

# Environmental Rights Institute

## Widener University Delaware Law School

### Spring 2017 Newsletter

Dear Friends: Welcome to the Spring 2017 newsletter of the Environmental Rights Institute at Delaware Law School! The Institute houses one of the longest-established environmental programs on the globe. Delaware Law was among the first law schools to offer Environmental Law, and its Environmental and Natural Resources Law Clinic is the 4<sup>th</sup> longest-running environmental clinic in the world. Our environmental law program has earned numerous awards, including from the Sierra Club, American Canoe Association, and the State of Delaware. The *National Jurist Magazine* recently recognized Delaware Law as having one of the nation's top environmental programs.

More than 1000 students have learned about environmental law in the classes and programs of the Institute, including more than 350 students who have interned in the Clinic, where we have represented dozens of environmental groups in hundreds of public interest environmental cases of national and regional significance. Collectively, institute faculty have published more than a dozen books, more than 100 law review articles and book chapters, and hundreds of other works of legal scholarship, as well as a dozen amicus briefs. The Institute has offered a half-dozen environmental symposiums, sponsored two dozen distinguished environmental law speakers and in the last 3 years alone hosted 20 visiting environmental scholars from the United States and around the world. Institute faculty are recognized leaders in emerging areas of environmental law, including environmental constitutionalism, environmental dignity rights, sustainability, and the human rights implications of climate change.

The pages that follow share some of the Institute's recent activities in teaching, scholarship and service. We look forward to continuing to work together to advance environmental rights worldwide. With best regards,

Erin Daly, Ken Kristl & Jim May

Co-Directors – Environmental Rights Institute, Widener University Delaware Law School

# Innovative Instruction

## *Classroom Teaching*

Delaware Law has been offering courses in environmental law since 1981, including Environmental Law, Natural Resources Law and International Environmental Law. To this list it recently added practicums, which advance high impact practices in pedagogy to make a difference for partners addressing real world challenges.

Students in the DIGNITY RIGHTS PRACTICUM work with partners around the world to advance the right to dignity in environmental human rights contexts. In Spring 2017, students made a **solicited submission to the United Nations High Commission for Human Rights on the effects of climate change on the dignity rights of children**; other teams of students are helping local grassroots organizations in Chester and Wilmington advance their claims to environmental and educational justice, operationalizing state recognition of the Lenape Tribe of Delaware, and working on the development of a dignity-based legal culture with partners in Bhutan. Jim May and Erin Daly have also taught a HUMAN RIGHTS PRACTICUM in which students helped advocates for victims of cholera in Haiti in their efforts to seek justice from the United Nations.

## *Clinical Teaching*

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The Environmental and Natural Resources Law Clinic and Professor Ken Kristl are leading the Pennsylvania effort in the national Atmospheric Trust Litigation in which youth seek to have government account for intergenerational equity in decisions contributing to climate change. The national strategy is coordinated by Oregon-based Our Children's Trust.

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**The Environmental and Natural Resources Law Clinic** helps prepare students for practice by protecting citizen environmental rights in a variety of different fora. Representing the Potomac Riverkeeper, the Clinic recently prosecuted and then negotiated a **settlement of a Clean Water Act enforcement action** in West Virginia federal court against a

public sewer service district's operation of a wastewater treatment plant. Clinic students identified violations, prepared the Notice of Intent to Sue letter, drafted, filed the complaint, and engaged in extensive pre-trial discovery. The settlement includes the appointment of an independent monitor and the payment of a substantial penalty and attorneys' fees.

In a groundbreaking national strategy to combat climate change, the Clinic represents seven Pennsylvania youth seeking mandamus relief against the Governor and five state agencies for their failures to discharge their constitutional duties as trustees of the

state's natural resources under the state constitution's Environmental Rights Amendment. The Clinic briefed the issues for the Pennsylvania Supreme Court.

The Clinic is also battling the administrative treatment of standing in Delaware in two separate appeals of permit actions by Delaware's Department of Natural Resources and Environmental Control (DNREC). One appeal, on behalf of Food and Water Watch, involved appeal of DNREC's issuance of a General Permit for poultry Concentrated Animal Feeding Operations pending before Delaware's Environmental Appeals Board. The second, on behalf of Delaware Audubon and the League of Women Voters of Delaware, challenged DNREC's issuance of a permit under Delaware's Coastal Zone Act allowing the Delaware City Refinery to transship ethanol from its docks on the Delaware River pending before Delaware's Coastal Zone Industrial Control Board.

The Clinic continues to represent clients on policy issues as well. After its successful work generating *Assessing The Legal Toolbox for Sea Level Rise in Delaware* (2014), the Clinic is advising clients on potential legislative changes to Delaware's Coastal Zone Act and regulatory approaches to minimizing lead-paint risks from repainting water towers.

## Impactful Ideas

### *Scholarship*

Ken Kristl published *The Devil Is In The Details: Articulating Practical Principles For Implementing The Duties In Pennsylvania's Environmental Rights Amendment*, 28 Georgetown Env. L. Rev. 589 (2016), and *It Only Hurts When I Use It: The Payne test and Pennsylvania's Environmental Rights Amendment*, 46 ELR 10594 (2016).

Erin Daly will publish a new article on environmental scholarship in a special edition of the Revue Juridique de l'Environnement., *La doctrine environnementaliste aux Etats-unis d'amérique – les suites de la « public trust doctrine » développée par le professeur Joseph L. Sax*, RJ • E n° spécial 2016

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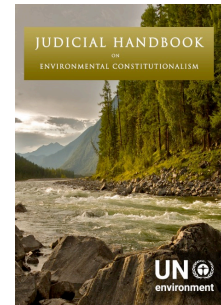
*A proposal for the Third International Covenant of Human Rights: The Right to a Healthy Environment, translated into English by Professor Erin Daly, was submitted to the United Nations High Commission for Human Rights on February 15, 2017*

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Erin Daly and Jim May have collaborated on several publications:

- et al. editors. NEW FRONTIERS IN ENVIRONMENTAL CONSTITUTIONALISM (United Nations Environment forthcoming 2017)
- eds. IMPLEMENTING ENVIRONMENTAL CONSTITUTIONALISM (Cambridge forthcoming 2017)

- *Bridging Constitutional Dignity and Environmental Rights Jurisprudence*, 7 *Jrnl. Human Rights & Env't* 218 (2016)
- *Environmental Dignity Rights*, in *EFFECTIVENESS OF ENVIRONMENTAL LAW* (Intersentia, 2017)
- eds. *HUMAN RIGHTS AND THE ENVIRONMENT: INDIVISIBILITY, DIGNITY AND LEGALITY* (Edward Elgar)
- *JUDICIAL HANDBOOK ON ENVIRONMENTAL CONSTITUTIONALISM* (United Nations Environment 2017)
- May & Daly, eds *ENVIRONMENTAL CONSTITUTIONALISM: A RESEARCH COMPENDIUM* (Edward Elgar 2016)
- May & Daly, *GLOBAL ENVIRONMENTAL CONSTITUTIONALISM* (Cambridge Univ. Press 2015).
- May & Daly, *Comparative Environmental Constitutionalism*, 6 *Jindal Global L. Rev.* 9 (2015)
- May & Daly, *Robinson Township v. Pennsylvania, A Model for Environmental Constitutionalism*, 21 *Widener L. Rev.* 151 (2015)



Professor May has also published the following:

- May, co-editor. *STANDARDS OF ENVIRONMENTAL CONSTITUTIONALISM* (Cambridge forthcoming 2017).
- May & Dernbach, eds *SHALE GAS AND THE FUTURE OF ENERGY, LAW AND POLICY FOR SUSTAINABILITY* (Edward Elgar 2016)
- May, *Modern Administrative Law: Cases and Materials* (ChartaCourse, 2016)
- May, *Justice Scalia's Jurisprudential Legacy and Environmental Law*, 26 *American Bar Association (Trends)* 1 (2016)
- Dernbach, May & Kristl, *Robinson Township v. Commonwealth of Pennsylvania: Examination and Implications*, 67 *Rutgers U. L. Rev.* 1169 (2015)
- Dernbach & May, *Can Shale Gas Help Accelerate the Transition to Sustainability?*, 57 *Env't* 4 (2015)
- Erin Daly will serve as the Director of the Global Network for Human Rights and the Environment.

### *Professional Presentations*

Professor Erin Daly's recent environmental presentations include:

- Tulane Environmental Summit (rights of nature)
- Center for Constitutional Democracy at Indiana University (environmental dignity)
- IUCN Academy of Environmental Law in Oslo, Norway (environmental dignity)
- International Society of Public Law (ICON-S) in Berlin, Germany (rights of refugees)

- New Frontiers in Environmental Constitutionalism, at Northwest University, Pochesfstroon, South Africa in April 2016 (co-organized with Professor Jim May and Louis Kotze) (environmental dignity rights)
- “Le rôle du droit comparé dans la doctrine : l’exemple du droit de l’environnement américain,” at the Colloque annuel 2016 de la Société Française pour le droit de l’environnement (SFDE), in Limoges, France
- A series of international environmental law lectures at UNIFA in Haiti;
- Judicial workshops on environmental constitutionalism co-organized with Professor May, Professor Louis Kotze, and supported by UN Environment in Pretoria, South Africa (April 2016), Brasilia Brazil (May 2017).
- A set of conferences at the Université de la Fondation Aristide on the environmental and human rights implications of gold mining in Haiti: “Les Mines d’or en Haiti,” and the Semaine Scientifique (co-organized)

Jim May has chaired or co-chaired several conferences, including Widener’s first “Sustainability Showcase,” “New Frontiers in Environmental Constitutionalism” (South Africa 2016), and “A Judicial Workshop on Environmental Rights,” (South Africa 2016).

He gave talks on sustainability at the annual conferences of the World Summit on Sustainability (Cambridge, MA) and the American Association of Sustainability in Higher Education (Baltimore, MD), and in Haiti, and chaired a delegation to Haiti of the American College of Environmental Lawyers.

In 2015, May visited the Philippines at the behest of the U.S. Embassy to promote rule of law and experiential learning initiatives, and served on the planning committee for the American Bar Association’s Annual Fall Conference on Environmental Law (2015). His 2017 presentations include Pace Law School (environmental constitutionalism), Denver (water rights), and the Pennsylvania Bar Institute (federal development in Environmental Law). He will also present on dignity rights and dignity rights teaching in the Philippines and France.

Professor Ken Kristl was part of Panel on *Ethical Framework: Achieving Environmental and Intergenerational Justice Through Legal Action* at the Philadelphia Bar Association in November 2016.

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In 2016, Professor May was invited to speak with the Moroccan Human Rights Commission and attend the 21<sup>st</sup> Conference of the Parties on Climate Change as a delegate.

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## Significant Service

For the third year in a row, the Environmental Rights Institute has invited **Scholars in Residence in Global Environmental Constitutionalism** to work at the Law School for up to two weeks. Past Scholars include Jochen Sohnle (France), Maria Antonia Tigre (Brazil), Chris Jeffords (US), Josh Gellers (US), Ramin Pejan (US), Louis Kotze (South Africa), Marcelo Buzgalos Dantas (Brazil), Rob Fowler (Australia), Carl Bruch (US), Ana Maria

Aguirre (Colombia), Judge Merideth Wright (US), Judge Bashier Vally (South Africa), Jason Czarnecki (US), Victor Flatt (US). Michel Prieur (France) will be among those who join us in 2017-2018.

For the fifth year in a row, it has co-hosted (with Commonwealth Law School) the **Distinguished Environmental Law Speaker Series**. This year's speakers included Jason Czarnecki (Pace), Victor Flatt (North Carolina), Rena Steinzor (Maryland) and Jamison Colburn (Penn State).

Professor Jim May continues to serve as a board member of the Pennsylvania Environmental Resources Consortium and GreenWatch Delaware, and as an advisor regarding constitutional amendments to address environmental rights, including New York, Maryland and Delaware. He also serves as the Chief Sustainability Officer at Widener University.

Professor Erin Daly is the United States National Correspondent to the Centre International de Droit Comparé de l'Environnement, a French NGO with *Special ECOSOC Status NGO*. She continues to serve as the Vice President for Institutional Development of the Université de la Fondation Aristide in Haiti. She is also the Director of the Global Network for Human Rights and the Environment.

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