. The projects to which I was assigned were quite diverse, and I was afforded a large degree of freedom and responsibility in working on them. In fact, I had the opportunity to present one of my research projects to the Assistant Administrator of OECA during a monthly briefing. Other excellent learning experiences were also available. For example, the interns participated in an Administrative Hearings and Trials course taught by an OECA attorney. The course consisted of instruction on the basic elements of administrative hearings and trials, including negotiations and witness trial preparation. My experience became particularly educational when I served as EPA counsel during a mock trial. I prepared and issued a closing statement and examined witnesses before an administrative law judge.

In sum, I was surprised at the degree of structure and the diversity of the educational experiences offered through the OECA externship. There were many positive aspects of the program that combined to provide a well-rounded experience. I have attempted to outline what I feel were the components that combined to create such an enjoyable summer:

**The Structure:** Upon arrival at OECA headquarters in Washington D.C., (next to the new Ronald Reagan building on Pennsylvania Avenue) I was assigned to the office of Federal Facilities Enforcement where I had the pleasure of working with a group of dedicated people from multidisciplinary backgrounds. The group was comprised of attorneys, scientists, and policy makers who worked in concert to ensure that all government-owned facilities were held responsible for violations of EPA regulations. Thus, working in Federal Facilities Enforcement provided the opportunity to research a variety of environmental policies, statutes, and regulations. Other interns worked in such areas as Superfund, RCRA, Clean Air, Clean Water, and Criminal Enforcement, among others.

**The People:** To portray a complete picture of my experience at EPA, I think it is necessary to describe the unique working environment within OECA. First and foremost, the people at EPA believe in and enjoy their work. Second, the people are nice. Really nice! I received an abundance of positive feedback from the attorneys with whom I worked. There was also the added bonus of discussing politics, environmental issues, and a wide variety of other topics with my coworkers. Additionally, my work was extremely flexible. For example, I spent a day at a Boy’s and Girl’s Club camp on the Eastern shore conducting
educational workshops for children about environmental issues. The program was organized by one of my coworkers and participation was encouraged.

**Seminars:** In addition to the work I did for my mentor, I attended weekly seminars—organized for the interns—that highlighted the divisions of OECA and attorneys’ responsibilities within each group. Some lectures were not specific to environmental law and were for general knowledge or enjoyment. For example, the intern coordinator was sympathetic to the challenges of job searches, which motivated him to organize lectures designed to improve interviewing and resume skills. During another seminar, EPA and local private attorneys were invited to compare their experiences of working for the government with that of working for a firm. Additionally, a few lectures were geared toward general interest in the environment such as environmentally responsible means of consumption and alternative fuel sources. The most exciting part of the lectures was the prize drawing at the end of each. I hope that I’m not boasting when I say that I was the first intern to win a free lunch at the famous Washington dive, the Waffle House! Occasionally, the intern coordinator would arrange field trips, including a visit to the Supreme Court or a walk through Arlington Cemetery to view the graves of the most revered justices.

**Fun!!** Finally, I should address the social aspects of the program. I suppose it is predictable that fifty interns from all over the country, having just survived their first year in law school, would want to have a little bit of fun. As such, we quickly organized and designated one intern as our social coordinator. Thanks to modern technology, (e-mail) we were always abreast of the latest plan to socialize. Social events included barbecues, an Orioles game, fireworks on the Mall, sightseeing, and happy hours. Additionally, we had the number one softball team in our league. Our softball team, despite lacking a supremely competitive spirit, consistently beat such teams as Greenpeace, National Wildlife Federation, and the Environmental Law Institute.

In sum, my positive experiences with the work, the people, and the intern program combined to create an enjoyable and educational experience. I encourage law students to research externship possibilities and participate in one that offers something of interest that may serve them well in their future careers.

*Tracey Spriggs is a second year law student and a board member of the Maryland Environmental Law Society. This summer Tracey will be an associate with the law firm of Piper & Marbury in Washington, DC.*

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**I WOULD LOVE TO HEAR FROM YOU!**

If you are interested in writing an article, commentary or giving an opinion, I will be happy to consider publishing it. The next issue of this newsletter will be published in Summer/Fall, 1999. You may contact me at the following:

Laura Mrozek  
Environmental Law Program Administrator  
University of Maryland School of Law  
500 W. Baltimore Street  
Baltimore, MD 21201  
410-706-8157  
e-mail: lmrozek@law.umaryland.edu
Thelma and Louise Resurrected: 
An "Undercover" Investigation of the National Park System

by Maureen O'Doherty*

We are slouching towards the millennium (apologies to William Butler Yeats). For some, this time is rife with anxiety, portending cosmic catastrophe; for others rebirth, celebrating new age fervor. I, however, see this era as one of miracles. A year ago I was offered a 1987 Suburban, a macho machine with a penchant for guzzling gas. Hesitating only briefly, I began plans for retrieving it from California. One individual grudgingly agreed to join me, provided the overnights were spent languishing in a Motel 6. Desperate for company on the week long drive, I agreed to her barbaric terms. And now the miracle: Laura Mrozek, mainstay of the Law School Environmental Program, agreed to camp for the first time ever.

Standing firm in the face of not a little laughter from her peers, Laura set to the task of equipping herself as a rugged individualist. E-mails reflected a growing list of needed gear and within a few months, we were ready to take on the wild west. Of course, we were taking it on in comfort -- none of this sleeping on hard ground and sitting on tree stumps nonsense. We treated ourselves to cushy foam mattresses and campchairs. Following a short layover in California, with Triple A maps in hand and the Suburban packed tightly, we pointed the truck eastward to Lake Mead.

Of course, this trip was not just for pleasure; we were on a mission to determine whether the federal government is a proper steward of our park system. All in all we concluded, yes, Mr. Babbitt and company were doing a generally fine job. The parks and reserves were well maintained, attributable to both seasoned campers and park employees and despite increasing budget restraints. All restroom facilities were immaculate and complete with handy signs about how to prevent death by dehydration. We did discover two correctable problems in all of the parks. First, recycling is minimal and containers not easily attainable. Therefore, a lot of glass and aluminum were discarded in the trash and there was no recycling of cardboard. Second, the parks did not provide adequate warnings against feeding animals. In every park, children and adults fed chipmunks. A ranger at the Tetons cautioned that the flea which causes bubonic plague had been discovered in the area. Perhaps posters of bubonic plague victims would be a convincing deterrent.

The day we embarked, the temperature was 109 degrees. Do not believe anyone who says that dry heat is tolerable -- it was HOT! Valiantly refusing to employ the air conditioning, we sweated our way through Las Vegas, a hideous testament to the truly tacky. By early evening we passed the new track housing in the middle of the desert, wondered what water source would be desecrated to accommodate new homeowners, and entered the Lake Mead National Reserve. On a promontory above the lake, we set up the tent and Laura found it easier to stake it at the campsite than in her living room.

The heat eased to a comfortable 99 degrees by 10 p.m. and we were ready to settle in. Any fears that we would be in a hotel the next night dissipated by morning. Laura drifted immediately into a deep sleep and continued well past the mandatory sunrise get up time. A natural camper, she fell easily into the morning routine of watching me make coffee and cook breakfast. As her home cooking leaves much to be desired, the task of food preparation was one I gladly assumed. Laura, on the other hand, was the master tent caretaker -- her skills improving with each stop. Lake Mead was just a quick layover on the way to the Grand Canyon. It served the purpose of establishing the fact that, yes, these old broads could do this trip.

Of all the campsites, the Northern Rim of the Grand Canyon was the most spectacular. Surrounded by tall pines, each site was neatly laid out and a comfortable distance from the next. It was at the Grand Canyon that we learned the effect of high altitude on hiking. We were a short distance from the rim and decided that we were hardy enough to make the three mile round trip trek to Blue Angel Point. We had our new L.L. Bean hiking boots, ergodynamic shorts and tee shirts, and socks with maximum wicking power. After one quarter of a mile we were sucking wind. Not until we returned, ready to pass out, did we realize that the 8,400 ft. altitude affected our otherwise excellent fitness worthiness. We made it to the Point, where we both agreed that it was amazing that more people did not plummet to the Colorado River: death by stupidity. Parents
allowed children to run willy-nilly — adults scaled railings and precarious rock ledges for that special picture.

Our wilderness skills were the envy of our fellow campers. Besides the perfect tent, we built the best campfire and made the best food — no hot dogs and beans for these veterans, we had Moroccan Chicken and Pasta a la Vodka Sauce. Each night we toasted our well being with a NattyBo, specially imported for the trip, and sang campfire songs until we received a verbal warning from the park ranger.

After two days, we reluctantly packed and headed north to Bryce Canyon in Utah. The ride between parks was like driving into an IMAX theater movie — rolling hills, surprise lakes appearing over a rise, open space. We had been to the Grand Canyon, what could be better? The answer is Bryce — a vast fairyland of intricately carved rock formations called hoodoos that appear to be hand hewn. While the canyon itself was more dramatic, the campground was less appealing. We repeatedly got lost in the circular mazes of designated sites. At one point we stopped and asked for directions, only to discover we had asked our neighbor.

From Bryce Canyon we traveled to the Grand Tetons in Wyoming. As it was a twelve hour trip, we were forced to stay at Motel Hell somewhere in Idaho. Just our luck, the Jumping Zambini Kids were in the room above us. We longed for our little tent and the pitter patter of bear feet. Outside Grand Teton National Park is Jackson Hole. The downtown area looks like a Disney wild west set which we rushed through as quickly as the locals would let us. Stopping to get supplies, we were made aware that we were strangers here. Laura asked a clerk if they had any oil (e.g. motor oil). Of course, anyone who has ever heard someone from Baltimore say, oil, can imagine the confused look on the poor clerk’s face as he said “no.” We found the “ahwl” and hurried off to the park.

With no foothills, the Tetons rise sharply from the meadow floor. We set up camp next to Jenny Lake below the still snowy peaks — our reward for getting to the campground at dawn. It is here where we tackled the danger-fraught Snake River. First, we tested our endurance on a float trip, which was quite tame. We saw coyote, bison and eagles as we drifted lazily along, listening to an astute guide. Satisfied with our water-worthiness, we were ready for whitewater. We made it but I couldn’t tell you one thing I saw other than the side of the boat, water and the mouthing of silent screams from the woman sitting next to me. Of course, the reason we decided to wed ourselves to the river was not that we were particularly hale and hardy, but rather that sun relentlessly heated our campsite. The only shade available was from the Greyhound bus size motor home parked next to us.

A few miles north of the Tetons is Yellowstone National Park. Nothing can prepare you for the reminder of the devastating fire of 1988. Thousands of acres are flagged with the ghosts of pine trees, standing naked and straight against the sky. Yellowstone, however, proves the resiliency of nature. Where ten years ago trees crackled with unrelenting flames above black earth, today wildflowers and a new generation of evergreen and deciduous trees are firmly established and growing. The fire was a warning and a lesson on how to manage parks. Nature has a course and human manipulation of that course consistently ends in disaster.

Again, the capacity for unrestrained stupidity in humans is never more evident than in places where they have been warned. For instance, a bold sign stating “Do not approach the bison,” should be clear enough (as if one had to be warned to stay away from a bazillion pound wild animal). After our observation of human behavior at the Grand Canyon, it was not surprising to see the number of brainiacs who approached a resting bison to get a better photograph.

Having traveled as far north as intended, we white-knuckled our way over hairpin turns of Sylvan Pass to the Black Hills, Crazy Horse and Mount Rushmore. The border between Wyoming and South Dakota is vivid: barren mesas and flatland transformed to rich tree canopy and black rock hills. The Black Hills pulled us in and allowed us to relax in the comfort of its rolling roads. We first arrived at the Crazy Horse Monument, where healthy young buckos took us for a fortune to drive up and see what we could have seen free from the road.
The devastation at Yellowstone National Park

Do you know how small Mount Rushmore really is? Somehow Hitchcock’s “North by Northwest” led me to believe it was massive. We took our pictures, made a pit stop and then couldn’t wait to get out of there. After days of peace in campgrounds, we actually had to jostle elbow to elbow with sweaty people we didn’t know. Ten minutes at Mount Rushmore and we headed for the Badlands National Park. We reached the Badlands late in the day when the sun turned deathly white formations into shadows of rich color. This national park is my favorite: stark and eerie: a Martian landscape only with prairie grass. There are no trees to speak of in the Badlands, just the “rock” formations and open prairie. Exploration through the well marked and illustrated trails informed us that the Badlands formations were not rock at all but hardened mud. The spires, therefore, are in constant transformation. This park is rich with dinosaur fossils, but visitors are strongly reminded that it is a federal crime to remove fossils or even fragments of hardened mud.

There are no National Parks between the Badlands and the Eastern States. Our intention, after the Badlands, was to reach Maryland in two days -- we were successful. Two weeks of travel seemed over in an instant and we had seen merely a fragment of the National Park System. My natural tendency towards cynicism melted for a time. With all of the strip malls, Levittowns and golf courses it is easy to forget that there still remain, protected for now, vast tracts of land which are mostly unspoiled. We should be mindful to be on guard against the ravaging of our national treasures by private interests. I had never seen an eagle, coyote or bison, and there, in the Tetons and Yellowstone they were plentiful. I saw my first prairie pothole and was struck by its significance in the wetland system. No McDonalds or Burger Kings for thousands of miles, no theme parks, unless you count Jackson Hole, and no monuments to industry scarred these acres.

We had traversed thirteen states and can honestly say that each, indeed, had its own identity. The trip across the breadth of this country has tantalized us to see more. Our hiking boots are not completely worn and the camping gear is stored for convenient retrieval. The end of the millenium may bring us to the Adirondacks, White Mountains or perhaps Canada. Look for our next installment in the Winter 2000 edition.

*Maureen O’Doherty, a ‘93 alumna, is a private practitioner in Connecticut practicing environmental law.
Former Aerialist Tackles Environmental Law: From One Three Ring Circus to Another

by Melissa A. Hearne

For many years, the University of Maryland School of Law prided itself on the diversity of its students and their wide variety of educational and occupational backgrounds. There is one second year law student who has added a unique dimension to the eclectic student body. Prior to coming to the School of Law, Rita Wisthoff-Ito worked as an aerialist with circuses in both the U.S. and Japan.

While most children dream of running off to join the circus in their early years, Rita waited until her sophomore year of high school before giving the idea some serious thought. Living in South Baltimore, Rita was attending Seton High School when a chance trip to a visiting circus planted the notion in her head. As others in her class were preparing to attend college, Rita had already made up her mind that college wasn’t the route for her yet. In fact, she had already started preparing herself for her intended path by stopping by the YMCA everyday on her way home from school to get herself in shape. The first part of her self imposed regimen was to get over her fear of heights, a rather important aspect of being an aerialist. It’s actually good to be afraid of heights since it keeps you focused, according to Rita. But she would still go to the YMCA to just hang from the rings and get used to being over five feet from the floor.

By the time Ringling Brothers returned to Baltimore, Rita was ready to graduate from high school and move on to her dream of joining the circus. Up until two weeks before she left, her family still didn’t take her plan seriously. But Rita was able to get a job working on the Ringling Brothers’ pie car, basically a traveling commissary for the circus performers and staff. After leaving Baltimore with the circus, Rita tried to convince other members of the circus to train her and teach her some of the performance aspects of the circus. However, as Rita puts it, the circus is very close knit and worried about training outsiders that could later compete with them for shows.

However, after three months with Ringling Brothers, Rita was finally able to find someone who was willing to train her. Rita left the circus and stayed in Florida to train under Danny Chapman, a former aerialist and co-founder of Ringling Brothers’ Clown College. Rita trained with Chapman’s daughter Stephanie on the rings, trapeze, and revolving ladder act, a vertically rotating metal ladder from which the aerialists perform spinning movements.
and also do trapeze work. After training with Chapman for three months, Rita and Stephanie branched out on their own by finding freelance work while traveling across the country. Circus performers are often self-employed with all the benefits and drawbacks you’d expect: no paid vacation, no retirement account, no boss to tell you when you have to work. So while Rita was working with Stephanie, they had to create their own routines, design their own costumes, design and buy their rigging, all while trying to stay in shape and perform nightly.

In 1984, Rita and Stephanie went to Japan for a six month stint with a circus there. In Japan, the circus is run more like a Japanese corporation in that paychecks come regularly, with raises and bonuses, and most expenses are covered. While there, Rita met her future husband Koji Ito, a catcher for the flying act with the Japanese circus. At the end of six months, Rita returned with Stephanie to the States, but soon after returned alone to follow her heart back to Japan to be with her future husband. Rita continued with the Japanese circus for another 7 years, having two children along the way. During all that time, she avoided any serious injury. As a member of the flying acts, you have the luxury of working with a net (and for Rita, to have her husband catching and throwing her). But as an aerialist as well, Rita was often working on the revolving ladder and rings without a net. She prides herself on never falling during these acts in a show; only in practice and never seriously.

In 1992, Rita made the difficult decision to leave the circus. After twelve years on the road, working three to four shows a day and only a day off every other week, Rita had finally gotten tired. In addition, her oldest son Hyoma was getting ready to start first grade. In Japan, children are not permitted to take correspondence school, which meant either Rita would have to leave her son with family or friends while touring or she would have to leave the circus. In fact, Rita was also ready to return to school. So, after parting amicably, Koji stayed with the circus and Rita returned to the U.S. with her children.

Upon her return, Rita enrolled at UMBC to pursue a degree in languages. She later switched to political science and earned her degree. When asked why she wanted to come to law school, Rita replied jokingly that a professor at UMBC had basically said women couldn’t work in the law. So in a way, she’s proving him wrong. She’s also proving she has the mettle to tackle some tough challenges. Not only is Rita raising three children (Hyoma 12, Jumina 8, and Sydney 4) but she’s also pursuing two degrees at once. In addition to attending law school with a concentration in environmental law, she’s also pursuing a Masters in Public Management from the School of Public Affairs in College Park. For the future, Rita would like to work with state or federal government in some way related to the environment. And she would definitely like some more time to spend with her children.

Her oldest child is even threatening to join the circus. Rita’s old partner Stephanie now owns a small circus with her husband, so whenever they come to Baltimore Hyoma is always ready to help out and see the business. However, Rita is trying to also show her son the difficulties of life in the circus, in addition to the glamour. While I wouldn’t discourage him from following his dreams, it was a pretty hard life that I wouldn’t wish for him, she says. What is that old saying, be careful what you do to your parents, your children may do it to you?

In retrospect, Rita looks back rather fondly on her days with the circus. While it was a hard life, she did make some pretty good decisions despite being only seventeen when she joined. Though she may have enjoyed that way of life when she was a teenager, she has no thought of ever going back. As she puts it, "It was great to do it once, but I have other dreams now."

*Melissa Hearne is a second year law student and a board member of the Maryland Environmental Law Society. Melissa will be a summer associate with the law firm of Piper and Marbury in Baltimore, MD.
**Elizabeth Donley, '90,** received an M.S. in Environmental Science from Johns Hopkins University. Liz is now with Dynamac Corporation supporting the Department of Interior, Office of the Solicitor with CERCLA cost recovery and cost avoidance issues. She also supports the Bureau of Land Management and Forest Service with their Abandoned and Inactive Mine Lands Program. Liz is really excited that she works part-time as a sea kayak guide.

**Erin Fitzsimmons, '91,** has been elected to the City Council of Ocean City. Running on an environmental platform, with emphasis on coastal bays, Erin edged-out an eight year incumbent. Way to go Erin! Sounds like the environment is a winner in Ocean City.

**Lisa Satterfield, '92,** works on Capitol Hill as an Assistant Legislative Counsel to the United States House of Representative. In this position Lisa advises members of Congress on proposed legislation and helps drafts that legislation. She lives with her children in Frederick County, Maryland on a 17 acre horse farm.

**Jake Caldwell, '95,** is an attorney and Program Director for Trade and the Environment at the National Wildlife Federation in Washington, DC. Jake specializes in examining the linkages between environmental policy and international trade in such fora as the World Trade Organization, North American Free Trade Agreement, and the Free Trade Area of the Americas.

**John Kang, '95,** is an attorney with the law firm of Manatt, Phelps & Phillips, LLP in Los Angeles.

**David Lutz, '95,** is a sole practitioner with offices in Baltimore and Silver Spring, MD. David's firm concentrates on criminal and personal injury law. He also works on environmental causes including assisting the Friends of Chapman's Landing.

**Jennifer Lewis, '97,** is a staff attorney at Spectra, Inc., a healthcare agency. Her primary responsibilities are regulatory compliance and administrative law.

**Howard S. Stevens, '97,** is an associate with Wright, Constable and Skeen in Baltimore, MD.

**Karin Krchnak, '93,** and Carl Leubsdorf, Jr., tied the knot in a "scuba" wedding made for two off the reef of Anse Chastanet in St. Lucia on October 17, 1998. Karin is Director of the Western Newly Independent States and the Environmental Law Program for the American Bar Association Central and East European Law Initiative (ABA/CEELI), while Carl spends his time as Foolish Techie for the Motley Fool Online (www.fool.com).

**Jerrold Poslusny, '98,** is clerking for Judge Derby and Judge Schneider in the Bankruptcy Court for the District of Maryland.

**CORRECTION**

**Lorraine Ebert, '93,** was incorrectly listed in the Winter-Spring 1998 issue of this Newsletter as an attorney with the Office of Administrative Hearings. Lorraine is an Administrative Law Judge and Deputy Director of Quality Assurance for the Maryland Office of Administrative Hearings.
THE MARYLAND ENVIRONMENTAL LAW SOCIETY

MELS members enjoy a day rafting on the Youghiogheny in Ohiopyle, PA

MELS hold its first get-together to sign up new members.
Jacob Scherr, Senior Attorney with the Natural Resources Defense Council, and a University of Maryland alumna, is presented with a gift by MELS officer, Tracy Spriggs. Mr. Scherr spoke to MELS members about International Environmental Law at the Society's annual dinner.