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ABA Publishes Book on Constitutional Principles of Environmental Law Edited by Professor May



“These days, it’s hard to imagine any environmental law or policy bromide that doesn’t contain soluble constitutional components, from climate change to species loss, from air to water pollution, from the boardroom to the courtroom, and from the vast hallways of administrative agencies to legislative halls in Washington, D.C., and in state capitols through-

out the country,” writes Professor James R. May in the preface to *Principles of Constitutional Environmental Law*.

Recently co-published by the American Bar Association and the Environmental Law Institute, *Principles of Constitutional Environmental Law* examines the growing intersection of constitutional and environmental law. A variety of emerging constitutional issues are examined in a series of accessible chapters that begin with a practice tip and end with a case study relevant to material explored in the chapter.

In addition to editing the volume, Professor May wrote the chapter on “The Political Question Doctrine” and co-wrote chapters on “Environmental Rights in State Constitutions” with former student William Romanowicz and “Constitutional Environmental Rights Worldwide” with H. Albert Young Fellow in Constitutional Law Erin Daly.

Visit the ABA’s site to learn more about *Principles of Constitutional Environmental Law* (<http://apps.americanbar.org/abastore/index.cfm?pid=5350220§ion=main&fm=Product.AddToCart>), or read Professor May’s post on the book’s publication on the Environmental Law Center blog.

Environmental and Natural Resources Law Clinic Negotiates Settlement in Appeal to Protect Threatened Species

The Environmental and Natural Resources Law Clinic recently negotiated the settlement of consolidated appeals of a small non-coal mining permit issued by the Pennsylvania Department of Environmental Protection to Catharine Properties, Inc. for a parcel of land in Blair County, Pa.

In the summer of 2010, the Clinic agreed to represent the Juniata Audubon Society, the Center for Biological Diversity, and wildlife advocate Laura Jackson. The appeal centered on the regulatory obligations for the Pennsylvania DEP to ensure that it avoid issuing permits that would impact the continued existence of endangered or threatened species. The small, non-coal mining permit was issued to allow preparatory work and preliminary mining on a small portion of a greater area of land for which Catharine Properties, Inc. is seeking a large permit. A series of 9 caves known as the Heller Caves are part of the larger parcel of land and home to the eastern small-footed bat, a threatened species, and the rock rubble at the base of the cliffs is a nesting area for the threatened Allegheny woodrat. The Pennsylvania Game Commission, which has regulatory authority over the eastern small-footed bat and Allegheny woodrat populations, raised serious concerns that mining on the larger parcel of land could do harm to the habitat of the bat and rat populations. The Game Commission recommended a 300 foot buffer to the DEP prior to the issuance of the small non-coal permit, but the area outlined in that permit was within the 300 foot buffer called for.

Claire Gargiulo '11, a Clinic intern on the Harrisburg campus, did a great deal of initial work on the case, gleaning relevant facts from a great number of documents. Picking up on Claire's initial work, Clinic Student Attorney Brittney Berenato assisted Clinic Director Ken Kristl in completing discovery. That process included preparing for 2 depositions of Game Commission staff, defending the depositions of client staff, and securing the expert report of Dr. Michael Gannon. Brittney also helped prepare a pre-hearing memorandum submitted in advance of the trial before the Environmental Hearing Board scheduled to begin February 27, 2012.

Prior to the trial, however, the parties reached a settlement that will protect the bats, rats, and a third new species unique to the site known as the Heller springtail until a large permit is issued. The settlement also preserves the ability of the clients to raise species protection issues during that permitting process as well.

Environmental Law Center Program Examines Past, Present, and Future of the Coastal Zone Act



Keynote speaker Congressman Mike Castle with Dean Linda Ammons, and Professor of Law and Conference Chair, James R. May

“It was unique legislation. I do not know of any other legislation like it at that time,” said former Congressman Mike Castle of the Delaware Coastal Zone Act during his keynote address at “The Delaware Coastal Zone Act at 40: Past, Present and Future,” a special CLE event hosted by Widener Law’s Environmental Law Center on Friday, September 30th, 2011 on the Delaware campus.

The daylong program began with a welcome from Environmental Law Center co-director Jim May, who said of the Delaware Coastal Zone Act, “The law is a wonder. It was the first comprehensive coastal land use act here or anywhere in the world.” Fellow Environmental Law Center co-director John Dernbach then spoke briefly about Widener’s Environmental Law Center by video feed from the Harrisburg campus.

The program then began in full with a video clip from “An Evolving Legacy: Delaware’s Coastal Zone Act,” a documentary on the Delaware Coastal Zone Act recently put together by Michael Oates of 302 Stories Inc. Marilyn P. Whittington, the Executive Director of the Delaware Humanities Forum, which funded the film, introduced the clip.

The first comprehensive coastal land-use law in the world aimed at curbing industrial development within a coastal area, the Delaware Coastal Zone Act forbids new heavy industry and bulk transfer facilities along the state’s fragile coastline. Despite heavy

opposition from the Shell Oil Co. and other industrial developers as well as the Nixon administration, the law passed by a slim margin in 1971.

The morning portion of the program featured a legal history of the Act and two panels: Practice and Procedure Under the CZA and Emerging Legal Issues. A luncheon and Castle's keynote address followed.

Introducing Castle, Widener Law Dean Linda L. Ammons said, "It is my distinct honor to introduce Congressman Mike Castle. He has played a key role in making Delaware a better place for everyone."

Castle's remarks focused on the political history and implications of the Act, and he spoke particularly about former Delaware Governor Russell Peterson, who was instrumental in seeing it enacted. "He was as fearless a politician as I have ever known," Castle said of Peterson.

The afternoon portion of the program featured a panel on legislative and regulatory perspectives, breakout sessions, a screening of "An Evolving Legacy: Delaware's Coastal Zone Act," facilitated by writer and director Michael Oates, and a "town hall meeting" discussion moderated by retired Delaware Superior Court Judge Susan del Pesco.

Widener Law thanks the Delaware Humanities Forum, the Delaware State Bar Association Section on Environmental Law, and the student-run Widener Environmental Law Society for co-sponsoring "The Delaware Coastal Zone Act at 40: Past, Present and Future."

Faculty Spotlight: Global Leader John C. Dernbach



John C. Dernbach worked for the Pennsylvania Department of Environmental Resources in 1992 when he took a week long vacation in Brazil to attend the United Nations Conference on Environment and Development—the first Earth Summit—in Rio de Janeiro. A seminar at the conference sparked an epiphany, a moment when he realized that the economy and the environment are inextricably intertwined.

Dernbach joined the faculty at Widener Law in Harrisburg the following year, and in 1997 taught a class on sustainability and the law. For a class project, he assigned students to write about how well the United States had followed Agenda 21, a plan of action for sustainable worldwide development agreed upon by the world's nations at the Earth Summit. He synthesized his students' research and published it in *The Environmental Law Reporter* and posted it online. When he attended a follow-up conference about Agenda 21 at the UN, the paper was the only one of its kind.

In 2002, Dernbach led a campaign to publish articles about sustainability efforts in the United States, resulting in a second review, *Stumbling Toward Sustainability*, a collection of 31 essays by experts nationwide. In 2009, Dernbach, by then director of the Sustaining America project, edited the influential book *Agenda for a Sustainable America*, published by the Environmental Law Institute. He called on the United States to take a leadership role in sustainability efforts worldwide. "This country has a major role to play," he wrote. "Our nation's global energy, ecological, and economic footprint is so large that it is difficult to imagine how the world can achieve sustainability unless the United States also does."

For his efforts, Dernbach has received many commendations. The university named him a distinguished professor of law, and he won a 2010 award for distinguished service from the Pennsylvania Bar Association's Environmental and Energy Law Section. He also has been named to the National Academy of Sciences' Committee on Incorporating Sustainability in the U.S. Environmental Protection Agency, and he is frequently invited to speak at conferences and events worldwide. Calling sustainability a topic of the utmost importance to all human endeavors, he said, "Environmental law is not just about the Earth. The primary benefit of environmental law is protecting human health."

Environmental Law Center Features Distinguished Speaker Series

The Environmental Law Center was pleased to feature three speakers in AY 2011-12.

On November 8, 2011, Professor Amy Sinden from Temple Law spoke on, *Formality and Informality in Cost-Benefit Analysis: Lessons from Entergy v. Riverkeeper*. She discussed how the Supreme Court's decision in *Entergy v. Riverkeeper* and the EPA's subsequent reaction to it reveal important lessons for the larger academic debate over the use of cost-benefit analysis (CBA) in environmental decisionmaking. "In particular, the opinion and its aftermath highlight the distinctions between formal and informal CBA and the importance of distinguishing between the two," she said. Sinden is a Professor at Temple University Beasley School of Law and a member scholar of the Center for Progressive Reform.

On April 19, 2012, the Center hosted Professor Lisa Heinzerling, who spoke on "*Climate Change at EPA*"

In *Massachusetts v. EPA*, the Supreme Court held that the Environmental Protection Agency has the authority to regulate greenhouse gas emissions under the federal Clean Air Act. "Since that ruling, EPA has taken several important steps toward developing a regulatory program for greenhouse gases," Heinzerling said.

Heinzerling is Professor of Law at Georgetown University. From January 2009 to July 2009, Heinzerling served as Senior Climate Policy Counsel to the Administrator of the Environmental Protection Agency and then, from July 2009 to December 2010, she served as Associate Administrator of EPA's Office of Policy. In 2008, she served as a member of President Obama's EPA transition team. While at Georgetown, Professor Heinzerling has continued to litigate cases in environmental law. Most prominently, she served as lead author of the winning briefs in *Massachusetts v. EPA*, in which the Supreme Court held that the Clean Air Act gives EPA the authority to regulate greenhouse gases.

As part of our Earth Day Celebration, on April 24, 2012 the Center hosted a talk by Dean and Professor Patricia Salkin of Albany Law. Salkin spoke about "*Beyond Environmental Review: Integrating Health Impact Assessment into Local Land Use Decision Making.*"

Health impact assessments (HIAs) outside of the United States have long been used to hone in on the public health impacts of certain government decision making. "While health impacts have been considered to a lesser degree through environmental impact review in the United States, recent findings suggest that HIAs can be very helpful in analyzing proposed development and redevelopment projects," she said. Salkin's talk reviewed the history of the HIA movement internationally and then examined the differences between HIA and EIR to explore whether or not HIAs and EIRs should be combined in the land development process.

Salkin is Associate Dean and Director of the Government Law Center of Albany Law School where she is also the Raymond & Ella Smith Distinguished Professor of Law.



*Pictured: Lisa Heinzerling (top), Amy Sinden (right)
Patricia Salkin (bottom)*

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