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Mark your calendars!



**Fall 2008 Conference
Environmental Law & Policy Program**

*An Environmental Agenda for the
Next Administration*
Thursday-Friday, September 25-26, 2008

Climate Change Panel

Moderator: Thomas P. Lyon
Director of the Erb Institute for
Global Sustainable Enterprise
University of Michigan

Alternative Energy Panel

Moderator: Gary S. Was
Director of the Michigan Memorial Phoenix
Energy Institute
University of Michigan

Lunch Address

Speaker: Lisa Heinzerling
Professor of Law, Georgetown University
Law Center

Sustainability Panel

Moderator: Richard J. Jackson, MD
Director of the Graham Environmental
Sustainability Institute
University of Michigan

For more information:

www.law.umich.edu/centersandprograms/ELPP

Michigan Law adds externships in Geneva, Switzerland

Day 4: *Today was a really exciting day! For one, I finished reviewing the biotechnology study I was looking at. But more importantly, I met with the Dispute Settlement Program Office to find out what I would be doing for the next three months. One word—WHOA! There are so many exciting and dynamic things to do. . . . I get to write for BRIDGES Weekly on current WTO disputes and the like; I get to help research information and dispute settlement activities for the past year to prepare a report for the organization's donors (I don't know why I find that very exciting, but I do); I get to dabble in WTO jurisprudence, and if I find anything interesting or noteworthy, I get to write an article about it; and they're even trusting me to help plan meetings. I love NGOs.*

— Geneva Program extern **Alicia Handy**

So went second-year law student Alicia Handy's fourth day as an extern at the International Center for Trade and Sustainable Development in Geneva, Switzerland. Handy, who plans to work on issues of law and energy after graduation, was one of eight Michigan Law students who spent the winter term in Geneva, working and learning at a variety of international agencies.

The program in Geneva began last January, for the first time offering a group of Michigan Law students the opportunity to gain credit and experience in what many observers feel is the most international city in the world. New it may be, but the program is a natural addition to the Law School's longstanding involvement in international legal education. (See "International Programs and Study Abroad Opportunities" at www.law.umich.edu/centersandprograms/cicl/Pages/programs.aspx.)

Launched and directed by international law specialist and Professor of Law Steven R. Ratner, with close involvement on the part of Assistant Dean for International Affairs Virginia Gordan and the enthusiastic support of Dean Evan Caminker, the new program is

unusual for its inclusion of an in-Geneva liaison who draws on her own international legal experience and knowledge of Geneva as well as the presence of Michigan Law alumni in Geneva to enrich and expand on the externs' experiences at their individual agencies.

"This experience has been absolutely fantastic," reported extern Ashwini Habbu, who worked at the International Service for Human Rights, a watchdog organization that monitors sessions of United Nations treaty- and charter-based bodies and trains human rights defenders.

"So far during my externship," Habbu told *Law Quadrangle Notes* in late March, "I have produced reports on Morocco's presentation to the Committee to Eliminate All Forms of Discrimination Against Women (CEDAW), several sessions of the newly minted Human Rights Council, and will produce a number of others by the end, including the U.S. review by the Committee to End Racial Discrimination (CERD)."

Two high points of the externship already stood out to her then: Attending the United States' presentation to CEDAW and attending the month-long session of the Human Rights Council.

"I remember sitting in Professor Ratner's class, talking about what makes the Council different from the Commission," Habbu explained of her attendance at the Council session. "Admittedly, I wasn't around to see the Commission at work, but watching the Council live has no substitute. There are so many little things that you simply can't get sitting in a classroom."

By incorporating an on-site coordinator, the new program also provides externs a variety of experience to expand on and enrich their work at their individual agencies. The on-site coordinator is Claire Mahon, a New Zealand-born Australian international lawyer and lecturer who has acquainted externs with events in the area, arranged visits to agencies and meetings with leaders, and helped facilitate a variety of other activities.

"I facilitated a series of visits to international organizations and NGOs, so that the externs could speak with high level legal and policy advisors about the work that they do and the legal issues they deal with," Mahon explained in an e-mail in late March. "So far, our visits have included hearing from University of Michigan alumni in places like the United Nations High Commissioner for Refugees, the U.S. Mission to the United Nations, the World Health Organization, and others, from the International Committee of the Red Cross to the World Trade Organization.

From left: Jennifer Wyeth, liaison Claire Mahon, Alicia Handy, Assistant Dean Gordan, Craig Ortner, Ashwini Habbu, Lindsay Denault, and Sunny Choi. Not shown are externs David Brown and Simone Colgan Dunlap.

Externs have appreciated this extra component. "Claire Mahon has been amazing at setting up meetings for us with heavy hitters from around Geneva," Habbu reported. "As time goes on," she added, "I think our questions to these professionals become more informed because we ourselves have had the opportunity to live in their world."

"We decided to set up the program to give students an opportunity simply not available in the United States, with top-flight international and non-governmental organizations," said Professor Ratner.

Like the externs themselves, the Geneva Externship Program landed running, Ratner reported after visiting Geneva in February. "Students have been busy and learning a great deal," he explained. "Such hands-on, experiential learning is an invaluable complement to their classroom education. The multinational richness of Geneva is unique, and we're elated to be able to place student externs into it."

The new program is a "tremendously exciting" addition to Michigan Law's lineup of international opportunities, said Assistant Dean Gordan. "It offers an extraordinary opportunity for our students to gain exposure to the work of leading international agencies and NGOs and to engage with some of the most pressing problems in the international arena."



Virginia Gordon, Claire Mahon, and Steven R. Ratner.

More opportunities next year

The Geneva externships program will expand to 16 placement options next year. This inaugural year, law students (listed in parentheses) worked in externships at these agencies: International Center for Trade and Sustainable Development (Alicia Handy); International Commission of Jurists (David Brown); International Labor Organization, Office of the Legal Advisor (Lindsay Denault); International Organization for Migration: Department of International Migration Law and Legal Affairs (Jennifer Wyeth); International Service for Human Rights (Ashwini Habbu); International Telecommunication Union (Craig Ortner); U.S. Diplomatic Mission to the United Nations in Geneva (Simone Dunlap); and the World Health Organization: Office of the Legal Counsel (Sunny Choi).

Next year, student externs also will be able to serve at these agencies: Center for International Environmental Law; The Global Fund to Fight AIDS, Tuberculosis and Malaria: The Legal Unit; International Organization for Migration: Department of Migration Policy, Research, and Communication; Office of the UN High Commissioner for Human Rights: Human Rights Council Secretariat; TRIAL; United Nations Development Program: Bureau for Crisis Prevention and Recovery; the UN High Commission for Refugees; and the World Intellectual Property Organization.

Alicia Handy, Jennifer Wyeth, and Ashwini Habbu.



Shedding new light

Michigan Law's Reading Room went dark in February as the first step in a Law School-wide project to restore, refurbish, and improve the Law School's 1930s-era lighting and electrical infrastructure. This first phase also includes the lower level of the Legal Research building and is expected to be completed this summer. The second stage will include Hutchins Hall and the 9th floor of Legal Research. The entire project is scheduled for completion in 2009, when the Law School celebrates its 150th anniversary.

The project is funded through a \$3 million gift from University of Michigan graduate Charles T. Munger, vice chairman of Berkshire Hathaway Inc. and a founder of the Los Angeles law firm of Munger, Tolles & Olson.

Work in the Reading Room also includes cleaning and restoration of the ceiling, decorative work, and other features.

For more photos, visit www.law.umich.edu and click on Reading Room Renovations.



Happy Birthday SFF!

Student Funded Fellowships (SFF) celebrated its 30th birthday this year—with the same energy, enthusiasm, and generosity on the part of law students and faculty that have fueled its previous 29—plus a record-breaking total of more than \$70,000 taken in to aid students in public service work this summer.

This year's auction raised more than \$50,000, a record, and another \$20,000 came from other SFF initiatives, the LSTAR and Donate A Day's Pay programs, law firms, and other supporters. LSTAR is a hotel voucher program in which SFF receives \$165 every time a Michigan Law student stays with a friend rather than in a hotel and \$35 for each time a student forgoes a cab ride to the airport when on a callback with a participating firm; the Donate A Day's Pay program asks law students to donate one day's summer firm pay.

More than 200 items, donated by faculty, students, law firms, and other supporters, were available at this year's vocal bidding and silent

auctions. Some of the choices: four VIP tickets to a taping of *The Daily Show* with Jon Stewart at its New York studio or lunch with director/screenwriter/producer Lawrence Kasdan, to skydiving with Professor Mathias Reimann, LL.M. '83, or (an annual bid winner) a copy of Professor Brian Simpson's book *Cannibalism and the Common Law* autographed with the author's blood. (Simpson, a longtime supporter of SFF, is pictured in the drawing on the cover of this year's auction program.)



SFF efforts aim for endowment—After their successful auction, SFF volunteers took to the phones to seek donations to establish an endowment to support the Student Funded Fellowships program. The effort is being matched one-for-two by U-M President Mary Sue Coleman's Donor Challenge Fund to support scholarship assistance efforts. Telephone workers participating in the first round of calls, which took place over a week-long period in early April, reported good success and plan to continue the effort, which, as you can see from these photos, was both earnest and enjoyable as students reached out to Michigan Law graduates for assistance.



Michigan Law hosts Federalist Society's national student conference

Federalist Society members at Michigan Law knew their home base would make a terrific location for the society's annual national student symposium. So they assembled their proposal to their parent organization and applied.

And applied.

And applied.

The third time was a charm, according to Eugene B. Meyer, president of the Federalist Society for Law and Public Policy Studies, as the organization is formally known. The Michigan Law students' commitment was evident, Meyer said, and after holding the previous two years' conferences at Columbia and Northwestern there was no doubt that it was Michigan Law's turn.

So last March some 500 Federalist Society members from law schools across the country gathered at Michigan Law for a day-and-a-half long conference that focused on a variety of issues around the central theme "The People and the Courts."

Planners wanted to focus the symposium on a subject within the "law and society" framework, explained symposium director and Michigan Law student Michael J. Ruttinger. The focus sharpened in 2006, when Michigan voters overwhelmingly approved the Michigan Civil Rights Initiative (MCRI) to amend the state constitution to prohibit preferential treatment on the basis of race or sex in public contracting, employment, or education. Within Michigan, that vote both illustrated direct democracy in action as well as exercised a principle of federalism by effectively overturning the 2003 U.S. Supreme Court decision in *Grutter v. Bollinger* that upheld the Law School's right to use race as one of many factors in its admissions decisions to ensure diversity for educational purposes.

"*Grutter* spawned significant controversy both in Michigan and throughout the country, and the success of the MCRI created a controversial blueprint for 'overturning' unpopular judicial decisions," Ruttinger and his symposium committee explained to participants in their registration materials.

"What role 'We the People' retain in our constitutional order is not just a question for academics; the increasing number of popular referenda and ballot initiatives addressed to voters on election day has made it a debate with real consequences. The breadth of that debate is not limited to affirmative action, though that remains a lively issue. 'The People' may also play a role in circumscribing a state's powers of eminent domain and deciding just who has the right to marry," organizers explained.



New York University School of Law Professor Roderick Hills Jr.



Opening panel moderator/Michigan Supreme Court Justice Maura D. Corrigan.

"Perhaps more importantly, the way ordinary people live their lives might help give meaning to our law. Because our legal system often takes its cue from tradition, it is critical to decide just when a judge should defer to customary practice—when interpreting the Constitution, and when fashioning the rules of private law that govern our most ordinary interactions."

It was a lively weekend, with the prize for fervent exchange going to the Saturday morning session "*Kelo*, *Grutter*, and Popular Responses to Unpopular Decisions." The presence on the panel of Ward Connerly, the former California regent who led California's and Michigan's and other states' efforts to outlaw racial preferences, drew audience members who used the question-answer part of the session to voice their opposition to such moves.

The California initiative—and others—are not anti-affirmative action, they merely opposed race- and gender-based affirmative action, Connerly answered critical questioners. "I support socio-economic affirmative action," he said. "I support not over-emphasizing standardized test scores."

Since Proposition 209's passage in California a decade ago, the University of California system overall has enrolled more and graduated more African Americans than previously, said Connerly, founder of the Civil Rights Institute. The UC system also has developed contracts with the state's 150 most underperforming schools to increase minority enrollment, he reported. "We're doing more affirmative action than ever before, [just] in a different form," he noted.

"I do not favor unbridled use of the initiative process, but I also recognize that there are times that representative government fails us woefully," Connerly said in his prepared remarks. The Civil Rights Act of 1964 said we all should be treated as equal without regard to race, color or national origin, he explained. "Color-blindedness, a color-blind government, is part of the DNA of the American people," and "the majority of the American people embrace that view."

But was that majority to do nothing when the U.S. Supreme Court in 2003 ruled that the use of race is constitutional in pursuit of diversity in education? he asked. "That was a direct contradiction of the Civil Rights Act of 1964. What are the people to do, say okay, that's okay? Or will they use the tools they can?"



American Civil Rights Institute founder Ward Connerly.



Questioning the presentors.

The voter initiative is that tool because lawmakers cannot or will not take up the issue, according to Connerly.

For panelist and Michigan Law Professor Sherman Clark, however, the “messier” but more thorough legislative process surpasses the voter initiative for handling such issues. “We should not claim that a referendum result represents the will of the people,” Clark explained. “We are more likely to have betrayed the will of the people when we have decided a controversial, high-profile issue through direct democracy. I think they have spoken more clearly through the legislative process. The legislative process measures not just preferences, but priorities on issues. We have a representative system that gives people as much as possible of what they want.”

Sometimes citizens get implicit agreements from legislatures to leave some issues alone that those voters favor if they will not oppose other issues the lawmakers want to approve. But voter initiatives, Clark said, “betray what they got through their representatives” and can let the majority betray the implicit agreement that the give and take of the legislative process created to give minorities what they gave up some other desires to get.

Panelist Marci Hamilton, of Yeshiva University’s Benjamin N. Cardozo School of Law, also expressed skepticism about voter initiatives because they can be “captured by moneyed interests” and “rank majoritarianism (sheer weight of numbers) does not necessarily make for good public policy.”

“There is something intrinsically good about debate and discussion” in the formation of public policy, Hamilton said. When lawmakers are doing their jobs—“because often they are not,” she cautioned—legislatures can move quickly to correct bad law and policy, she indicated.

For example, after the U.S. Supreme Court’s decision in *Kelo v. City of New London* (2005) that eminent domain could be used to take private property for private gain, many states enacted laws forbidding the practice within their jurisdictions. The *Kelo* decision did not make new law or practices, Hamilton noted. Instead, it generated attention and created a popular reaction that transformed itself into legislative action.

Other symposium panels produced similarly thought-provoking sessions. The conference was “very exciting” and the fruition of nearly three years’ work, explained Michigan Law Federalist Society chapter president Craig Chosiad during a break in the proceedings. It’s valuable to bring people together and have discussions like these, echoed Federalist Society President Mayer.



State Supreme Court majority votes for ‘The People and the Courts’

It’s unusual for a majority of the Michigan Supreme Court justices to spend their weekend at the same function, but the Federalist Society’s recent national student symposium was the magnet that proved the exception.

Four of the court’s seven justices—Chief Justice Clifford W. Taylor and Justices Maura D. Corrigan, Stephen J. Markman, and Robert P. Young Jr.—were speakers or panel discussion moderators during the society’s 27th annual student symposium, held at Michigan Law in March. The symposium topic was “The People and the Courts.”

Chief Justice Clifford W. Taylor, originally scheduled as moderator for a panel discussion of “The Merits of Electing Our Judges,” graciously stepped in as a panelist on short notice when a family emergency prevented Judge Harold See of the Alabama Supreme Court from attending. Countering fellow panelist and retired Texas Supreme Court Judge Tom Phillips’ support for the so-called merit system of appointing judges from a list compiled by lawyers, Taylor told participants that instead he favors the open election of judges. Political influences always dog judicial choices, hovering over the process like an elephant in the room, explained Taylor, who this fall will run for his second full eight-year term. “We cannot escape that selection is political,” said Taylor. “I am, with certain misgivings, in favor of the popular election of judges. . . . At least with popular election we take notice of the elephant in the room.” “Merit selection drives the politics underground,” Taylor continued. “It’s better to have the politics in the open arena, openly discussed and debated.”

Phillips said he and Taylor agree that the best place for judicial election is at the state supreme court level. But in lower state courts and especially in urban areas, he countered, voters know little or nothing about judicial candidates. The merit system means that “we don’t have to have the elephant in the room in trial court judicial choices.”

Markman was one of three speakers for the panel “An Originalist Judge and the Media,” while Corrigan served as moderator for the symposium’s opening panel on “Judicial Interference with Community Values.” Young moderated the Saturday morning discussion “*Kelo*, *Gutter*, and Popular Responses to Unpopular Decisions.”



Michigan Supreme Court Justices Taylor, Young, Corrigan, and Markman.