IT ALL STARTED HERE:
The Law School Steps Up with Landmark Events

This spring saw a nationwide flurry of recognition for the fiftieth anniversary of the Brown v. Board of Education Supreme Court decision that led to U.S. school desegregation. The landmark case has special resonance for the University of Maryland School of Law community, which re-lived the critical role of the school through an important series of commemorative events: Donald Murray first integrated the law school in 1935, one of the NAACP's first successes. That gives the law school a unique perspective on the case, and the school brought key players in the historic decision and experts on the case together to explore both its impact on the past and how to fulfill its goals in the future.

In addition to the momentous anniversary date, the fact that UM Law faculty could draw from an impressive body of scholarship on race and civil rights inspired planning the commemorative events. Professors Taunya Banks, David S. Bogen, C. Christopher Brown, Douglas L. Colbert, Lisa Fairfax, Larry Gibson, Sherrilyn Ifill, Garrett Power, and Robert Suggs are either researching and/or have published a number of articles focusing on these issues.

"It All Started Here: Maryland and the Road to Brown" was a wide-ranging series of events presented over seven months, co-sponsored by the University of Maryland School of Law and its Student Government Association and Student Bar Association; the Stephen L. Snyder Center for Litigation Skills of the University of Baltimore School of Law; Morgan State and Coppin State Universities; and the Maryland State Bar Association and Baltimore County Bar Association.

The first event in "The Road to Brown" was a November 20, 2003, symposium, "Pearson v. Murray — The Test Case: Baltimore in the '30s and the Admission of Donald Murray to the Law School," featuring a panel discussion moderated by David Bogen of the law school, with keynote remarks from the Honorable Robert L. Carter. Carter worked on every phase of the litigation; was responsible for securing the evidence of social scientists for the case; and argued on behalf of the plaintiff before the Supreme Court in the original argument, re-argument, and argument on appropriate remedy.

"The 'road' ran through me," said Carter in "Reflections on the Arguments in Brown v. Board of Education," He outlined his personal history as a child during the initial wave of black migration from the rural south to the urban north in 1917; through grammar school in Newark, N.J., where "the school environment was without open hostility, but there was almost no interracial social intercourse"; to being the only black student in a college preparatory course; attending Lincoln University, Howard Law School, and Columbia University; and being drafted into the Army, where "I encountered my first [experience] of the Armed Forces' raw racism," he said. He joined the NAACP as a research assistant, took the bar exam and began his journey on "The Road to Brown." Today, at 87, he is one of two surviving members of the legal team that argued the 1954 case and, as he told the New York Times recently, remains concerned that there is still much to do to truly fulfill its goals.

Other panelists and their topics included: Professor Sherrilyn Ifill of the law school, "Mob Violence and the African-American Community"; Bruce Thompson of Frederick Community College, "Organizing and Activism: The Young People's Forum and the 'Don't Buy Where You Can't Work' Campaign"; Professor Larry Gibson of the law school, "The Campaign to Desegregate the Law School"; and David Taft Terry, Maryland State Archives, "The Aftermath of Murray."

Thompson's remarks came from his master's thesis on the organizing campaign. Gibson presented documents and letters from his collection of materials related to the Murray case. Terry's segment focused on materials developed for his thesis, "Tramping for Justice: The Dismantling of Jim Crow in Baltimore, 1942-54," and events such as desegregation of the city's public golf courses and the beginnings of the teacher-pay case.

Echoing a central theme of the extended Maryland recognition, "Brown still deserves study," Bogen said, "because where you came from says something about where you're going."
Building on the Foundation

"Maryland and the Road to Brown" continued on January 28, when Gibson led a program entitled "From Murray to Brown: How Equal is Separate?" He reviewed Maryland cases that showed how civil rights attorneys tried to work under Plessy v. Ferguson and eventually show that the term "substantial equality" was not, in fact, equality. "They made it so expensive to be 'equal' that it was easier to dispense with separation," says Gibson.

On March 8, Professor Ifill reviewed "Roadblocks and Resistance" on the road to Brown, in which the opposition to desegregation immediately following the decision and the measures taken to respond to that resistance was examined. The presentation was highlighted by a showing of the film "The Intolerable Burden."

A three-day conference wrapped up the scholarship portion of the commemoration— an historic, first-ever collaboration with Coppin State University and Morgan State University. From April 29-May 1, panelists and attendees looked at what Professor Bogen describes as "the issues, hardships, and conflicts we have today." These include, he says, "major problems in our society that have not been resolved. Brown did what Brown could do about the rule of law, but individuals have added class to race and created resegregation today. It isn't something the law can address, but it is a real problem. Part of the purpose of the conference was to look at legal principles and realize there is a lot of work still to be done."

The conference included "Images of Brown" from Professor Gibson's personal collection, assembled over the years to illustrate the case—the social conditions that led up to it, the individuals involved, how it played out in court, and its aftermath.

Former Fisk University president Walter J. Leonard opened the event, and Congresswoman Eleanor Holmes Norton (D-DC) provided the keynote address. The morning featured a panel with Professor Gibson, Professor Garrett Power, and Damon Hewitt, Esq., of the NAACP Legal Defense Fund. Afternoon panels looked at media coverage of Brown; "Telling Our Stories," a collected oral history from people who experienced Brown as children; and a book signing by Juan Williams, author of "Thurgood Marshall: American Revolutionary," at the Maryland Historical Society.

Last-day sessions focused on "Teaching Brown v. Board" to kindergarten through twelfth-grade students, and an assessment of the current status of equal education in Maryland with Dr. Alvin Thornton of the Thornton Commission.

Brown takes Center Stage

Maryland wrapped up this intensive assessment of the Brown case with a May 3 dramatization of its legal arguments at Baltimore's Center Stage, in conjunction with the state bar association and the Baltimore Sun newspaper. Law school graduates and others from the local legal community brought the words to life in a sold-out production (see story, page 34).

"The Road to Brown" series is just one facet of the law school's strong and continuing commitment to equality and justice—a commitment that has long been evident in our curriculum, scholarship and our institution's service to the community," says Dean Karen Rothenberg. — Ruth Thaler-Carter

Baltimore City attorney Dwight Pettit was the child plaintiff in one of the first cases supporting Brown, in Maryland's Harford County.

The historic collaboration between colleges enlisted top players in the field: (from left) UM Law Professor Larry Gibson, as well as Professor Cynthia Neverdon-Morton, Coppin State University; Honorable Eleanor Holmes Norton, (D-DC); and UM Law Professor Sherrilyn Ifill.
Meeting of Constitutional Minds

The Krongard Room was buzzing this past March as University of Maryland once again convened a group of constitutional scholars in law and political science to exchange views on contemporary issues. The two-day event, known as the Constitutional Law Schmooze, was held on March 5 and 6, and provided participants the opportunity to try out their arguments before introducing them into the classroom or writing about them. A hallmark of the group has been to invite the best young scholars, mixing them with working professors and scholars in the later stages of their careers. This year they tackled “The New First Amendment and the Meaning of Liberalism/Conservatism.” Mark Graber, professor of government at College Park as well as Maryland professor of law, planned the meeting, as he has in the past.

What’s new, he explained, is that liberal and conservative interpreters of the Constitution have changed places on some issues. This shift has come from a variety of influences, such as technology, corporate speech, campaign financing, and a controversy over whether the Internet is public or private.

“For me personally, this was a particularly valuable discussion, because it gave me some useful ideas for my next large-scale writing project on American political development and the First Amendment,” says Mark Tushnet, professor of constitutional law at Georgetown University Law Center. Tushnet founded the group fifteen years ago. He and Professor Graber take turns hosting the “Schmooze.” First-timer Howard H. Schweber, assistant professor of political science at the University of Wisconsin at Madison, remarks: “There were two aspects to the Schmooze that made it outstanding. First, the format. Unlike most academic conferences, there was no division between contributors, commentators, and audience. Everyone played all three roles over the course of the meeting. The symposium format greatly enhanced the chance to meet and engage in discussion with the leading scholars in the field. As someone in the relatively early stage of my career, I found this aspect particularly valuable. It was also one of the few times that I have seen legal scholars and political scientists talking to each other, rather than remaining sealed off in our separate worlds. The Schmooze was a first-rate academic conference that should serve as a model for others.”

According to Professor Graber, the next “Schmooze” will take place March 4-5, 2005, on the subject of “Jurisprudence.” —S.M.

Celebrating Clinical Law

It was 30 years ago when a groundbreaking solo practice juvenile law clinic started up at the University of Maryland Law School. This past April 2, leading scholars and nationally known public interest lawyers gathered to celebrate the Clinical Law Program, which today is one of the largest and most sophisticated experiential law programs in the country. A celebratory dinner followed a day-long conference, which featured a panel of speakers debating the current challenges faced by educators and the role the legal academy and clinical education can play in expanding access to justice. See full article on page 28.

RIGHT FROM THE HEADLINES: IMMIGRATION LAW REVISITED

The terrorist attacks of 9/11 have triggered national debate, anti-immigration sentiment, and burgeoning scholarship over a whole host of issues that used to be almost the exclusive province of policymakers, legal experts, and advocacy groups.

The topics of this year’s Immigration Law Teachers Workshop, June 3-5, 2004, came right out of the headlines: deportation, undocumented workers, transnational adoption, borders, and the sentencing of non-citizens.

UM Law Professor Katherine Vaughns, who planned the logistics for the biennial workshop, presented a paper on “Immigration Advocacy in the Twenty-first Century Post-9/11 Era” about immigration reform efforts since the attacks. Professor Vaughns noted that in combating terrorism domestically, immigration never used to be a major tool of law enforcement. However, since the Department of Homeland Security, immigration has, unfortunately, become increasingly associated with the prevention of international terrorism.

M. Isabel Medina, chair of the planning committee and professor of law at Loyola University New Orleans, explained that the purpose of the workshop, which began in 1994, is to encourage immigration law scholarship. Approximately fifty law professors and clinicians from across the country traveled to the biennial workshop to share ideas on teaching methods; resources, such as the use of films and art in the classroom; and to critique one another’s papers. Small groups also grappled with how to balance teaching with outreach, government and community service—and how to address race and ethnicity in the classroom. Examples of published articles or works in progress include: The Boundaries and Bonds of Citizenship: Recognition and Redistribution in the U.S., Germany, and Israel by David Abrahams, Professor of Law, University of Miami School of Law; Sentencing and Collateral Sanctions for Non-Citizens: Are Changes Necessary? by Nora V. Demleitner, Professor of Law, Hofstra University School of Law; Habeas Corpus for Immigrants Challenging Deportation: A Study of Habeas Practice in the Western District of Louisiana and Proposals for Reform, by Nancy Morawetz, Clinical Law Professor, New York University School of Law; The Inherent Flaws in the Inherent Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution, by Huyen T. Pham, Associate Legal Research and Writing Professor of Law, University of Missouri-Columbia School of Law; and Members Among Us: The Economic Basis for Undocumented Rights, by Bernard Trujillo, Assistant Professor, University of Wisconsin Law School.

The workshop also included a memorial tribute to Joan Fitzpatrick, a scholar and teacher of international and human rights law at the University of Washington Law School in Seattle, who died in 2003.

Despite the serious subject matter, Professor Medina said, “Immigration law professors are actually a fun group of people. An indispensable tradition of our workshop is a sing-along led by guitar strumming Hiroshi Motomura.” —Susan Middagh
The Myerowitz Competition: Argue This!

One by one, the dignified orators moved to the podium of the Ceremonial Moot Courtroom to address the three-judge panel. Each of the four law students had bested twenty-six competitors over the course of the year to qualify for this fourth and final round of oral arguments in the 35th Annual Myerowitz Moot Court Competition, held on March 17, 2004.

As is traditional, this year's problem stemmed from a fictionalized version of a case pending before the U.S. Supreme Court. At issue was whether the Pledge of Allegiance infringes on the Establishment Clause of the First Amendment and whether a non-custodial parent has standing to contest a school district's policy of making elementary students recite the pledge. The student attorney argued that the recitation of the Pledge of Allegiance by school children is a patriotic, voluntary exercise; its reference to God is consistent with other historical documents, such as the Declaration of Independence. The words "under God" violate the establishment clause of the First Amendment, he said.

When the competition was over, one of the judges, the Hon. Marcella A. Holland, of the Circuit Court for Baltimore City, praised the students for their poise and civility, as well as their ability to return to their original arguments despite interruptions from the bench. "You have a career in advocacy," she told them. Joining Judge Holland were the Hon. Robert King of the U.S. Court of Appeals for the Fourth Circuit, and the Hon. Victor H. Laws, U.S. Magistrate of the U.S. District Court for the District of Maryland.

Elchanan Engel ('06), from Baltimore, took the top prize as oralist at the 2004 competition, one of the highest honors conferred by the School of Law. Runner-up was April Hitzelberger ('05); Walter Kirkman ('05) won for best brief. The team of Engel, Hitzelberger, and Ami Grace ('05) will represent UM at the National Moot Court Competition in New York, to be held early next year.

During the March competition, Mrs. Merry Myerowitz announced that she was making an additional donation to the Morris Myerowitz Moot Court Competition Fund in memory of her daughter, Bonnie, who died last year. The Myerowitz family started the fund in the early 1980s in honor of their son and nephew, Morris, who was killed in a car accident after graduating from law school in 1968.

In the audience that day was Michael Newdow, MD, the plaintiff in the real-life "Pledge" case. Dr. Newdow, who is also an attorney, was at the law school to rehearse and receive feedback from the UM Law faculty on the oral argument he planned to deliver before the U.S. Supreme Court. (His appearance finally occurred on May 5; a little over a month later, the Court ruled that he had no legal right to bring the case.) "There's always something one can learn by review, by hearing others, and by reconsideration," he said. Just one more example of real-life learning, going both ways. —S.M.

German Justice Shares His Thoughts

Dieter Grimm, a renowned intellectual on the international legal stage and a former justice of the Federal Constitutional Court of Germany, brought his insight and scholarship directly to Maryland students when he presented his lecture, "Fundamental Rights as Positive Rights," on February 26, 2004. He explained numerous historical and cultural differences between the constitutions of the United States and the Federal Republic of Germany. Peter E. Quaint, Jacob A. France Professor of Constitutional Law and an expert on German constitutional law, made Professor Grimm's lecture possible in conjunction with his seminar on comparative constitutional law.

Respected for his scholarship here and abroad, Grimm, professor of public law at the Humboldt University in Berlin, is the rector of the Institute for Advanced Study Berlin, which has addressed such challenging topics as a constitution for the European Union. Author of many books and articles on constitutional theory, history, and law, Professor Grimm has participated in a colloquium on the Constitutional Future of Europe with several associate justices of the U.S. Supreme Court. A member of the American Academy of Arts and Sciences who holds an LLM degree from Harvard Law School, Professor Grimm is currently the Georges Lescy Visiting Professor at Yale Law School.

At the Maryland lecture, Professor Grimm said the German constitution is based on the assumption that the state has an ethical mission which dates from the time of the monarchy; the state's primary responsibility is to ensure social justice and the fundamental (positive) rights of all citizens. The German courts expect to take the initiative. In contrast, the U.S. Constitution grew out of the colonists' desire to prevent government from interfering with individual liberties or negative rights.

Among the fifty persons in attendance at the lecture were graduate students in political science from the Johns Hopkins University and the University of Baltimore, lawyers in private practice, as well as students and faculty of the School of Law. —S.M.

MEETING IN THE MIDDLE: The Mediation Solution

The farmer was upset when her neighbor’s motorcycle disturbed her prize-winning sheep. The motorcyclist was equally upset when the sheep knocked down her bike. With a few props and audience participation, students from the Center for Dispute Resolution (C-DRUM) clinic dramatized how a dispute between neighbors can escalate. Mediation can replace a complicated court battle.

This skit added a light touch to the Mediation Awareness Event held in the UM Student Union on March 16, 2004. It pointed out the differences between mediation and litigation. "A good litigator is an advocate on behalf of his or her client," says UM Law professor and director of C-DRUM, Roger C. Wolf. A mediator is neutral, a person who brings the parties together and explores ways to resolve the problem in a way that respects both sides.

In addition to developing the skills of future lawyers, C-DRUM’s services are available free of charge to all students throughout the University of Maryland system. C-DRUM accepts cases that might ordinarily go to Small Claims Court: for example, arguments between college roommates; landlord-tenant disputes; and demands for the return of property in romances gone sour. For details, call Professor Wolf at (410) 706-3836 or email him at rwolf@law.umd.edu —S.M.
The Costs of Accidents Turns Thirty Five: Scholars Honor Guido Calabresi

When Richard Posner stated that the influence of The Costs of Accidents has been “baleful,” Guido Calabresi was delighted—not at the criticism but that the symposium on his book was generating lively discussion, even controversy, from the beginning. Posner and Calabresi were head to head at the symposium celebrating the thirty-five-year anniversary of the book’s publication, “Calabresi’s The Costs of Accidents: A Generation of Impact on Law and Scholarship,” held at the School of Law on April 23 and 24. A former dean of Yale Law School, Judge Calabresi now sits on the U.S. Court of Appeals for the Second Circuit. Judge Posner sits on the U.S. Court of Appeals for the Seventh Circuit.

Whenever it is discussed, The Costs of Accidents unfailingly generates spirited discourse, and Posner went on to say that the book was “an analytical template for the new field of interdisciplinary studies,” but it has been a bad influence because its author had forewarned academic study for “armchair theorizing.” Other speakers, many of them former students of Judge Calabresi at Yale, did not agree. In fact, Harvard Law professor Jon Hanson, said that “though The Cost of Accidents has had amazing influence, it may not have had enough”—it could have been more of a catalyst for applying social-psychological insights to the law.

The symposium on The Cost of Accidents produced questions as well as answers. “We don’t know the extent to which activity responds to liability,” mused Keith Hylton of Boston University School of Law. Gregory Keating of the University of Southern California found a paradox: “One of the most provocative themes in Calabresi’s work is that he seems committed both to regarding life as priceless and to pricing it.”

Guido Calabresi gave the closing address at the symposium, and he responded with wit, warmth, and thoughtfulness to each speaker and panel on both days. “Law is always part of a social-political system and it cannot be otherwise,” he commented after the panel on mass torts. “That’s why torts is so much fun.”

In his closing address, Calabresi spoke of his pleasure at seeing so many “who have pushed the quest forward.” As a recognized founder of the discipline of law and economics, he predicted that “the analysis of law through economics has a tremendous future. We can use what we know to push economics.” He easily criticized his own work, which he wrote when he was thirty-three. Stating that The Costs of Accidents is “still a very young book,” he identified gaps such as the fact that the treatment of justice is quite inadequate. He defined the phrase “other justice,” saying he had used it as a catch-all for all the goals he didn’t know enough about to analyze.

“It’s my responsibility,” he said finally. “I believe in strict product liability. I put that product out, and the product has a defect in using ‘other justice’ in that way.” —Anne R. Grant

The papers from the symposium will be published in an upcoming issue of the Maryland Law Review.
Setting a Course for an Environmental Sea Change

The nation's policies for managing its coasts and oceans are a shambles, according to two recent landmark reports, including one by a U.S. government commission. "Fundamental reform in oceans governance" is imperative, says University of Maryland environmental law professor Robert Percival, "but it's not going to be easy."

Overfishing depletes crucial fish stocks, vessels pollute with near impunity, and fouled rivers threaten human health and coastal marine life. These problems won’t be fixed in a day, but a day-long conference, "Protecting our Oceans: Legal and Policy Responses to Declining Marine Ecosystems," held on June 11, 2004, co-sponsored by the law school's nationally recognized Environmental Law Program, took an important step toward tackling oceans policy reform.

Keynote speaker Andrew Rosenberg, a fisheries scientist who served on the government commission, discussed why regional fisheries councils often fail to use scientific data appropriately when setting catch quotas and how restructuring the councils could improve fisheries management.

In one of four panels, recent legal disputes over the U.S. Navy's use of active sonar, and the harm it allegedly causes marine mammals, touched off a spirited debate. Other panels grappled with obstacles that have slowed the adoption of less destructive fishing technologies, addressed pollution from cruise ships and inland sources, and discussed the need for a comprehensive legal framework that addresses marine ecosystems as a whole rather than individual species or activities.

In addition to Percival, who co-chaired the event, participants included law professors from other universities, lawmakers, environmental scientists, and government officials. The audience of about 100 lawyers included many from the Department of Defense. —B.H.

Clean Science vs. "Sound Science"

The use of science in regulatory decisions, once thought impartial, has moved far from that, all the way to adversarial. Political pressures on research sway how lawmakers and regulators respond to all manner of threats, from worker safety hazards to health and the environment.

To address how science can be scrubbed of dirty politics, the School of Law and the Center for Progressive Regulation co-sponsored an April symposium in Baltimore titled "Clean Science in Regulation." Speakers and panelists at the day-long conference, held on April 16, included several public-health scientists, a philosopher, and about a dozen law professors from across the country.

"The sciences have been increasingly captured or dominated by the industries that would be regulated," says conference participant Rena Steinzor, a Maryland law professor. "That leads to tremendous potential for conflicts of interest and distortion [disguised as] 'sound science.' This conference was about countering that crusade by pushing for what we call clean science."

Participants and a small audience discussed themes and case studies of bias and conflicts of interest in the health sciences and in resulting regulations. Panelists noted, for example, that government-funded research often meets the scrutiny of the scientific review process only to be bogged down by politically motivated challenges. Private research, by contrast, may be selectively published or suppressed depending on whether it supports its sponsor's political contentions. A recent case alleges that the makers of the popular antidepressant Paxil suppressed negative studies regarding its use with adolescents. —Ben Harder

A forthcoming book on science and regulation, co-authored by conference participants, will be targeted toward policymakers. Publication is anticipated in 2005.

Breathing Life into Biodefense

The threat of bioterrorism has been hanging in the air since anthrax arrived in the mail in 2001. Yet legal and commercial roadblocks continue to hamper the development and stockpiling of countermeasures for bioterrorism. By bringing both impediments and possible remedies to the attention of Congress, organizers of a June symposium, "Eliminating Legal, Regulatory and Economic Barriers to Biodefense Vaccine Development" hope to smooth the path to biosecurity.

The University of Maryland’s Center for Health and Homeland Security and its Law and Health Care Program co-sponsored the event, in conjunction with a regional consortium of medical institutions. CHHS director Michael Greenberger and his fellow University of Maryland law professor and associate dean Diane Hoffmann participated in the symposium, as did law school dean Karen Rothenberg and other legal academics, scientific luminaries, pharmaceutical executives, and regulatory officials.

"One of the critical hurdles is that [biodefense] is not thought to be a profitable venture" by pharmaceutical companies, Greenberger says. Participants addressed how the government could provide manufacturers with better financial incentives for vaccine development, how the sluggish vaccine-approval process might be expedited in cases affecting biodefense, and how manufacturers' intellectual property can be safeguarded. Speakers also analyzed the role of legal liability concerns in the failure of the administration's recent smallpox vaccination campaign.

About 100 lawyers, scholars, medical researchers, and corporate and government personnel attended the symposium, and the proceedings are slated to appear in the January 2005 Journal of Health Care, Law and Policy. —B.H.