Maryland’s Environmental Law Program assembled a group of distinguished experts when hosting the Atlantic Rounds of the International Environmental Moot Court Competition on February 6-7, 2009. Teams from law schools in the eastern half of North America competed in hopes of advancing to the International Finals at Stetson University College of Law. Judges for the competition included Maryland alumni, faculty, and practitioners with expertise in international environmental law. Serving as judges for the final round were Daniel Magraw, president and chief executive officer of the Center for International Environmental Law; Paul Hagen, chairman of the board of directors of the Environmental Law Institute; and Bruce Rich, co-director of the Environmental Defense Fund’s International Program.

Teams from Cleveland-Marshall College of Law and The John Marshall Law School advanced to the International Finals. Cleveland-Marshall was also named overall Champion after winning the final round, and its members Carrie Lewine and Danja Therecka won Best Memorial honors. David Rainey of John Marshall was named Best Oralist, Final Round.

This problem for this year’s competition concerned one nation’s seizure of another country’s fishing vessel to prevent overharvesting of krill in Antarctica. Adjunct professors David Mandell and Karla Schaffer, who teach Maryland’s Environmental Advocacy course, managed the moot. Maryland has agreed to host the North American Finals of this renowned competition in 2010.
On February 6, the School of Law was honored to host over 100 students, alumni, and friends to the Fedder Lecture, featuring top Chinese public interest lawyer Zhang Jingjing. The Fedder Lecture was supported by the Fedder Environmental Fund, established in September 2007 through the generosity of Joel D. Fedder, Esq. ’58, and his wife, Ellen S. Fedder.

Zhang Jingjing is the Director of Litigation for the Beijing-based Center for Legal Assistance to Pollution Victims (CLAPV), China’s first nonprofit environmental law office. Known as the “Erin Brockovich of China,” Ms. Jingjing helped win what was perhaps the largest class-action environmental lawsuit in Chinese history. More than 1,700 villagers in Fujian Province were awarded compensation from a factory that had dumped chlorine and chromium 6—the highly toxic chemical implicated in the cancer clusters exposed by Brockovich’s California case—into the water supply. In a landmark suit against the Beijing Municipal Commission of Urban Planning and the Beijing Environmental Protection Bureau, Jingjing established an important precedent for the public’s right to challenge the issuance of construction permits. Jingjing is also a senior legal consultant to the Natural Resources Defense Council in Beijing and has been frequently featured in the media for her pioneering work in public interest environmental law.

During her lecture titled “Taking the Long Distance Bus to the Court: A Practitioner’s Perspective of Environmental Litigation in China,” Jingjing shared that she chose to be an environmental lawyer because she grew up close to a chemical factory where her parents worked for their entire lives. The chemical factory polluted their community, resulting in red and brown water in the rivers. Because of her experience, it is Jingjing’s goal to vindicate everyone’s human right to clean water and air. She employs five strategies to pursue this goal: litigation to enforce existing laws, creation of new environmental laws, empowerment of China’s citizens by educating them about their rights, encouragement of the government to be transparent, and support of efforts to make the judiciary independent. Jingjing is committed to her efforts, even though she is aware that the government monitors her whereabouts and her phone number.

Jingjing concluded her lecture by encouraging everyone in the audience—which included judges and competitors from the International Environmental Moot Court Competition, students and faculty from the Environmental Law Program, alumni practicing in the field, and distinguished guests—to use their legal knowledge to take action. It was clear from the audience’s standing ovation that they were inspired by her charge.
ENVIRONMENTAL LAW CLINIC UPDATE

The student attorneys in the 2008-09 Environmental Law Clinic have been busy with a number of matters involving the health and protection of Maryland’s natural resources and the citizens who use them.

Environmental Justice

The Clinic continues to work on a zoning appeal to deny the grant of a special exception to construct a concrete batching plant in a historic minority community already heavily burdened by, and subjected to health problems from, surrounding existing industrial uses. On behalf of the Cedar Heights Civic Association, the Clinic appealed the decision of the zoning hearing examiner to the Prince George’s County District Council. The District Council ruled against the civic association, granting the special exception based on what the Clinic believes is an incorrect interpretation of the zoning law. The decision as been appealed to the Circuit Court of Prince George’s County.

Legislation Improving Access to the Courts

Clinic students drafted and advocated for legislation in the Maryland General Assembly designed to broaden the scope of standing for citizens and associations to assert their rights in State court. The proposed “Community Environmental Protection Act of 2009” would have reversed the restrictive common law rule that requires an individual or association to demonstrate a personal or property interest that is specifically affected in a manner different from that of the public generally or the association’s members in order to file suit against a polluter. Although the specific bills didn’t pass, the Clinic’s work led to passage of compromise standing legislation to ensure greater public participation in permitting decisions.

Clean Air

Clinic students have also been working with the Environmental Integrity Project (EIP) on a mandamus action to compel the Maryland Department of Environment (MDE) to issue a CAA operating permit to the Wheelabrator Municipal Waste Incinerator Facility. The facility—recognizable along I-95 by its large smoke stack imprinted with “BALTIMORE” in bold letters across its face—emits toxins such as hydrogen chlorides, nitric oxides, toxic metals, mercury, and dioxins. The facility has been operating without a valid permit since its existing permit expired in August 2006. In response to the mandamus complaint, MDE promptly issued a draft operating permit on which the EIP commented, with the Clinic’s help.

Clean Water

General Stormwater Permit for Construction Activities

On behalf of its Waterkeeper clients, the Clinic is involved in a contested case hearing with MDE over the legality of the General Permit for Stormwater Associated with Construction Activity. The permit authorizes stormwater discharges from large and small construction activities into the waters of Maryland, while setting forth numerous requirements designed to minimize the harmful effects of stormwater pollutants. The Waterkeepers contend that the permit violates numerous sections of the CWA, including requirements concerning public participation and impaired waters, and that the permit fails to adequately protect waters that are already severely polluted from becoming even more polluted as a result of stormwater discharge. MDE believes that the permit adheres to the obligations set forth in the CWA and thus it should come into force immediately. Hearings before an administrative law judge were scheduled for mid-April.

Potomac Riverkeeper and Zekiah Swamp

In April 2008 Clinic client Potomac Riverkeeper joined the EIP and several individual citizens in filing a federal notice of intent to sue Mirant Faulkner over the illegal discharge of toxic pollutants from Mirant’s facility in Charles County, Maryland, in violation of the CWA. MDE had opted to pursue a trend of non-enforcement while toxic pollutants such as cadmium and selenium polluted the waters of the ecologically vital Zekiah Swamp and downstream Wicomico and Potomac Rivers. The EIP and the Potomac Riverkeeper, on their own initiative, conducted sampling of the water bodies into which Mirant discharges and analyzed Mirant’s discharge monitoring reports for violations. This research found nearly 13,000 CWA violations since 2006.

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MORE THAN 200 ATTEND ANNUAL ENVIRONMENTAL LAW WINETASTING

On November 13, 2008, more than 200 faculty, students, and alumni of Maryland’s Environmental Law Program gathered for the Program’s annual winetasting party. The party also served as a retirement celebration for Program Coordinator Laura Mrozek, who retired after 21 years of unparalleled service. Laura was honored by tributes from Dean Karen Rothenberg, Program Director Robert Percival, Professor Rena Steinzor, and Environmental Clinic Director Jane Barrett, among others.

Professor Percival called Laura nothing less than the “key to the success of the Environmental Law Program.”

In touching and heartfelt remarks, Professor Steinzor described Laura as “the person who picked us up when we were down, the conciliator who smoothed over the inevitable tensions, the moral authority who exhorted us to be our best selves, and the protector who shielded us from the worst that a harsh world has to offer.” Laura’s “strongest attribute,” Steinzor said, is “a selfless concern for other people, an unfailing interest in having those people succeed, and the amazing creativity to know best how to help them do it.”

Professor Barrett affirmed, “All the wonderful things that Bob and Rena said about Laura are true, but as the students who went to China with us during Spring Break 2008 discovered, Laura is also a lot of fun to hang out with.”

Professors Percival and Steinzor also expressed appreciation for Laura’s tireless efforts to ensure that the Program would remain in good hands after her departure by helping recruit new Managing Director Jacqueline McNamara ’93.

Environmental Law Program Welcomes New STAFF

Jacqueline M. McNamara ’93 joined the Environmental Law Program as Managing Director in Fall 2008. Upon graduation from the School of Law, Jackie worked for several years at the Environmental Law Institute as an editor of the Environmental Law Reporter and as Books & Treatise Editor. She also did some freelance legal writing and editing while taking time off to raise her two children. In August 2006 Jackie returned to full time work as a research fellow for the Center for Tobacco Regulation, Litigation & Advocacy at the School of Law.

Suzann C. Langrall is the Program’s new Administrative Assistant. She formerly worked as a legal assistant and has significant non-profit and community service experience. Suzann holds a B.A. in psychology from Loyola College in Maryland and hopes to attend graduate school in the near future.
“GOLDEN TREES” AWARDED TO STUDENTS AT SIXTH ANNUAL ENVIRONMENTAL FILM FESTIVAL

For the past six years students in Professor Percival’s Environmental Law class have participated in an optional class project making short documentary films. The students form small groups to make six- to ten-minute films about environmental issues of their choosing. During the fall 2008 semester, the students produced more films than ever before—a total of eight. On March 5, 2009, awards were presented to several of the student filmmakers in the form of the Environmental Law Program’s coveted “Golden Trees.”

Several of the movies highlighted important local environmental issues. “Gunpowder Riverkeeper” by Talley Kovacs and Brooke O’Hanley explored the concerns of local fly fisherman about the environmental consequences of opening a large rock quarry in the watershed of a popular local trout stream. The film won the Golden Tree for Best Cinematography for its lush video footage of the Gunpowder River basin. “Arsenic and Old Dirt,” which won awards for Best Picture and Most Educational film, examined how local authorities are responding to the discovery of arsenic contamination at Swann Park in Baltimore. Produced by Katy Jackman, Rene Parks, and Rebecca Seitz, the film featured interviews with residents living near the park, which has been closed to the public while extensive remediation of the contamination is conducted. In “The News,” which won for Best Acting, Joey Chen and Rama Taib posed as network news anchors reporting on environmental issues. The film also featured Carter Beach, assisted by John Archibald, interviewing Shari T. Wilson, Secretary of Maryland Department of the Environment (MDE), who discussed MDE’s priorities.

“Sustainable Harvest,” by Natalie Baughman, Lisetta Silvestri, Kim Stefanski, and Lynne McChrystal, took viewers on a visit to the Baltimore Farmer’s Market. The student filmmakers interviewed farmers about the environmental benefits of producing and consuming locally grown, organic produce. The film won Golden Trees for Best Interviews and Best Sound. Efforts by Eastern Shore entrepreneurs to develop more environmentally benign shrimp-farming practices were highlighted in “Marvesta Shrimp,” produced by Eva Carbot, Aminah Famili, Jesse Iliff, Emily Lipps, Megan Mueller, and Limor Weizmann. “Urban Legends of the Inner Harbor” asked experts whether it is true that if you fall in Baltimore’s Inner Harbor you had better seek immediate medical attention. Andrew Keir, Eric Hergenroeder, Chris Montague-Breakwell, Daniella Einik, and Patrick Smith produced the film.

Some films addressed environmental concerns on a national level. “There Doesn’t Have to be Blood” by Jordan Vardon discussed efforts to increase U.S. energy independence by developing renewable energy alternatives to oil. Jordan reports that he has placed his film, which won the award for Best Narration, on YouTube where it has acquired “a cult following among friends.” The film “Green-Co” by Kim Myers and Scott Yager took a satirical look at efforts by companies to “greenwash” their products through advertising touting the companies’ supposed environmental consciousness. The film garnered awards for Best Use of Humor and Best Use of Animation and Special Effects. It featured a spoof on the GEICO “caveman” ad campaign and a hilarious animated exchange between a Prius and a Hummer debating their respective virtues.

The Golden Trees were awarded based on the results of voting by a panel of independent judges that included Professors Taunya Banks, Kathleen Dachille, and Kathy Vaughns, as well as critics Laura Mrozek, Rita Turner, and Megan McDonald. At the awards ceremony all students received a DVD with copies of this year’s student films.
AN EXTERN’S PERSPECTIVE:
SOMETHING FISHY IN THE STATE OF MARYLAND

By Megan Mueller ’10

With its proliferation of aquariums, posters depicting the life cycles of various fishes, and models of trophy catches adorning the walls and shelves, the Fisheries Service at the Maryland Department of Natural Resources (DNR) is not the first place one would expect to find lawyers. However, the complex jurisdictions governing fishery management and the sheer volume of regulations the DNR promulgates make lawyers an essential component of fisheries management in Maryland. The Fisheries Service is responsible for rules and regulations relating to fish and shellfish in inland Maryland waters, the Chesapeake Bay, and the Atlantic Ocean from the Maryland coast out to three nautical miles. As a result, the division is one of the most prolific areas of natural resources regulation in terms of the sheer volume of regulations promulgated every year.

During the first semester of my second year of law school, I worked with Sarah Widman, the Regulations Coordinator for the Fisheries Service. Ms. Widman’s diverse responsibilities include writing regulations, coordinating stakeholder meetings for public input, and moderating public comment. On top of that she teaches the Global Fisheries Law seminar as an adjunct professor at the School of Law. I became interested in fisheries in college because it gave me the opportunity to become involved not only with the biota but also with resource users from indigenous fishing communities to weekend fishermen. I was thrilled to intern with the DNR because it seemed like a great way to apply my background in marine biology with my current education in environmental law.

Fisheries management in Maryland is complicated by overlapping jurisdictions that include other states, federal agencies, and interstate compacts. Many of the fish that can be found in Maryland’s portion of the Chesapeake Bay and Atlantic Ocean are also found in the waters of neighboring states and are, therefore, jointly managed. DNR not only works with the corresponding state departments in Virginia and Delaware, but also with the National Oceanic and Atmospheric Administration, a federal agency, and regional management bodies including the Chesapeake Bay Program, the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council, and the Potomac River Fisheries Commission.

One area in which this complex set of regulatory relationships is evident involves nuisance and invasive species. The Fisheries Service works to ensure the quality of Maryland’s water bodies and the stability of native fish stocks by working with other divisions to prevent the introduction and spread of nuisance species. Many of these species are either aquatic plants, which are transferred between water bodies as “hitchhikers” on fishing gear that is not washed between fishing trips, or live bait, which is released by fishermen at the end of a fishing trip. The DNR primarily uses two means to combat invasive species: regulations prohibiting the transport and sale of invasive species to prevent introduction of new invasives, and public education campaigns to alert fishermen to these species and stop their spread.

As part of my externship duties, I created fact sheets for several nuisance species. These fact sheets, in the form of “NOT WANTED” posters (see picture), contain information on the target species, including a description and photograph, native habitat, and map of the current distribution in Maryland. The sheets will be placed at boat launches, and will enable fishermen to identify the potential threats and ensure that they do not transport the offending species into, or out of, the area.
I then conducted a telephone survey of bait shops throughout the state to determine where invasive species were bought and sold. One of the primary goals was to determine how the rusty crayfish was introduced to Maryland. Once introduced, the rusty crayfish out-competes and dominates native crayfish, thereby disrupting the balance of stream ecosystems. I called owners of bait shops to determine if they sold live bait, and if so, what types of live bait they sold. I then asked whether they bought their bait from a wholesaler or collected it themselves. Preliminary results indicate that most of the invasive species used as bait are bought over the Internet and that individual fishermen rather than bait shops may be a more significant source of these purchases.

I also looked at other states’ regulations limiting the possession, sale, capture, or distribution of these nuisance species. Combining the survey results with existing regulations in other states helped me get an idea of what type of regulatory scheme might work best to prevent the spread of invasives from other states and throughout Maryland. In order to tackle this multi-jurisdictional problem, Maryland’s regulations must work with those of other states and all stakeholders must be adequately informed.

Another project I worked on involved determining whether Maryland’s striped bass fishery could incorporate an individual transferable quota (ITQ) regulation system under the state’s current regulatory authority. ITQ systems allocate a specific portion of the total catch for a fishery among each of the permit holders, rather than permit holders competing to catch as much as possible before the fishery reaches its quota. I examined whether Maryland Natural Resources Article § 4-701, which allows a waterman to temporarily transfer his license to another waterman, could be expanded to allow for an ITQ system, as well as what such a provision might look like. I discovered that an ITQ system in Maryland would require an additional grant of authority to DNR from the General Assembly. One potential model is Alaska Statute § 16.43.180, which gives the Alaska Commercial Fisheries Entry Commission, a division of the Alaska Department of Fish and Game, the regulatory authority to “adopt regulations providing for the temporary emergency transfer of entry permits and interim-use permits…” The future of fishery management will likely involve more ITQs as fisheries become more competitive and fishing techniques become more efficient. While the means of allocation within an ITQ system is often controversial—as ITQs remove the traditional open-access nature of fisheries—overall the system furthers two objectives of fisheries management: maintaining sustainable fish stocks and providing a reliable source of income for fishermen.

Fisheries regulations can often be highly controversial. As required by law, the DNR holds public hearings on proposed regulations to receive input from stakeholders. The opportunity to work closely with stakeholders was one reason I initially became interested in fisheries law. Working with the Fisheries Service I had the opportunity to get to know several commercial and recreational fishermen, and was able to see how the individual regulations that the DNR promulgates have very real impacts on the lives and livelihoods of these individuals. While it may be relatively simple to change a catch-size limit from twelve inches to eleven, or to shorten a season by a month, it can be easy to forget that these seemingly minor changes can have dramatic consequences to stakeholders. Through these meetings we discussed what types of regulations work best from the viewpoints of nongovernmental organizations, fisheries biologists, DNR police, and commercial and recreational fishermen.

Reaching a consensus within a group with various interests is a challenge, but I found it much more rewarding to have had the opportunity to learn from those with the most direct exposure to and the most at stake within the fishery. A sampling trip on the Chesapeake Bay helped to bring it all into perspective for me. When you reel in a rockfish, it is impossible not to feel a connection with the Bay and the generations of Marylanders who have fished before you on the same waters, and it is impossible not to try and ensure that future generations of Marylanders have the opportunity to do the same.
A VISIT TO CHERNOBYL, 23 YEARS AFTER THE NUCLEAR ACCIDENT

By Robert V. Percival

On April 26, 1986, the world’s worst nuclear accident occurred at the Chernobyl nuclear power plant in northern Ukraine. The accident spread radioactive contamination over large areas of Ukraine, Belarus, and Russia, killing 56 people (including 47 response workers) and forcing the permanent evacuation of 336,000 people from a vast area in the vicinity of the accident site. Today, 23 years after the accident, radiation levels have declined to the point where small tour groups are permitted to make brief trips to the accident site. While in Kiev to speak at a global jurists’ conference, I arranged to participate in such a trip. On March 21, I was allowed to spend five hours in the Chernobyl Exclusion Zone and to venture within 300 meters of the damaged reactor.

You know it is no ordinary trip when the first order of business is to sign a release stating that you are aware that you will be exposed to radioactive contamination and promising not to sue the tour company or the Ukrainian state if you or your property is harmed by the exposure. The tour company tells visitors that if they obey the rules concerning how to dress, where to walk, and what not to touch, the typical tourist is likely to receive less radiation during the trip than on an international plane flight. The tours, which have been operating since 2001, are increasing in popularity. Our group included tourists from six countries—Australia, the United Kingdom, Romania, Spain, Denmark, and the U.S. (“the United Nations visits Chernobyl” one of the group quipped as we introduced ourselves).

Initially one is struck by how close the accident site is to Kiev, Ukraine’s beautiful capital where six million people live. Traveling due north from Kiev it took our van less than two hours to reach the perimeter of the exclusion zone, the 30-kilometer area surrounding the accident site that has been closed to most human activity since the accident. A gate blocks the road and large signs warn of radiation danger beyond. A fence, stretching to the horizon, marks the zone’s perimeter. Our van stops at the gate and a gruff guard emerges to transport us briefly back to the Soviet era. Thinking that a group member has photographed him, he demands to see the camera and tries to force the tourist to delete the photo. When he discovers that the nationality of one of our group has been listed incorrectly on the waiver forms, he angrily denounces our guide (perhaps hoping to create difficulty to necessitate a bribe?). After this fails to elicit any visible response from our guide, the guard reluctantly lifts the gate and waves us through.

Inside the exclusion zone we drive past many abandoned buildings, including what looks like a factory. The first stop is Chernobyl, a town 18 kilometers south of the nuclear power complex that took its name. Prior to the accident Chernobyl was a thriving city with 14,000 residents. Today the town is largely empty except for workers managing containment and decommissioning activities and 250 elderly residents allowed to return to their former homes. Large above-ground pipes run throughout the town—part of its heating system.

Our tour starts at the Chernobyl information center with our guide, Sergei, describing the accident and its consequences. A safety test gone awry triggered the accident in the middle of the night. Two days passed before the Soviet authorities provided any information about the accident to the outside world. Their initial warnings were triggered only after Swedish diplomats demanded to know why abnormal levels of radiation were being detected in Sweden, more than 1,000 kilometers away.

At the time of the accident, the Chernobyl nuclear power complex had four operating reactors. The nuclear accident occurred in Reactor #4. Two additional reactors were planned at the site and construction of Reactor #5 was nearly complete. While Reactor #5 was abandoned, the Soviets continued to operate the other three reactors after the accident, relocating their workers to a town 40 kilometers east of the complex. After considerable international pressure, the Ukrainian government shut down the other reactors in stages extending between 1996 and December 2000. They are now being decommissioned.

Guide Sergei showed us maps tracking the dispersion of...
radioactive contamination and photos of the response efforts. He spoke with passion, having lived in the area at the time of the accident, and missed no opportunity to remind us of the hubris of the former Soviet authorities.

After the briefing, we left the town of Chernobyl and drove further into the exclusion zone, stopping first at a memorial to the firefighters killed by radiation they encountered when they responded to the accident. We then drove to the reactor sites, passing through another checkpoint at the 10-kilometer inner exclusion zone. Just as the reactor buildings started to appear on the horizon we stopped at a site where a small village had been buried. After the accident, Soviet authorities ordered that the village be destroyed and its contaminated buildings buried; flags mark the locations. The guide also pointed out a large radar structure on the horizon, the site of a secret Soviet facility to detect U.S. missile launches, also abandoned in the accident’s aftermath.

Then we drove on to the reactors. What first appears on the horizon is a large, unfinished cement structure that I first thought might be the damaged Reactor #4. Instead it is an unfinished cooling tower for Reactor #5. Next to the cooling tower is the nearly-finished Reactor #5 surrounded by gigantic construction cranes abandoned at the time of the accident. Seeing a nearly complete power plant rendered useless by an accident next door highlights the enormous economic loss on top of the human and environmental tragedy. It is now estimated that the accident caused $200 billion in economic damage.

We then drove to Reactor #4, the site of the accident. Standing 300 meters from the reactor is a statue erected as a memorial to the response workers killed by the radiation. The statue is a giant pair of hands cradling a model of the reactor building underneath an alarm bell from which a lightning bolt emanates. Five marble plaques at the base of the statue are engraved in four different languages (one is blank, apparently for a language to be added later). The English-language plaque, dated March 11, 2006, bears the inscription: “To heroes, professionals, to those who protected the world from nuclear disaster in honour of the 20th anniversary of shelter object construction.”

Gazing at Reactor #4 it is hard to imagine that at the bottom of the structure lies 200 tons of melted nuclear fuel that will remain highly radioactive for hundreds of years. In the immediate aftermath of the accident a cement sarcophagus was constructed to contain releases of radiation. This structure, which is highly unstable, was subsequently reinforced. An international aid fund is now financing construction of a giant arched steel encasement structure that will be moved over the sarcophagus in two years. Our guide used a radiation detector to demonstrate that background levels of radiation 300 meters from the reactor were approximately twice normal, though below what you would receive on an international airline flight.

The ability to approach so closely to the source of such a disaster almost made its consequences seem less real. But any doubt as to the scope of the tragedy was dispersed when we visited the town of Pripyat where 50,000 people had lived in sight of the nuclear power complex. Located directly in the path of some of the greatest contamination, the town had to be evacuated when the accident occurred. Despite initial Soviet promises that residents would be able to return within days of the accident, Pripyat is now a ghost town littered with the remains of what was there on March 11, 1986. When the accident occurred, the town had been preparing for a May Day celebration that was to feature the opening of a new amusement park and a restaurant complex.

First we visited the town’s Palace of Culture. On the patio outside the building, Sergei used his radiation meter to point out “hot spots” of radioactive moss and asphalt. When hovering above them, the meter started clicking furiously. Inside the building, we crunched over floors of broken glass and climbed the stairs to a gymnasium. Pripyat had been home to a championship women’s volleyball team, documented in decaying photos on a bulletin board. Volleyball imprints can still be seen on the walls of the gym while decaying gym shoes and a deflated volleyball lay among the debris on the floor. As we gazed out the empty space that once held the gym’s windows, looming at eye level was the amusement park’s enormous Ferris wheel, its rusting frame securing 20 bright yellow buckets that had been five days away from carrying their first passengers when the accident occurred.

We ventured into the backstage area of Pripyat’s theater, which was littered with large posters of Soviet officials, including the leaders of the town’s government. Our guide continued on page 14
“GOLDEN TREES” COME TO CHINA AND CHINESE STUDENTS COMPETE IN THE U.S.

After fall semester classes ended at Maryland, Professor Robert Percival returned to China for a reunion with students and faculty at the China University of Political Science and Law (CUPL) in Beijing where he taught as a Fulbright scholar during the spring semester 2008. On December 5, 2008, Percival presented his Chinese students with “Golden Tree” awards for the films they had made in his Environmental Law class and he conducted a moot court for CUPL’s International Environmental Moot Court team.

The Golden Tree awards were the result of voting by an independent panel of seven judges, including Professors Taunya Banks and Kathy Vaughns from Maryland, former Fulbrighter Alan Lepp, Maryland alumni Karla Schaffer, David Mandell, and Lewis Taylor, and former student filmmaker Bob Clemons. Golden Tree statuettes were presented in eight categories. “White Pollution,” a film that examines the new law banning free distribution of plastic bags at Chinese grocery stores, won awards for Most Educational, Best Interviews, and Best Picture. “Disposable Chopsticks,” a film about the environmental consequences of using disposable chopsticks, won the Best Acting award. Best Cinematography and Best Sound went to “Red Beijing,” a film that examined the daily consequences of air and noise pollution in Beijing, while “Banana’s Fault,” which focused on the consequences of improper waste disposal, garnered Best Use of Humor. A Special Judge’s Award was given to “Loving Animals Is Loving Ourselves” for creativity for filming from the animal’s perspective.

Following the film awards ceremony, Professor Percival conducted a moot court practice session for the CUPL students who have entered the Stetson International Environmental Moot Court Competition. CUPL is the first Chinese law school ever to compete in this event. The students argued before Percival, his Maryland colleague Professor Shruti Rana, who was in Beijing to lecture as part of Maryland’s joint program with the Central University of Finance and Economics (CUFE) and Maryland environmental law student Nathan Hopkins, a participant in the Maryland/CUFE program. The moot court was the first time that some of the Chinese students had ever participated in oral advocacy. Considering that they were competing in a language that is not their native tongue, they did a particularly impressive job.

While at CUPL Professor Percival met with Professor Wang Canfa, a CUPL professor who is director of the Center for Legal Assistance to Pollution Victims (CLAPV). Professor Wang had just been honored by the Chinese edition of Esquire magazine, which had named him one of the 30 hottest men in China. Professor Wang updated Percival on CLAPV’s growing litigation docket as well as recent developments in Chinese environmental law. Wang noted that there are now specialized environmental courts in at least four provinces in China. One judge from such a court has expressly recognized the right of registered nongovernmental organizations to bring public interest litigation. CLAPV is involved in a wide variety of cases, many of which center on failures to comply with environmental assessment requirements. For example, CLAPV is challenging the Shanghai Environmental Protection Bureau’s refusal to release certain environmental assessment documents in response to a request from CLAPV under China’s new open information law. The judge hearing CLAPV’s challenge seems interested in persuading the litigants to settle, although CLAPV staff believe the case can be a vehicle for establishing an important precedent for public access to information.
On March 24, 2009, Professor Mingde Cao accompanied a group of five CUPL students to the U.S. to compete in the International Finals of the Stetson International Environmental Moot Court Competition (see p. 1). It was the first time any of the students had been outside China. Professor Percival, who joined them in Florida, reports that they did a terrific job, defeating teams from India and Brazil in the preliminary rounds. The CUPL team advanced as far as the quarterfinals where they lost to the team from Ireland that eventually won the competition. The Chinese team was recognized at the awards ceremony for having written the second best applicant’s memorial.

After spring semester classes are finished at Maryland and Harvard, where Percival is teaching Environmental Law as a visiting professor this spring, he will return to China in May for a two-week speaking tour sponsored by the U.S. State Department’s Office of the Under Secretary for Public Diplomacy and Public Affairs. In March 2010 Percival will lead a group of Maryland students and alums on a Spring Break trip to China (see page 14).

ALUMNI GIVE STUDENTS CAREER ADVICE AT ANNUAL MENTOR DINNER

By Jesse Iliff ’10

The fall 2008 Environmental Law Program Alumni Mentor Dinner was a great success, featuring eight alumni from a broad spectrum of positions in the environmental field. As in past years, the speakers helpfully discussed their jobs with students interested in pursuing a career in environmental law upon graduation.

Leading off the evening was Melanie Shepherdson ’00, a staff attorney with the Water and Coastal Program of the Natural Resources Defense Council in Washington, D.C. Ms. Shepherdson’s practice focuses on Clean Water Act litigation and policy. She is also an adjunct professor at the School of Law, teaching the Clean Water Act seminar. Her discussion was useful for students considering work at the federal level. Jessica Stuart Steinhilber ’02, Senior Manager of Environmental Affairs at Airports Council International-North America (ACI-NA) in Washington, D.C, was next in line to speak. Ms. Steinhilber’s discussion opened the eyes of many students who hadn’t before considered a job in industry.

A more traditional career in the environmental field was described by Chris Corzine ’02, an Assistant Attorney General for the Maryland Department of the Environment in Baltimore. Mr. Corzine’s talk appealed to those students interested in enforcing environmental laws at the state level. Director of Family Advocacy Services at the Coalition to End Childhood Lead Poisoning in Baltimore, Sarah Keogh ’05, represented a non-traditional application of environmental legal training. Ms. Keogh emphasized the frequent court appearances her public interest career can afford the budding litigator.

Four panel members who graduated within the past couple of years provided students with a look at how recent alumni of the Environmental Law Program have been cutting their teeth. Khushi Desai ’07, an associate with the Mason Law Firm in Washington, D.C, and Jayni Lanham ’08, an environmental associate with Beveridge & Diamond in Baltimore, represented the private practice possibilities for graduates. James Goodwin ’07, a policy analyst with Center for Progressive Reform, was able to demonstrate how big-picture thinkers can put their skills to work at a think tank, while Amber Widmayer ’07, a Natural Resources Planner with the Critical Area Commission and Atlantic Coastal Bays in Annapolis, gave the audience insight into state and local governments’ approaches to environmental problems.

The distinguished panel’s talk and informative question and answer discussion that followed encouraged the career development of many environmental law students anxious about finding jobs in this troubled economy. That reassurance, combined with a tasty Italian meal, amounted to another successful Alumni Mentor Dinner.
Yvette Pena-Lopes ’99 has been hired as Director of Legislation and Intergovernmental Affairs for the Blue Green Alliance, a strategic national partnership between labor unions and environmental organizations working to expand the “green” economy and advance the rights of traditionally blue-collar workers worldwide. Founded in 2006 by the United Steelworkers and the Sierra Club, this unique collaboration has grown to include the Communications Workers of America, the Natural Resources Defense Council, the Service Employees International Union, and the Laborers’ International Union of North America. In the U.S., the Alliance has focused on solutions to global warming that create jobs, increase America’s energy independence, and combat climate change.

Jeremy Scholtes ’08 has been published in 27 Temple Journal of Science, Technology and Environmental Law 177 (2008). His article “When the Darkness Consumes the Light . . .” is about California’s legislation to regulate automobile greenhouse gas emissions. While he was still a student, the Environmental Law Reporter published Jeremy’s article “The Siren Sounds for Nitrogen,” in which Jeremy discussed efforts by the international community to combat nitrogen pollution. 38 ELR 10253 (Apr. 2008).

Joey Tsu-Yi Chen ’10 was a finalist in the School of Law’s 2009 Myerowitz Moot Court Competition and the winner of Best Brief. This year’s problem involved the hypothetical Defense of Marriage Act, which excludes individuals in same-sex marriages from the definition of “spouse” under federal laws including the Family and Medical Leave Act.

Maximilian Tondro ’10 was awarded a 2008-2009 Daniel J. Curtin Fellowship for Land Use Planning from the Planning and Law Division of the American Planning Association. The Fellowship’s purpose is to foster increased interest in the study of land use planning and its interrelationship with the law to increase participation in the planning profession and to provide greater service to communities across the nation. Max holds a B.A. in European History, an M.A. in Italian Renaissance Cultural History, and a Ph.D. in Art and Architectural History. A native of Connecticut, he served on the Planning and Zoning Commission and Wetlands Agency of the City of Hartford, while working as an urban planner for the Town of West Hartford. Max decided to study law to deepen his understanding of land use planning; he chose Maryland because of its strong environmental law program and commitment to public policy.

The Maryland team of Elaine Lutz ’09 and Lisetta Silvestri ’10 won second place among a field of 26 teams in the 2009 Robert R. Merhige, Jr. National Environmental Negotiation Competition in Richmond, Virginia. Lutz and Silvestri adeptly competed in the Finals against law schools with some of the top advocacy programs in the U.S.—Lewis & Clark, Hastings, and Competition winner Regent. The team of Lavanya Carrithers ’09 and Limor Weizmann ’10 also delivered an excellent performance throughout the Competition, which simulates real-world negotiations among multiple parties—businesses, state agencies, and environmental and citizen groups—trying to achieve a general agenda while furthering individual goals.
During its final months in office, the administration of President George W. Bush made several efforts to weaken important environmental regulations before the Obama Administration took office. Such “midnight regulations” are nothing new, but the Bush Administration went to unusual lengths to rush through such changes. In an effort to speed up regulations to weaken endangered species protection, the Interior Department reportedly assembled a team of 15 staff to read 200,000 public comments in four work days—an average of seven comments per minute for each reviewer. Associated Press, “Feds Rush to Ease Endangered Species Rules,” Oct. 21, 2008. To make it more difficult for the Obama Administration to reverse these regulatory changes, the Bush Administration directed agencies to finalize them by November 1, 2008.

During the 2008 fall semester Professor Percival’s Administrative Law class monitored the progress of midnight regulations and Percival gave an in-studio interview on the topic on Baltimore’s National Public Radio station, WYPR, on the program “Maryland Morning with Sheila Kast.” On November 25, Percival noted that the Bush Administration had one of the worst environmental records in history. He explained why its efforts to weaken endangered species, clean air and clean water regulations, and to lease public lands near national parks for oil drilling did not represent the legitimate “finishing up your homework” type of midnight regulations, i.e., attempts to complete long-delayed regulatory actions to avoid further delay from the change of administration.

Percival also explained the options open for reversing these last-minute changes, including: suspending rules that have not already become effective, withdrawing regulatory changes to settle litigation challenging them, and use of the Congressional Review Act (CRA) to fast-track their reversal through congressional action. Percival noted that while the CRA initially was adopted at the behest of congressional Republicans as a way to block more stringent regulations, the Act also could be used to veto an outgoing administration’s efforts to weaken existing regulations. Because a CRA resolution must be approved by the President, or enacted over his veto by two-thirds majorities in each House, it is likely to be used only after a change of administration, which is what happened in the opening days of the Bush Administration to block a Clinton Administration regulation to prevent ergonomic injuries to workers.

On Inauguration Day, Professor Percival returned to Maryland Morning to provide an update on the status of the Bush midnight regulations. Percival noted that an environmental protester had found a new way to block a few of the oil leases by showing up at the government’s auction and outbidding the oil companies for leases he did not intend to carry out. Before all the oil leases were finalized, however, a federal judge blocked their issuance on environmental grounds; this action ultimately gave incoming Interior Secretary Ken Salazar sufficient time to withdraw the leases.

To listen to the midnight regulation broadcasts, please visit [http://www.law.umaryland.edu/PercivalOnWYPR2](http://www.law.umaryland.edu/PercivalOnWYPR2) for the 11/25/08 interview, and [http://www.law.umaryland.edu/PercivalOnWYPR](http://www.law.umaryland.edu/PercivalOnWYPR) for the 1/20/09 interview.

To hear Professor Percival talk about the Chesapeake Bay Foundation’s lawsuit against EPA for deficiencies in its Chesapeake Bay cleanup efforts on Maryland Morning with Sheila Kast, please visit [http://stream.publicbroadcasting.net/production/mp3/wypr/local-wypr-784941.mp3](http://stream.publicbroadcasting.net/production/mp3/wypr/local-wypr-784941.mp3).

**LL.M. DEGREE IN ENVIRONMENTAL LAW NOW AVAILABLE AT MARYLAND**

The University of Maryland School of Law now offers a Master of Laws (LL.M.) degree in Environmental Law, among a number of other areas of specialization. The full-time, one-year LL.M. Program is intended for American lawyers with a J.D. degree who want to further develop an expertise in one of the School of Law’s nationally ranked areas of strength and for foreign lawyers and graduate students who want to develop an expertise in U.S. law.

The LL.M. in Environmental Law is an academically rigorous program of study. The specialization offers a foundational course supplemented by advanced courses and seminars that enable students to develop a deep understanding of subject areas. LL.M. students also take courses of interest from across the law school’s extensive offerings. Candidates must submit an original, scholarly thesis of substantial length and publishable quality on an issue of environmental law. Yearly enrollment will be limited to ensure that each LL.M. student receives personalized attention from his or her faculty supervisor, particularly during the thesis-writing process.

For more information on the LL.M. Program, visit [www.law.umaryland.edu/llm](http://www.law.umaryland.edu/llm) or call Program Director Crystal Edwards at 410-706-2091.
In 2008 a group of 48 students, professors, alumni, and friends visited China during Spring Break when Professor Percival was teaching as a Fulbright scholar in Beijing during his sabbatical from Maryland. The trip was such a wonderful experience for those involved that the Environmental Law Program has decided to repeat it. Thus, we would like to invite you to join us on another Spring Break trip to China from March 12-20, 2010.

This trip will take us to some of the top tourist sites in China, including the Great Wall, the Forbidden City, the Temple of Heaven, the terra cotta warriors of Xi’an, and the Bund in Shanghai. It will also include meetings with professionals and NGOs who are working to combat China’s immense environmental problems.

For a tentative itinerary, please visit www.eftours.com, using tour number 722628. Upon visiting the website, you may also enroll and make your first payment of $95.

The cost of the trip is an incredible deal because it includes roundtrip airfare, all transportation within China, all hotels, and most meals. Also, we expect to get a rebate of approximately $100 per person upon returning from China. During these troubling economic times, it may be comforting to read about the job-loss money-back guarantee policy that our travel agency, Education First, provides. You can view it at http://student-travel.eftours.com/landing/pages/guarantee.aspx.

We hope that you will consider joining us!

A Visit To Chernobyl
cont’d from p. 9

warned us that it was too dangerous to go on stage, but we were able to peer across the stage into the vast hall. We then walked through the amusement park, past rusting bumper cars, a merry-go-round and the Ferris wheel. Using his meter, Segei pointed out to us a chunk of asphalt that remained highly radioactive.

Our van then took us to Pripyat School #2, which had been a combined primary and secondary school. We were allowed to roam through the school on our own, visiting classrooms, a library, and a locker room. The walls featured an ironic juxtaposition of images: cartoon characters and posters of Soviet propaganda. Student journals remained open on a few of the empty desks.

Our final stop was a large apartment complex. It felt voyeuristic to wander through the tiny rooms where Pripyat’s residents had lived. On the second story I made a quick retreat when the floor started to give way under my steps, making me realize that this was the kind of tour no company would dare offer in the U.S. As we drove out of Pripyat, Sergei reminded us of how the accident and the Soviets’ initial attempts to cover it up became a powerful indictment of the communist system that collapsed five years later.

We then returned to the town of Chernobyl where we went through radiation screening before having a late lunch at the information center. The screening machine requires you to place your feet and the palms of your hands over radiation monitors that flash green if they detect no excess levels of radiation. At the edge of the exclusion zone we went through another round of radiation screening, this time in a room with several machines to process tour groups more quickly.

Back in Kiev I mentioned the Chernobyl tour to many participants in the global jurists’ conference at which I was speaking. They seemed surprised that such a trip was possible since it is not mentioned in any of the official tourist literature. The country of Ukraine has many wonderful tourist sights, but the Chernobyl area will forever be a haunting monument to environmental disaster.

Information about Chernobyl tours is available at www.tourkiev.com. Photos of my visit to Chernobyl are available online at http://gallery.me.com/rperci/100427.
In May 2008 MDE filed its own lawsuit against Mirant in Maryland State court. The EIP, Potomac Riverkeeper, and the individual citizens then moved to intervene in the State lawsuit to stop the illegal discharges and to ensure that Mirant be held accountable for its allegedly unlawful behavior. The Charles County Circuit Court heard Mirant’s resultant motion to dismiss in December 2008. The motion to intervene was also scheduled to be heard, but the judge decided that she wanted MDE and Mirant to attempt to settle before considering that motion. While the parties attempt settlement, the Clinic will be scrutinizing the draft discharge permit MDE issued for the Mirant facility in early 2009. A public hearing on the permit’s issuance has yet to be scheduled.

**Chester River Association**

The Clinic continues to represent the Chester River Association (CRA) concerning the Velsicol Chemical/Genovique manufacturing plant in Chestertown, Maryland. The facility manufactures plasticizers and discharges nutrients and toxic chemicals into the Chester River, a major tributary of the Chesapeake Bay. Despite the diligent efforts of students from the 2007-08 Clinic, the CRA was not allowed to intervene in MDE’s enforcement action against Genovique over alleged groundwater contamination. Thus, the CRA was unable to participate in negotiations between Genovique and MDE that led to a consent decree in July 2008 that requires the facility to develop and implement various remediation and pollution-reduction plans, as well as to document its progress in such activities on a publicly available website. This year’s Clinic students have submitted written comments and met with MDE representatives, including Director of Water Management Jay Sakai, to discuss the CRA’s concerns over Genovique’s compliance with the consent decree. Students have also commented in writing on the facility’s CWA permit and anticipate submitting additional comments once a new draft permit is released.

**Access to Nutrient Management Plans**

The Clinic and the Waterkeeper Alliance sued the Maryland Department of Agriculture (MDA) to compel the release of nutrient management plans (NMPs), which detail the amount, placement, and timing of various fertilizer applications by farmers. Nutrient run-off from farms contributes to nitrogen and phosphorus loads in Maryland waters. In February 2009 the Anne Arundel County Circuit Court held that the confidentiality of NMP-holders ends after three years within the plain meaning of Maryland Agricultural Article § 8-801.1(b). However, the MDA cannot disclose any information that could be used to identify a plan-holder who has a current plan, even if that information is in a plan that is more than three years old. Thus, the Waterkeeper Alliance can review NMP information retained by MDA for three years, so long as it does not identify a current plan-holder. The Alliance can use the data gleaned from this review to monitor farmers’ compliance with their NMPs.
Comments and letters should be forwarded to the above address.