

## STUDENT ATTORNEYS HEAR ORAL ARGUMENT AND VISIT JUSTICE GINSBURG AT U.S. SUPREME COURT

On December 2, 2009, twelve Student Attorneys from the Clinic traveled to Washington, D.C. to hear oral arguments in a unique environmental case and met with Justice Ruth Bader Ginsburg.

The case—*Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, No. 08-1511—involves a challenge to the Florida Supreme Court's ruling that a Florida statute authorizing beach rebuilding (or "renourishment") after hurricanes was constitutional. Under the act, city, county, and state agencies established an "Erosion Control Line" fixing the property line for beachfront parcels as part of the state's plan to add additional sand to the beach and thereby restore it. When the Florida Supreme Court rejected the petitioner's claims that fixing the property line deprived them of their right to obtain additional land that might arise because of accretion (the creation of dry land above the mean high water mark through imperceptible deposits of materials), the petitioners appealed to the U.S. Supreme Court, claiming that the Florida Supreme Court ruling so changed settled Florida law that the ruling itself amounted to a "judicial taking" of petitioner's rights.

The oral argument itself was lively and made a big impression on the Student Attorneys. As Matt Burdalski commented, "As law students we spend three years studying the Justice's opinions and I think form a very rigid and formalistic view of them. While the Supreme Court is obviously a formal Court and expects nothing but the utmost respect and preparation, it was interesting to see the Justices joking and having some fun with the attorneys ([asking questions about] hot dog [stands], spring break [amusement parks]). It gives you a feeling that they are normal people who have achieved an extraordinary amount in their legal careers." Both Catherine Emmett and Reena Pushpangadan were surprised at the humor shown by the Justices during the argument. For others, it served as a great reminder of

why they chose to go to law school. As Rita Assetto commented, the arguments gave her "a renewed appreciation for the law. I have found it is really easy for me to get lost in to do lists and class work and fail to see the big picture. Being in that courtroom and hearing the argument was a great reminder of the history and importance of the system[—] which was great to have right before finals and heading into the bar exam in a few months."

After the argument, the Student Attorneys, along with Clinic Director Ken Kristl, Professors Jim May and Ben Barros, and Mid-Atlantic Environmental Law Center Executive Director Mary Jacobson went to the Lawyers Lounge and met with Justice Ruth Bader Ginsburg. Justice Ginsburg spoke about oral arguments and the Court's internal processes. She also spoke about the need for attorneys of the future to provide legal guidance at the local, national, and global levels, and that the students' focus on environmental issues positioned them well for such public service. The students enjoyed the meeting and found it inspirational. As Catherine Emmett commented, "Justice Ginsburg's willingness to respond



to the curious inquiries of law students was striking. When asked what advice she would give to new attorneys, Justice Ginsburg told us that while the legal profession can offer attorneys a way to make a living, we should work to improve the lot of our community. Justice Ginsburg has lived that advice through her work with American Civil Liberties Union where she co-founded the ACLU's Women's Rights Project. Her advice was inspiring and well taken. Listening to the advice of Justice Ginsburg reinvigorated the initial sense of optimism and inspiration that brought me to law school."

## **STUDENT ATTORNEY HELPS APPEAL EMERGENCY DREDGING PERMIT**

Student Attorney Nicholas Jajko helped file an appeal of an emergency dredging permit for the Premcor refinery in Delaware City, DE that raises novel issues concerning the state's power to issue such permits and the processes required for such permits.

The permit itself allowed the refinery to dredge around a cooling water intake that sucks millions of gallons of water from the Delaware River for once-through cooling of refinery processes. The intake results in significant impacts to aquatic species that are pulled through the pipes and killed by the heat or get stuck against screens on the intake. The challenged permit gave the refinery permission to dredge around the intake on an emergency basis. In issuing the permit, however, Delaware's Department of Natural Resources and Environmental Control did not conduct a public hearing on the request.

On behalf of client Bill Moyer, Nick drafted a Statement of Appeal to the Delaware Environmental Appeals Board challenging the permit on three grounds: (1) the failure to conduct a hearing on the request for authorization to dredge; (2) the failure to order mitigation of the adverse environmental impacts that would arise from the dredging; and (3) the failure to protect against the environmental impacts of dredging. In preparing the Statement of Appeal, Nick worked with the Clinic Director and with volunteer attorney Pam Meitner.

Nick has found the case provided "an interesting view of administrative lawmaking and policy intersecting with the rules the legislature has established." He finds the case has provided "a great opportunity to interact with our client to understand his goals and to translate that into legally-based arguments."

The Environmental Appeals Board has set the hearing on the appeal to start in April 2010.

## **STUDENT ATTORNEY FOCUSES ON "SMART GRID" IMPLEMENTATION**

Student Attorney Richard Scott played a major role assisting Clean Air Council in dealing with the administrative proceedings arising out of implementation of "Smart Grid" technology in Pennsylvania.

The Clinic appeared on behalf of Clean Air Council in administrative proceedings on PECO's Petition for approval of its plan to develop and install 600,000 smart meters in the PECO service area. The plan, required under Pennsylvania's Act 129, involves the development of an extensive infrastructure to handle the real time information on energy usage and rates provided by new meters that will be installed in homes and businesses. PECO's Petition is actually the first of three such petitions that PECO will file to fully implement its planned installation of meters for all customers by 2015.

For Richard, the project involved the analysis of numerous written submissions to the Pennsylvania Public Utility Commission (PUC), including testimony from experts for PECO as well as several other stakeholders in the process, generating summaries for the client, analyzing settlement issues, and drafting pleadings.

Spring will require Rich to focus on the completion of the administrative process for PECO's first Petition and the response to the second Petition, expected sometime later in the Spring.

## **STUDENT ATTORNEYS HELP APPEAL ON PA ANTIDegradation REGS**

Student Attorneys Matt Burdalski, Marie Hobson, Jongbin Lee, and Keith Salador are helping client Blue Mountain Preservation Association (BMPA) continue its attempt to protect the Aquashicola Creek from degradation in BMPA's appeal of an NPDES Stormwater Permit issued to Alpine Rose Resorts. The permit would allow Alpine to begin construction of a private road course club in Eldred Township, Monroe County, PA.

The appeal is actually the second that the Clinic has pursued for BMPA on the project. The first resulted in a landmark ruling (available in the Clinic's Document Archive on the website, discussed below) remanding a similar permit because Pennsylvania's Environmental Hearing Board found that the Department of Environmental Protection failed to follow Pennsylvania's Antidegradation Regulations. Alpine submitted additional information after the remand, and now DEP has issued the permit claiming compliance with the regs.

Matt, Marie, Jongbin, and Keith spent the Fall semester working on the discovery phase of the appeal, preparing document requests and interrogatories, responding to interrogatories from Alpine and DEP, preparing for and assisting in the taking of depositions, and assisting BMPA's expert in the preparation of her report.

The Spring will require the Team to prepare for the evidentiary hearing before the EHB. This will include preparing direct and cross examinations, identifying exhibits, and preparing the Pre-Trial Memorandum.

## **CLINIC CELEBRATES MILESTONES AND NEW OPPORTUNITIES**

Fall 2009 was a busy time for the Clinic. In addition to the regular work on behalf of clients, the Clinic celebrated several milestones, including its 20<sup>th</sup> anniversary, the launch of the new Environmental Law Center, the launch of the Clinic's new web presence, and the decision to open a new office on Widener's Harrisburg campus.

In recognition of its 20 years of operation, in September 2009 the Clinic participated in the Law School's dedication of the new Clinic wing of the law school. The ceremony included comments and a ribbon-cutting ceremony involving Delaware's Governor Jack Markell and a reception in the new clinic space afterwards.

In October, the Clinic participated in the launch of Widener's Environmental Law Center on both the Wilmington and Harrisburg campuses. The Center, which brings together and leverages the significant resources of the 7 full-time environmental faculty on Widener's 2 campuses, is the natural home for the Clinic. In one of the first tangible Center efforts that bore fruit, in the Fall the Delaware faculty approved an Environmental Law Certificate program that will allow students to obtain a certificate on either a clinical or non-clinical track.

In connection with the launch of the Environmental Law Center, Clinic Director Ken Kristl spearheaded an effort to create a robust web presence for both the Center and the Clinic. The new website, [www.widenerELC.org](http://www.widenerELC.org), provides valuable information about the Center and its faculty, as well as several pages related to the Clinic itself (described more fully on the back page of this Issue).

The Clinic also expanded. During summer 2009, Environmental Law Center Director John Dernbach,

Harrisburg Civil Clinic Director Palmer Lockhard, and Environmental Clinic Director Ken Kristl worked with the Pennsylvania Chapter of the Sierra Club to secure a grant to fund a Harrisburg office of the Clinic. The primary job of the Harrisburg office will be to run the Widener Environmental Help Line, a toll-free phone (1-888-953-6853) and web-based resource for Pennsylvania citizens to seek help from the Clinic on environmental problems. During the Fall, Ken and Palmer worked with four Harrisburg students (Jennifer Berosh, Claire Garguilo, Jon Johnson, and Steve Matzura) to design the Harrisburg office and the Help Line from scratch. The office and the new Environmental Clinic seminar class opened on the first day of classes and are in full operation.

As a result of all this work, 17 students (13 in Delaware, 4 in Harrisburg) are currently enrolled in the Clinic and helping to represent clients in the Mid-Atlantic Region.

## **STUDENTS SWORN IN AS DELAWARE STUDENT INTERNS**

Fall 2009 marked the first time that Student Attorneys in the Environmental Clinic could be sworn in as Legal Interns under Delaware's Limited Practice Rule. Student Attorneys Rita Assetto, Matthew Burdalski, Dawn Kurtz Crompton, Catherine Emmett, Marie Hobson, Nicholas Jajko, Jongbin Lee, Chris McCann, Keith Salador, Richard Scott, and Jonathon Spadea were all part of the historic first group of Legal Interns for the Clinic.

Prior to Spring 2009, Delaware's Rule 56 did not cover the work that Student Attorneys did in the Clinic. Attempts to have Student Attorneys participate in proceedings before Delaware's Environmental Appeals Board were denied because of the language of the Rule. Director Ken Kristl, working with Justice Randy Holland of the Delaware Supreme Court, persuaded the Supreme Court to amend the Rule so that Legal Interns under the Rule could appear before the EAB, and recognizing the Clinic as a Supervision and Placement agency within the Rule. Now Student Attorneys who are sworn in will be able to appear before the EAB.

"This will create new opportunities for students to really participate in the appeals we bring before the EAB," Kristl said. "This will enrich their educational experience. I look forward to having Clinic students present and cross examine witnesses with me during EAB hearings."



*At the Supreme Court December 2, 2009*

► A Clinic Newsletters Page, providing back copies of the *Clinic News*

“The website is a great resource for clients and students. We intend to keep it up to date so that it will continue to provide a service for the public,” Kristl said.

## CLINIC WORK PROVIDES SIGNIFICANT PRO BONO CONTRIBUTION

During the Fall 2009 semester, the Clinic provided significant pro bono representation. This work, on behalf of 18 clients over 27 different matters, amounted to the following:

Clinic Director	223
Student Attorneys	1,149
Total Hours	<hr/> 1,372

## CLINIC STARTS FOURTH YEAR OF ADOPT-A-HIGHWAY CLEANUPS

Smith Bridge Road, from the Delaware State Line to US 202, continues to receive the Clinic’s attention. Clinic Student Attorneys and the Clinic Director did 2 cleanups during the Fall 2009 semester. This marks the fourth academic year of Clinic cleanups on the Road.

## LINES ARE OPEN! THE WIDENER ENVIRONMENTAL HELP LINE KICKS OFF (1-888-953-6853)

As explained elsewhere in this Issue, a generous grant from the Pennsylvania chapter of the Sierra Club means Widener students in Harrisburg will help empower Pennsylvania citizens by providing legal knowledge and guidance so that citizens (or groups of citizens) can advocate for themselves or directly representing citizens to obtain appropriate legal recourse. Pennsylvania citizens can reach the Help Line in one of two ways: A Toll Free telephone line (1-888-953-6853) OR an internet-based Request for Help Form available at [www.widenerELC.org](http://www.widenerELC.org) (and clicking on the Request for Help Form link on the right hand side of the home page).

*For more information on the Environmental and Natural Resources Law Clinic, stop by the Clinic (L256) or contact Professor Kristl (477-2053 or at [kkristl@widener.edu](mailto:kkristl@widener.edu)). The Clinic is open to second semester 2RDs, as well as 3RDs and 4EDs.*

*Printed on 100% recycled paper.*

## CHECK OUT THE CLINIC’S NEW WEB PRESENCE!

In October 2009, the Environmental Law Center’s Website ([www.widenerELC.org](http://www.widenerELC.org)) went live with significant resources and information about both the Center and the Clinic. Clinic Director Ken Kristl spearheaded the effort to design and build the site. “During the Spring, I began work on creating a website for the Clinic, and so it was a natural to expand the site to cover all the great things the Center does,” Kristl said.

The site features numerous pages of Clinic-specific information, including:

- A Clinic home page, providing an overview of who we are and what we do
- A Director’s Office Page, providing information about Director Ken Kristl
- A For Clients Page, providing information about the Clinic that a potential client may find helpful
- A For Students Page, providing information about the Clinic that students may find helpful
- A Video Testimonials Page, providing short video clips of Student Attorneys describing their experience
- A Document Archive Page, providing copies of public documents from cases filed by the Clinic, and will provide access to the legal analyses generated through the Help Line
- A Widener Environmental Help Line Page, which describes the Help Line and includes a Request for Help Form for electronic requests