Dear alumni and friends:

The Environmental Law Program had a wonderful 2014 in large part due to your participation and the contributions you made throughout the year.

Our students continue to go out into the field to gain valuable experience while contributing to the development of environmental policy and enforcement of environmental laws at the local, state and national level.

Our faculty remains on the cutting edge of environmental issues, testifying in front of legislatures both here and abroad.

Our curriculum continues to evolve to meet changing environmental demands with the help of our experienced adjunct faculty.

Alumni and externship supervisors continue to mentor our students in ever-growing numbers.

Financial contributions from our alumni and friends continue to fund the Program and expand opportunities for students.

We are grateful for all of the contributions so many of you have made to a successful 2014 and we look forward to making 2015 even better. I look forward to seeing you.

Robert V. Percival
Robert F. Stanton Professor of Law and Director, Environmental Law Program
# TABLE OF CONTENTS

**Taking Charge**
Attorney General Brian Frosh delivers Ward Kershaw Keynote. .................................................. 4

**Commitment to the Future**
Joel D. ’58 and Ellen Fedder pledge $1M to Program. ................................................................. 5

**Faculty Honors**
Professors Percival and Pappas recognized for scholarship and work. ....................................... 6

**The Last Frontier**
3L Bethany Henneman discusses her summer in Anchorage, Alaska. ............................................ 7

**Colloquium in Tarragona**
Six students travel to Spain to present papers at the IUCN Annual Colloquium. ........................ 8

**Bridging the Gaps**
Environmental Law Scholars from the University System of Maryland create interdisciplinary initiative. ................................................................. 9

**Witness to a Chemical Spill**
Students visit West Virginia and find themselves on the front line of an environmental disaster. ................................................................. 10

**High Stakes Lawyering**
A student externship experience with global consequences. ........................................................... 12

**Making an Impact**
Professor Percival presents global testimony. ................................................................................ 14

**40,000 Bees and an Intern**
3L Sandia Martin interns with the USDA, and makes friends with some pollinators. .................. 16

**Advocating for a Neighborhood**
Environmental Law Clinic works to preserve way of life in Morrell Park. ...................................... 17

**Program News** ....................................................................................................................... 18

**Welcome New Alumni**........................................................................................................ 19

**Three Cities, Three Law Schools, Nine Days**
2014 Spring Break Trip to China .................................................................................................. 20

**A Very Special Evening**
2014 Fedder Lecture and Winetasting. ......................................................................................... 22
That very morning, veteran Baltimore Sun environmental reporter Tim Wheeler had published a lengthy story about Frosh’s dilemma: finding himself partnered with a conservative Republican whose views on many issues were the polar opposite of his own. Frosh’s potential as a candidate for governor in 2018, Wheeler continued, only serves to build the pressure on a fellow known in Annapolis for his passionate views on the issues and his congenial, low-key personality. Opening his remarks, Frosh referenced the Wheeler piece and quipped, “There was an article in the Sun. Does anyone have any questions?”

Turning more serious, Frosh began his talk by recounting recent and quite dangerous environmental events around the country, including the spill of a coal mining chemical into the Charleston, West Virginia drinking water supply; the explosion of the fertilizer plant in West, Texas that killed 15 people and obliterated a middle school; the spill of heavily polluted coal ash from a Duke Energy impoundment into North Carolina’s Dan River.

“Each one of those incidents is the result of a government failure—to regulate, to enforce, to pass new laws, to maintain adequate oversight,” he said. He added that all of these events signify what’s at stake in Maryland, not just because the state is heavily populated but because it is the home of the Chesapeake Bay, reminding his audience that when John Smith first arrived in the Bay, he wrote about catching fish in a frying pan.

“That’s where we started in Maryland,” he said, “but we have not been able to maintain what H.L. Mencken called the ‘great nutrient factory.’”

Calling efforts made over the last three decades to restore the Bay “heroic,” Frosh mentioned clean air, stormwater management and other laws passed to help advance these efforts. But, he said, these efforts seem stalled, largely because of population growth, posing a “huge challenge.” Although the attorney general does not make environmental policy, Frosh said he hoped to use the office as a “bully pulpit” to encourage the governor and the General Assembly to keep the laws strong and the efforts to restore the Bay moving forward.

What the attorney general can do, and indeed must do, said Frosh, is to “enforce the laws,” because the “simple law of economics” show that “if polluters know they can pollute without paying a price, they will do it.” He acknowledged that the attorney general’s office has suffered huge budget cuts since 2008 and that those realities undermine enforcement.

“Years go by between inspections,” he said. “If permit holders are not in compliance, it’s years before we find out about it.”

He explained that his office must be careful about setting priorities, and that the penalties his attorneys collect must serve as deterrence to further bad behavior. “We must be going after folks who are committing the most serious, most dangerous practices.”

“I don’t expect we will ever be able to catch fish with frying pans in the Chesapeake Bay,” he said. “But I can promise you that as attorney general, I will do everything I possibly can to help leverage the resources we have to have the maximum impact on protecting the Chesapeake Bay, enforcing the environmental law, and I will fight like hell to protect the health and safety of Marylanders.”
Joel D. Fedder ’58 and his wife, Ellen, have recently pledged one million dollars to support the Environmental Law Program. Joel Fedder is of counsel for Fedder & Garten P.A., in Baltimore.

This generous gift from the Fedders, long-time friends of the program, will endow two initiatives they have previously funded: the Fedder Lecture and Dinner, which brings an outside scholar to the school to discuss prominent environmental issues; and the Fedder Scholars Program, which provides grants for students to participate in the annual IUCN Academy of Environmental Law Colloquium.

In 2013, five students presented papers during the colloquium at the University of Waikota in New Zealand. In 2014, six students presented papers to this international gathering of environmental law scholars at the Universidad Rovira i Virgili in Tarragona, Spain.

The Fedder’s generosity goes well beyond funding these initiatives.

The additional funding generated by the Fedder endowment will support the Environmental Law Clinic. Currently, the Clinic’s four staff attorneys, who are essential to the Clinic’s successful operation, are funded through annual grants. While the continuation of these grants is imperative, and the program’s commitment to these grantors remains steadfast, endowed funding from the Fedders and others will become increasingly necessary as the Environmental Law Clinic aspires to recruit senior attorneys to join the team and continue the important work of protecting Maryland’s environment.

“We appreciate Joel and Ellen’s forward-thinking first step toward permanent, endowed funding for the Environmental Law Clinic,” notes Robert Percival, professor and director of the Environmental Law Program. “This endowment is truly a transformative gift for the program.”

Fedder cites many reasons for his generosity toward the program. First, is his passion for environmentalism and, specifically, his desire for society to address climate change. For years, Fedder has studied the science of climate change and lectured on the subject to a variety of audiences.

Understanding the long-term importance of addressing climate change, Fedder has sought both to inspire and to support environmental law students whose career goal is to be “a friend and advocate for those who cannot speak for themselves, namely the flora and fauna that populate our beautiful Planet Earth.” Another reason Fedder cites is the “joy” of developing young attorneys and the satisfaction of making a difference in the career paths of Maryland Carey Law students.

Fedder also wants to inspire others to give to the law school. As a member of the law school’s Board of Visitors, he has worked hard to increase the financial support available to Maryland Carey Law and has asked other philanthropic supporters to follow in his footsteps—to find some legal issue they are passionate about and support students who share that same passion.

Over-arching all of these reasons is a simple maxim: “success is best when shared.”

“Joel’s work as an advocate for the environment and our law school is inspiring. His support of the Environmental Law Program is an honor,” said Percival.

“The Environmental Law Program is deeply grateful to Joel and Ellen Fedder for their gift, which will inspire and support future generations of law students as well as the Clinic’s work to protect the environment. We hope that Joel’s words and deeds will also inspire our alumni and friends to deepen their ties with the Environmental Law Program.”
Professor Robert Percival received the Senior Distinguished Environmental Law Education Award in recognition of his “outstanding teaching and contributions to the field of environmental law.” At the closing dinner of the 12th Annual Colloquium of the IUCN Academy of Environmental Law on July 4, the Academy cited his establishment of Maryland’s award-winning Environmental Law Clinic and Environmental Law Program, authoring the most-widely used environmental law casebook, pioneering students’ use of film in the classroom, creating opportunities for students to present their research at international conferences, and developing digital teaching materials.

“Bob’s contribution to the environmental law community is truly global in scale, and we are extremely proud that he is a part of the Maryland Carey Law community,” said Dean Donald Tobin. “He is a fantastic teacher and scholar. After hundreds of guest lectures, paper presentations, and workshops in 26 countries on six continents, this recognition from the IUCN Academy is richly deserved.”

One of the founding members of the IUCN Academy and an internationally recognized expert on global environmental law, Percival is a twice-named Fulbright Scholar and has served on the Board of Directors of the Environmental Law Institute. He is an elected member of the American Law Institute, the American College of Environmental Lawyers, and the National Committee on U.S./China Relations.

Professor Michael Pappas was named the 2014 Pace Environmental Law Distinguished Junior Scholar, an honor presented annually to a junior environmental law professor who exhibits scholarly excellence and promise. Pappas was recognized for articles published in the past year in the Florida State Law Review and the Arizona Law Review as well as for his work advancing interdisciplinary teaching and research collaborations throughout the University System of Maryland and his election as 2014 Outstanding Faculty Member of the Year by members of Maryland Carey Law’s Student Bar Association.

The Pace award comes on the heels of the Top Professional Scholarship Award, which Professor Pappas won in November 2013 from the American Agricultural Law Association for “Escaping the Sporhase Maze: Protecting State Waters Within the Commerce Clause,” a paper he co-authored that was published in the Louisiana Law Review.

Prior to joining the law school, Professor Pappas was a Forrester Fellow and Instructor in Legal Writing at Tulane University Law School, where he also taught international and domestic fisheries law. In addition, he taught natural resources law as an adjunct professor at Loyola University New Orleans College of Law and served as an instructor for the U.S. Army Corps of Engineers PROSPECT Training Program, where he taught environmental law and regulation.
Bethany Henneman 3L spent the summer of 2014 working for the U.S. Department of the Interior in the Office of the Solicitor in Anchorage, Alaska, honing her interest in natural resources law and federal land management.

As a law student with a focus on natural resource law and specifically an interest in federal land management, Anchorage was the perfect place to spend the summer working with, and learning from, the knowledgeable attorneys at the Department of the Interior.

The Solicitor’s Office performs the legal work for the United States Department of the Interior (DOI). Headquartered in Washington DC, DOI attorneys are spread out across the nation in Regional and Field Offices. The Anchorage Regional Office is charged with advising all DOI agencies in Alaska. These agencies include, among others, the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Ocean Energy Management, the National Park Service, and the U.S. Fish and Wildlife Service.

In the Anchorage Regional Office, most of the attorneys are lead attorneys for a particular agency while others have special areas of expertise such as employment law.

The internship provided me the opportunity to work as a legal advisor, learn more about the federal government and the operation of federal agencies, and gain practical experience in the application of many areas of law.

The professionals in the Solicitor’s Office were very enthusiastic about their careers and invested in my experience as an intern. They were friendly, welcoming, and willing to go above and beyond to provide me with a hands-on learning environment filled with interesting and substantive work.

My work as an intern primarily centered on conducting legal research and writing. One writing project was a Solicitor’s Opinion that I wrote in conjunction with Maryland Carey Law alumnus Mike Gieryic ’97—yes, we even have a presence in Alaska. The project was a wonderful learning experience which spanned the length of my internship.

In addition to research and writing, I attended meetings with agency staff, participated in teleconferences with DOI attorneys nationwide, went to federal court for arraignments, commented on Environmental Impact Statements and reviewed a pending lease. Furthermore, I had a chance to delve into Alaska-specific statutes, such as the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

All together, the internship increased my knowledge of the diverse legal work in the Solicitor’s Office and affirmed my interest in pursuing a career with the office upon graduation.

For students seeking meaningful, well-rounded summer employment opportunities, the Department of the Interior has a diverse and wide ranging mission, and the work of the Solicitor’s Office affects the lives of millions of people. My experience there was invaluable for my career, as well as fun and socially rewarding. I had the opportunity to travel to Alaska, visit incredible National Parks and other public lands, meet new people, experience life in a city with a lively bear and moose population, and expand my professional network. I highly recommend the summer internship program in the Solicitor’s Office to Maryland Carey Law students.

I am thankful for the Maryland Environmental Law Society’s BARBRI summer grant which provided funding for my summer internship and glad BARBRI provides opportunities to students who are pursuing unpaid summer positions in the environmental law field.
Six students from the Environmental Law Program elected to spend a portion of their summer vacation—and all of their Independence Day holiday—at the 12th Annual Colloquium of the IUCN Academy of Environmental Law in Tarragona, Spain.

From June 30 to July 5, 340 environmental law professors and students from 44 countries gathered to present on and listen to a wide variety of environmental topics.

During the conference, six environmental law students presented papers before audiences that included some of the top experts in the field, including some whom they had cited.

- Jennifer Cameron 2L presented “Hydroelectric Dams: Development at the Cost of Human and Environmental Rights”
- Andrea Olsen 3L presented “Redressing Environmental Injustice Through Litigation by Indigenous Communities: The Case of Ecuador”
- Haley Peterson 2L presented “Drilling Paradise: Oil Extraction in Protected Areas of Ecuador, Uganda, and the United States”
- Teal Hinga 2L presented “Developing an Effective Legal Regime to Prevent and Remediate Oil Spills”
- John Gustafson 2L presented “Legal Obstacles to Subnational Efforts to Combat Climate Change”
- Christine Wang 2L presented “Rx H2O: Global Response to the Emerging Program of Pharmaceuticals in Drinking Water”

Professor Robert Percival presented “Why Has the Transition from Fossil Fuel to Green Energy Been So Difficult and What Can Be Done to Facilitate It?” to a plenary session of the Colloquium, and Environmental Law Program Managing Director William Piermattei made a presentation on Dr. Michael Mann’s defamation suit against climate change deniers (Mann v. National Review, Inc. et al., 8263-12, DC Superior Court).

Percival was also honored by the Academy during the closing dinner on July 4, receiving the Senior Distinguished Environmental Law Education Award.

The Academy also held a book launch event for “Global Environmental Law at a Crossroads,” a new book co-edited by Percival, Piermattei, and Professor Jolene Lin from the University of Hong Kong, containing chapters from 22 contributors to the 2012 IUCN Academy Colloquium that was hosted by the University of Maryland Francis King Carey School of Law.

The students’ participation in the Colloquium was funded by the Joel D. and Ellen S. Fedder Environmental Law Fund and, under a new gift from Joel and Ellen Fedder, the six students will now be recognized as Fedder Scholars for the 2014-2015 academic year.
The Environmental Law Program, with the assistance of several professors throughout the University System of Maryland (USM), began a long-term project to create a durable interdisciplinary initiative by bringing together environmental scholars from the University’s 12 campuses and three environmental research centers.

Professors Rena Steinzor and Mike Pappas led the effort to organize the inaugural USM Environmental Summit, held at the law school on February 17, 2014, and designed to foster an enduring, collaborative, inter-disciplinary community of more than 300 environmental scholars.

The summit’s over-arching goal was to bridge the gaps between disciplines and campuses to develop research, teaching, and student-recruiting opportunities for environmental scholars. The one-day conference focused on enhancing interdisciplinary curricular opportunities, improving scholarship through building research and teaching relationships, addressing challenges to stated goals, and building administrative support to sustain this effort into the future.

The conference featured three-to-five minute “lightning” presentations from 20 participants about their current and future research; a course design workshop where groups of scholars created models for future interdisciplinary courses addressing climate change topics; and a concluding keynote address from USM Chancellor Brit Kirwan, who recognized the extraordinary opportunities presented by this initiative. Due to the event’s success, plans for the 2015 USM Environmental Summit are already underway.

The Steering Committee is now pursuing and enlisting University support for an “Interdisciplinary Environmental Boot Camp” to enhance interdisciplinary environmental education by creating unique courses and learning environments. The boot camp project would bring students from across disciplines together in intensive, week-long “mini-mester” courses during summer or winter break periods. These courses will be team-taught by interdisciplinary faculty and will give students the opportunity to immerse themselves in multi-faceted environmental issues and engage in collaborative problem-solving.
WITNESS TO A CHEMICAL SPILL

Since 2009, every winter break the Maryland Environmental Law Society (MELS) sponsors students to go work at the law firm of Thompson Barney PLLC in Charleston, West Virginia on the banks of the Kanawha River. The 2014 trip proved to be just a little bit different.

Reported by first-year students Shannon Frede, Jennifer Cameron, John Gustafson, and Christine Wang.

The “Assignment Appalachia” project was started by Elizabeth Lyon ’11, and is staffed, run and funded completely by MELS students. It is intended to give students first-hand legal experience, both in the issues at stake for residents and how our environmental laws work—or sometimes don’t work—in practice.

We got in on Sunday night, January 5, and went to dinner with the two firm lawyers, Kevin Thompson and Dave Barney, a few legal aides, and friends of the firm. Everyone was very welcoming as the law firm staff and attorneys shared past experiences with Maryland Carey Law students.

The next couple of days we worked on discovery and got to sit in on some depositions in a toxic tort case. Students went with attorneys on a two-hour trip into the mountains to attend a community meeting addressing water well pollution from improperly reclaimed coal mines. The test results and types of chemicals found in the water were read aloud to the assembled community. They included varying levels of lead, arsenic, manganese and sulfates, among others. Some days the water is colorless and odorless, on other days it looks like thin, red mud.

On Thursday, January 9, we went to Mingo County, WV to meet with a retired West Virginia judge. After our meeting we learned about a community rehabilitation initiative and toured its facilities in Williamson, a coal town where residents face social, economic, and health issues. We toured some sustainable Williamson initiatives and did some gardening in the Williamson community garden.

On the way home we stopped by a desecrated cemetery on a hill side, the subject of another Thompson Barney suit against a coal company which, rather than taking the time and expense to properly remove its equipment from the steep mountain side, decided to drive through the cemetery.

When we returned to the office of Thompson Barney, we were ready for dinner, a hot shower, and bed. It was not to be. As we walked up the steps, a neighbor called out, “Don’t drink the water!” The same report was made to us inside, with greater detail—we were not to use the tap water for drinking, bathing, or cooking as there had been a chemical spill in the Kanawha River, the office’s waterfront, and water supply.

When we stepped back outside, we noticed it—an unmistakable licorice odor. Earlier that day, approximately 10,000 gallons of a chemical used to treat coal (4-methylcyclohexane menthol or “MCHM”) spilled into the Elk River, a tributary of the Kanawha River, fouling the water supply for approximately 300,000 West Virginia residents and garnering national attention. The state required all restaurants, bars, and coffee shops in Charleston and the surrounding counties to close. We weren’t even supposed to wash our hands or brush our teeth with the water.

Needing water and food for the evening, we drove to the local Kroger. While driving, Thompson began to develop a litigation strategy to address the harm to various area businesses and residents. Fired up about the real, time-sensitive work we were about to do, we raced through a chaotic Kroger scene: people were fighting over bottled water, but police officers did their best to distribute the scarce supplies equitably and to maintain the peace.

Upon returning to the law office, we were enlisted to research the events as they unfolded, estimate the potential effects, develop Notice of Intent to Sue letters, and ensure all required parties received the letter.
The Thompson Barney staff assigned us each an area of legal research which included the applicable state statute, the West Virginia Hazardous Waste Management Act, looking at similar complaints from the Deepwater Horizon disaster, and poring over census information.

We combined our drafts to include the research we each conducted and submitted them to Thompson, who made corrections and sent the letters out the following morning. Much of the research and work we performed also went into a federal class action complaint on behalf of residents and business owners.

We came away from the trip with only a fraction of understanding of what West Virginians were experiencing; we left Friday afternoon and it would be a week before water was restored for the people affected by the chemical spill.

“I think the best part about the whole trip was meeting the people in the communities,” said Christine Wang about the experience. “The people I met while on the trip, from my hosts to their clients to the Mingo County judge, are good hearted, gracious people. Meeting them reminds me of the importance of experience, the good a lawyer can do for a community, and the reasons why I want to be a lawyer.”

We all share Christine’s sentiments. Experiencing an environmental disaster, thinking about what this disaster means to hundreds of thousands of people and getting to work on a project to address the harm inflicted on an entire community is a vivid reminder of why we are in law school, the power of the law and the responsibilities lawyers have in our society.

---

UPDATE: West Virginia’s governor Ray Tomblin signed a law in April 2014 that strengthens standards for new aboveground storage tanks—the source of the Charlestown spill—and requires inspections of existing ones. The state completed inspections on January 1, finding that about 1,100 tanks did not meet the new requirements.

“That shows there are still tanks out there that may be leaking today,” says Angie Rosser, executive director of the advocacy group West Virginia Rivers Coalition. She notes that the 48,000-gallon tank that leaked into the Elk River was rusty and had been built in 1938. The new state law also requires public utilities to submit a plan for how they will respond to any chemical spills.

Before the Elk River spill, not a single U.S. state was inspecting aboveground storage tanks, says Rosser. But in recent months, Virginia, Indiana, and Georgia have passed measures to introduce inspections. A federal bill introduced last year by U.S. Senator Joe Manchin, a West Virginia Democrat, aimed to take such rules nationwide. That effort failed to gain traction, but his office says the lawmaker intends to try again in the new Congress.

The former president of the company that owned the tank, Freedom Industries, faces federal charges of fraud and lying under oath in connection with the incident. Freedom Industries went bankrupt shortly after the spill, and the tanks were dismantled. Since the spill, the local water utility has installed new treatment and chemical monitoring equipment.

—Brian Clark Howard, for National Geographic
As second-year law students, we were selected to do an externship working on an important, complex and high-profile human rights and environmental case, Chevron v. Donziger. The case is only the latest saga in litigation that has spanned over twenty years in U.S. and Ecuadorian courts.

Reported by second-year students Aminah Zaghab, Maritza Carmona, and Andrea Olsen

The Litigation

In 2011, an Ecuadorian Court found Chevron liable for $19.5 billion for environmental damage and chronic health problems resulting from oil operations in the Amazon that devastated indigenous communities.

Since Texaco, now owned by Chevron, shut down its operations in Ecuador long ago, there were no assets to liquidate and therefore the Ecuadorians had to go abroad and ask courts in the U.S., Brazil, Argentina, and Canada to recognize the judgment in order to have it satisfied. These enforcement efforts spawned the Chevron v. Donziger case along with dozens of other cases.

Ecuadorians first filed their claim against Texaco in 1993 in U.S. court. Texaco spent a decade fighting to remove the case from the U.S. to Ecuadorian courts. In an illustration of “be careful what you wish for,” Texaco removed the case to Ecuador, litigated the case in Ecuadorian courts, and lost. Big.

After the verdict was entered against them, Chevron filed a civil suit under the Racketeer Influenced and Corrupt Organization Act (RICO) in the Southern District of New York against the plaintiffs and their lawyers. Chevron claimed that Steven Donziger, our client, and others were involved in a conspiracy—that their efforts to enforce the judgment amounted to “extortion” and that the Ecuadorian judgment was procured through illicit means.

The stakes of this case are high. If Chevron succeeds, it would have a powerful weapon in its efforts to nullify the historic Ecuadorian judgment against it, and the Ecuadorians could collect nothing. The trial began in October and continued well into the last week of November.

The Work

Our focus was on the Second Circuit, but we also looked to other circuits to see if there were emerging trends that may prove persuasive for our arguments. We briefed attorneys on the legal merits of arguments and helped research and prepare draft responses to motions for summary judgment and motions in limine.

Several times a week we were on conference calls and as the trial date loomed closer, the volume of work increased.

Because the trial was high-profile, it also had a public relations and social media aspect to it. As younger members of the team, we were assigned to organize a modest social networking campaign, which included integrating multiple social media campaigns, managing incoming news sources, and posting news in a timely manner. Monitoring and posting on Twitter became a central part of our days, something none of us had utilized before the trial.

International law was also a huge research focal point. We found ourselves learning how to use the Ecuadorian version of LexisNexis and reading through Ecuadorian civil law. We were forced to become experts on Ecuadorian law overnight and held conference calls with plaintiff’s Quito law office if we needed clarifications. We also translated legal documents in very short periods of time and searched through Ecuadorian newspapers to support creative legal arguments.

The Trial

We were not prepared for the experience that awaited us. Initially, the expectation was that we would work remotely, maybe visit New York City (NYC) to see the trial and, time permitting, have the opportunity to garner advice from the various lawyers on the case.

But for two months, we spent long weekends living with 15 other lawyers and volunteers in our makeshift office near the courthouse, working 15 hour days and facing a revolving door of press, non-profits, volunteers, lawyers, and plaintiffs from Ecuador.

It was a whirlwind experience that furthered every aspect of our legal education. Our practical skills became honed
to the task at hand, from running to the courthouse to file court documents, to researching obscure international law, to staying up until 4 a.m. reviewing exhibits and drafting objections.

We learned to apply law and further our research skills, but we also learned to do this with a looming deadline of 9 a.m. the next morning.

One of the most important lessons we learned was that while brilliant legal arguments are important, they still need to satisfy local rules. In conjunction to adhering to the Rules of Civil Procedure, we had to abide by the local court civil procedure rules as well as Judge Kaplan’s rules.

These local rules played a major role in legal strategy. For example, one of Judge Kaplan’s trial rules is to forego direct examination. Instead, party witnesses submit written statements that need to be filed with the court the week prior to witness testimony. During trial, cross-examination begins at the start of witness testimony. This changed the dynamic of the parties’ preparation and presentation of their cases in many ways.

We learned that finding the exhibits and research is very challenging but only useful if you get it to the printers in time. We learned law may not always be enough to reach a just result. We learned that attention to the menial issues (copies of exhibits in the correct folder, an organized and readily available work product, and computer operations) all take on added importance during trial. We learned how to perform work under the stressful realities of trial.

There was a steep learning curve, but the ability to provide pragmatic support to such a significant case provided motivation to learn, to improve, and to prepare for our own future trials. While these lessons are ultimately useful, they are by no means the most valuable lessons learned.

The People
At all times we were in the presence of people who, after two decades, are still fighting for their rights.

This was a remarkable team composed of lawyers, law students, and volunteers dedicating themselves because they believed in what they were doing. School teaches us skills and we are provided practical purposes to apply those skills. The one part of legal practice that our classes cannot teach is passion.

We are taught that objectivity makes for better legal practice. Perhaps that is true, but this case taught us the value of caring, of emotion, of dedication, and of passion. It taught us that being a lawyer is not what the media portrays it to be. We witnessed people who had graduated from top law schools volunteering their time for this cause solely because they believed the people affected deserved justice.

Though we were outmanned and out-resourced, we were a part of a resourceful and dedicated team. A volunteer force accumulated from around the world: working professionals, recent grads, teachers, students, friends, and family.

We worked with student volunteers remotely from University of Maryland Francis King Carey School of Law, American University Washington College of Law, New York University Law School, and Harvard Law School.

We worked closely with other organizations such as Amazon Watch and Earth Rights International, who understood the importance of this case—some of whom had the honor of being called “co-conspirators” by Chevron for their efforts to fight for justice in the Ecuadorian Amazon.

Seeing people changing the world is powerful. Seeing volunteers motivated by something larger than any individual can change the world. There is nothing more profound for law students to see in their formative years.
Professor Robert Percival testifies - both domestically and internationally - on environmental law issues.

“The ESA has been recognized as one of the most profound moral accomplishments of the human race,” Robert Percival, Robert F. Stanton Professor of Law and Director of the Environmental Law Program at Maryland Carey Law, told the House Committee on Natural Resources during an April 8 hearing on several proposed amendments to the Endangered Species Act (ESA).

The amendments create new publication and disclosure requirements for agencies implementing the ESA and replace its current attorney fee-shifting provision with the more restrictive standard found in the Equal Access to Justice Act (EAJA). Fee-shifting provisions allow courts to assign one party in a lawsuit the responsibility of paying some or all of another party’s legal fees.

In objecting to the proposed publication and disclosure amendments, Percival argued that they unnecessarily impose “additional unfunded mandates” on already underfunded agencies which “will only make it more difficult for them” to enforce the ESA.

While proponents of the fee-shifting amendment, including Committee Chairman Doc Hastings (R-Wash.), claim it is needed to curb “exorbitant, taxpayer-funded fees,” Professor Percival said that the ESA already protects against such awards.

The Supreme Court has prevented “outrageous windfalls to plaintiffs who bring non-meritorious litigation,” he noted, by holding in *Ruckelshaus v. Sierra Club* that plaintiffs “have to win some aspect of the lawsuit before [they] can even be eligible to apply for the attorney’s fees.”

Moreover, in cases that have merit, “the Endangered Species Act requires that the court determine that the fee is reasonable. So in each of these cases where attorney’s fee awards have been made that some are touting as outrageous, you had a member of the independent, neutral, federal judiciary determining, based upon an assessment of the amount of work and skill that went into the litigation, that that fee award was reasonable,” Percival argued.

Replacing the attorney fee-shifting provision, he said, would “single out ESA suits” and “subject them to below-market fee caps.” This would “make it more difficult for citizens to hold government agencies accountable” and frustrate the intent of the original law.

The lawyers in citizen suits, he noted, “are sometimes the only lawyer [a] species has if it’s not adequately being dealt with or being ignored by the agency.”

The right to sue one’s government is “one of the aspects of American law that makes our system the envy of the world,” Percival observed. Chinese environmentalists, with whom he has worked closely, “would love to be able to” sue their government.

During the Environmental Law Program’s trip to China, Professor Percival testified March 19 as one of three invited foreign experts before representatives of the Standing Committee of China’s National People’s Congress (NPC) and Ministry of Environmental Protection (MEP).

Called the “Green Dialogue,” the event was an extraordinary effort to obtain expert input on proposed amendments to improve the enforcement of China’s basic Environmental Protection Law. Presiding over the proceedings were Yuan Jie, director of the Administrative Law Department of the Legislative Affairs Commission of the NPC’s Standing Committee, and Bie Tao, deputy director general of policies and regulations of China’s MEP.

Representatives from the Beijing offices of the Natural Resources Defense Council (NRDC) and the Environmental Defense Fund also observed the proceedings.

Tao cited estimates that half of all regulated facilities in China violate the law and that pollution in China would decline by 70% if polluters were in full compliance. Much of the discussion focused on a proposal to increase fines for environmental violations in China, based on the number of days the violation has occurred rather than the current “per violation” practice.

Percival asserted that the “daily fine” system, a fundamental principle of U.S. pollution control law, provides a powerful incentive for violators to stop and correct violations. This principle is written into the enforcement provisions of the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Oil Pollution Act and the Comprehensive Environmental Response, Compensation and Liability Act.
Percival also argued for China to adopt the Environmental Protection Agency’s (EPA) policy that environmental settlements always should recoup at least the economic benefit of the violation to ensure that companies do not profit from their violations.

Yuan characterized the discussions as “very productive,” noting that China is now at a “critical moment” in the development of its environmental laws.

In April 2014, the NPC Standing Committees adopted amendments incorporating many of Percival’s recommendations.

Specifics of the new amendments, as described by NRDC’s Beijing office, include:

**Daily penalties.** The new law has adopted daily penalties, providing that a competent administrative agency may order continuous penalties on a daily basis if it ordered a violator to correct its illegal behavior but the violator fails to do so. The new law also provides local governments with more discretion to increase the types of activities that may incur daily penalties.

**Environmental public interest litigation.** The law establishes the environmental public litigation provision and expands standing of environmental public interest groups registered with the governmental civil affairs departments. To tackle difficulties in having cases accepted by courts, the new law also clearly provides that courts must accept cases filed by qualified social organizations in accordance with the law. This breakthrough is a strong supplement to the public interest litigation clause in the Civil Procedure Law.

**Basic concept of the Environmental Protection Law (EPL).** The new EPL elevates the importance of environmental protection; “the work of environmental protection must be coordinated with economic construction and social development” has been changed to “the work of economic and social development must be coordinated with environmental protection.”

**Environmental information disclosure and public participation.** The new EPL dedicates an entire chapter to provisions for environmental information disclosure and public participation. It makes specific provisions for the disclosure of environmental supervision information, monitoring information, corporate environmental information, and also for citizens’ access to environmental information and participation and supervision of environmental protection. The new law has established a “blacklist” system, which records environmental law violation information in a new records system and produces a list of violators that will be released to the public.

**Permitting system.** The new law establishes a pollutant discharge permit system and clearly stipulates that enterprises, institutions, and other production operators under the pollution discharge permit system can only discharge pollutants within the stated range of emissions on their permits. Without obtaining emission permits, an operator is not allowed to emit any pollutants.

**Ecological red lines.** The new law provides that the nation set ecological bottom lines (“red lines” as referred to in the law) and implement strict protection for key ecological function zones and ecologically sensitive or vulnerable zones. Also, according to the law, governments above the provincial level are obliged to organize investigations and evaluations of environmental conditions and to establish early warning mechanisms to detect environmental problems. The new law requires that environmental protection departments must suspend approval of construction projects’ Environmental Impact Assessments in areas where pollutants exceed national total emission control targets for major pollutants or in areas that fail to accomplish national environmental quality objectives.
I had a goal: to work at the United States Department of Agriculture (USDA) and I had been trying to figure out how to do so for many months. The USDA had no formal legal intern program (now they do), so I looked on their website for people to email and express my interest. I eventually e-mailed about a dozen people the same inquiry letter which was forwarded to Linda Woo.

Reported by third-year student Sandia Martin

Ms. Woo was on special assignment to build the law intern program and had just started recruiting legal interns. I was her test case, and I ended up working in the Office of General Counsel (OGC).

OGC is an independent legal agency within the USDA providing legal advice and services to the Secretary of Agriculture and USDA officials and agencies throughout the Department. All legal services are centralized within OGC and the General Counsel reports directly to the Secretary. I worked in the General Law and Research Division.

My supervisor, Ms. Shawn McGruder, gave me a tour of the OGC and introduced me to many of the attorneys. Everyone was welcoming and excited to have legal help—you could see the wheels turning as they mulled over work they wanted to give me. My work assignments were varied and interesting.

I worked on a case that the USDA had just lost in court and wrote a recommendation to the Department of Justice addressing whether the USDA should appeal the decision. I wrote an article for the OGC newsletter summarizing a case that USDA had recently won in the appellate court, upholding a USDA penalty assessment for unpermitted animal sales. The appellate court actually took the unusual step of not only upholding the penalty, but finding that an even higher penalty was warranted.

I also researched the Freedom of Information Act (FOIA) and the Federal Torts Claims Act (FTCA) for several different cases. I was surprised how many tort cases the forestry service must defend. Even though I was assigned to the OCG, directly across the hall from my office was the Natural Resources Division. I made a point of introducing myself and developing some professional contacts which has since paid off—I just accepted a paid law clerk position with Natural Resources.

An added bonus during my time at USDA was a visit to the apiary (bee hive yard) on the roof of USDA’s headquarters. For the tour, I was required to don a head to toe beekeeper suit—the hives host over forty thousand bees. Through the tour and discussions with attorneys, I expressed my interest in bee colony collapse disorder and was then invited to sit in on an important meeting addressing this serious problem.

A non-profit organization set up the meeting to discuss the Animal and Plant Health Inspection Services (APHIS) and their $50 million budget to assess ongoing pollinator issues, including colony collapse disorder.

This meeting led to a chance connection with a Maryland Carey Law alumna at the USDA and, hopefully, a valuable contact for future USDA opportunities.

Overall, my summer at USDA was a wonderful experience and I look forward to continuing my work there with the Natural Resource Division. I had the opportunity to do some environmental law work in addition to the general litigation and policy issues. The attorneys were welcoming, helpful, and excited to have legal intern assistance. I would highly recommend the USDA internship experience. The people at the USDA bent over backwards to ensure I had a meaningful experience and would love to see more law interns contribute to their varied duties in the future.
In September 2012, the railroad giant CSX, in partnership with the Maryland Department of Transportation (MDOT), announced that it planned to build a new intermodal container transfer facility in Morrell Park. While CSX and the Department touted the expected economic benefits from the project, residents of Morrell Park became concerned about its potential impacts on their health, safety, and quality of life.

Morrell Park is a blue collar community in southwest Baltimore where many current residents can trace their families’ roots back generations, and the community leaders are deeply committed to protecting and improving their close-knit residential neighborhood. MDOT agreed to provide $30 million in taxpayer funds for the project that would connect Baltimore to CSX’s double stack rail network. The project had been in the works since 2009, but CSX and MDOT were met with stiff, and successful, resistance at the sites originally proposed in suburban Anne Arundel, Howard, and Prince George’s counties.

The proposed facility would operate 24 hours a day, seven days a week, and generate 300 to 350 truck trips per day. The community was alarmed by the potential air emissions, noise, traffic, and light pollution from the facility. Many of their concerns were confirmed by the findings of a Health Impact Assessment conducted by the National Center for Healthy Housing.

After CSX repeatedly failed to respond to the residents’ questions and concerns about the project, many of them felt ignored and powerless to protect their homes and community from its potentially devastating effects. The community turned to the Environmental Law Clinic and the Community Law Center for help. The lawyers and law students helped the community obtain information through the Maryland Public Information Act, and discovered that MDOT had not followed the requirements of the Maryland Environmental Policy Act. Armed with that information and CSX’s unresponsiveness, the residents convinced their elected officials in Annapolis to step in during the 2014 legislative session. The General Assembly passed a budget amendment that required MDOT and CSX to address the facility’s impacts on the community before moving forward.

By August 2014, it had become clear that CSX was unable to address the resident’s concerns to the satisfaction of MDOT, the City of Baltimore, and the community. As a result, Baltimore Mayor Stephanie Rawlings-Blake pulled her support for the project and MDOT terminated its agreement to provide funding. Ultimately, City and State decision-makers heard the community’s concerns and recognized that any economic benefit from the project did not trump the health and well-being of the Morrell Park residents. The tireless effort of Morrell Park community leaders and residents to successfully advocate for their community exemplifies environmental justice in action.
This past fall, Andrew Keir ’10 left his position as senior staff attorney at the Environmental Law Clinic to join the U.S. Department of Justice’s Environmental and Natural Resource Division, Environmental Enforcement Section in Washington D.C. Andrew is currently working on chemical and oil contamination cases (CERCLA, RCRA and Oil Pollution Act) with EPA Regions I and II and the U.S. Coast Guard. Andrew has already attended the Department of Justice’s National Training Center for a three-day intensive training on evidence and discovery (particularly electronic discovery).

While in the Environmental Law Clinic as a student and staff attorney, Andrew worked on several complex civil litigation matters. Andrew argued before the Court of Appeals, on behalf of the appellants, in Environmental Integrity Project, et al. v. Mirant Ash Management LLC, which raised important issues concerning the ability of citizen groups to intervene in state environmental enforcement actions.

While Andrew’s experience in the Clinic prepared him well for environmental enforcement litigation, there have been some adjustments.

“Coming from the law clinic I was astonished by the extraordinary scale and complexity of the federal bureaucracy, both within the department and across my client agencies,” he noted. But even more extraordinary is the knowledge, skill and professionalism of the attorneys at DOJ and their willingness to mentor young attorneys. This is a fantastic place to work.”

3L Jessica Kyle received an Honorable Mention award for her paper “Of Constitutions and Cultures: The British Right to Roam and American Property Law” published in the Environmental Law Reporter, 44 ELR 10898 (Oct. 2014). Jess begins her analysis of “the right to roam” on private property with Britain’s Countryside and Rights of Way Act (CRoW) which increases public access to unimproved, privately held lands. After tracing the roots of CRoW back to feudal times when landless peasants needed a “right to roam” to survive, Jess then reflects on the prospects of a “right to roam” on privately owned land in America and the formidable barrier of modern Supreme Court holdings that enconce the “right to exclude” as a fundamental property right under the Fifth Amendment.

Jess analyzes these Fifth Amendment decisions and the (very recent) development of making the right to exclude others a fundamental property right. Jess conducts this analysis in the context of the historical演变 of American private-public land distinction, including the impact of racism in redefining property rights. Jess concludes that while recent Fifth Amendment jurisprudence is a substantial obstacle to establishing a “right to roam” on private property in America, it is not insurmountable. The tenuous foundation of the “right to exclude” as a fundamental constitutional right, environmental justice concerns and American historical and cultural elements that are consistent with a right to roam on unimproved, privately held land provide an opportunity to re-evaluate the proper balance between private and public rights to enjoy natural beauty.
On May 16, 2014, 21 students graduated from the University of Maryland Francis King Carey School of Law with a certificate of concentration in environmental law. A total of 334 students have now graduated from Maryland with the environmental law certificate, which the school first offered in 1998.

George Thomas Aguilar
Thomas Blonkowski
Phillip Chalker
Jennifer Clark
Emma Currin
Fernando Guerra
Elise Henry
Kevin Kellogg
Ilana Kerner
Joseph Kroart
Joseph Licata

Yuezh Liu
Nicole Lindsay Merz
Jennifer Miesen
Simon Penning
Leanna Richardson
Christina Taylor
Melissa Timbers
Megan Ulrich
Alana Wase
John Yowell
The Environmental Law Program completed another successful and enlightening trip to China, visiting three cities, three law schools, and meeting many interesting people during spring break 2014.

Reported by William Piermattei, Managing Director, Environmental Law Program

In Beijing, we journeyed to a number of sites including Tiananmen Square, the Forbidden City, and the Great Wall. We visited the Beijing offices of the Environmental Defense Fund (EDF), and learned about EDF’s work promoting carbon trading. China is launching seven pilot carbon trading programs with the hope of adopting a nationwide trading system by 2015.

Professor Cao Mingde of the China University of Political Science and Law hosted us for a luncheon banquet followed by a lecture by Professor Robert Percival, director of the Environmental Law Program. His lecture, “Forging a U.S./China Partnership to Save the Planet,” focused on prospects for bilateral action between the two countries that have the largest impact on the world’s environment, highlighting the agreement between President Obama and Chinese President Xi Jinping to support a phase-out of hydrofluorocarbons (HFCs).

Next, we met with Wang Canfa at his environmental law firm. Canfa is the director of the Center for Legal Assistance to Pollution Victims, which operates a hotline to field complaints about environmental conditions in China. Professor Wang’s recent work includes a project in which he used media publicity to get a company to clean up shoddy hazardous waste disposal practices without having to file a lawsuit.

The group traveled next to Qingdao, a beautiful city on the Chinese coast. Upon arriving, we traveled to Ocean University Law School, where we met with several environmental law professors and students and learned about their environmental and natural resources law program and their fellowship program, which enables qualified foreign students to obtain an advanced legal degree tuition-free and receive a monthly stipend.

After touring the campus, we visited Qingdao’s beaches and the headquarters of the Tsingtao Beer Company, one of the leading environmental voices in the Chinese business community. Surviving two whirlwind days in Qingdao, that included a late night karaoke extravaganza, the group packed their bags again and traveled to Shanghai.

While in Shanghai, we toured several of the city’s attractions, including the Bund, the World Financial Center, the Jade Buddha Temple, and the captivating YuYuan Garden. We visited Maryland’s China Center, where we heard a presentation from Zhenxi Zhong from the Shanghai office of Roots and Shoots. She explained the work of the organization—from planting trees to combat desertification, to working with school children on raising environmental awareness and planting organic gardens.

The highlight of Shanghai was attending the 19th Annual PhD Forum of Shanghai Jiao Tong University’s GoKuan Law School. Dean Ji Weidong gave an illuminating presentation on judicial reform in China and the rule of law, followed by a presentation from Professor Percival on the power of future bilateral agreements between China and the U.S. to address climate change.

Four Maryland Carey Law students—Renee Connor, Ilana Kerner, Haley Peterson and Allie Santacreu—also gave presentations, as did Andrew Keir, staff attorney of the Environmental Law Clinic, along with several Chinese PhD students. Afterwards we had a reception (complete with Domino’s pizza) where we mingled with Chinese law students and ended the festivities with party games, including a form of musical chairs without music and a competition between Chinese and U.S. law students to untie the human knot (we won!). The group headed out to the Shanghai airport aboard the Maglev high speed train, the world’s first high speed magnetic levitation train that can reach speeds of nearly 300 mph.

Once again the tour through China highlighted the amazing culture and history of the ancient country and provided a wonderful opportunity to meet and learn from many Chinese environmental lawyers, professors, and students.
A VERY SPECIAL EVENING

This year the Environmental Law Program combined two annual events into one wonderful evening. David Doniger, director and senior attorney for the Natural Resources Defense Council’s (NRDC) climate and clean air program, gave the Fedder Lecture focusing on current climate change policy.

Doniger began his lecture by pointing out that Congress was considering the potential impacts of man-made climate change as far back as the 1960’s. In 1970, the first annual report from the newly created Council on Environmental Quality devoted an entire chapter to climate change. This chapter prompted the inclusion of “climate” and weather” in the 1970 Clean Air Act definition of adverse effects on public welfare that could trigger regulation or action under the Act. Doniger pointed out that the Clean Air Act was “built to last” and the drafters intended the Act to be flexible and capable of addressing not only current air pollution problems, but also future air pollution threats that were not currently understood.

Doniger first worked at NRDC on clean air issues from 1978 through early 1993, helping strengthen protections in the international treaty to stop depletion of the ozone layer (the 1987 Montreal Protocol) and the Clean Air Act amendments of 1990. David left NRDC in 1993 to serve in the Clinton administration, working for a year at the White House Council on Environmental Quality and then for seven years as counsel to the head of the Environmental Protection Agency’s (EPA) clean air program. David was also director of climate change policy, and a U.S. negotiator for the Kyoto Protocol. During this time Doniger worked on establishing EPA’s authority to address climate change under the Clean Air Act.

With the change in administration, David rejoined NRDC in 2001 and challenged the Bush administration’s reversal of his previous work. The Bush administration asserted that the EPA does not have authority to regulate carbon pollution under the Clean Air Act. Doniger represented NRDC in a string of climate change cases, including Massachusetts v. EPA, that reaffirmed the EPA’s authority to regulate carbon pollution (reversing the Bush administration’s policy reversal), defending California’s clean car standards, the EPA’s landmark “endangerment determination” for carbon pollution and the EPA’s carbon pollution standards for vehicles.

Doniger’s lecture highlighted the recent advancements in carbon pollution regulation, focusing on President Obama’s Climate Action Plan regulating carbon emissions from power plants and increasing vehicle fuel economy standards as well as the recent bilateral agreement with China to reduce carbon emissions. Looking to the future, Doniger asserted that these advancements in climate change regulation should be safe from repeal as conservative opposition does not have a sufficient majority to override a Presidential veto.

After the Doniger lecture, participants then attended the 23rd Annual Winetasting where an eclectic mix of alumni, students, environmental law professionals and friends of the Environmental Law Program enjoyed fine wine, fine conversation and good cheer.
Comments and letters should be forwarded to the above address.