



LAW FOR THE COMMUNITY AND THE WORLD

Fall 2014

ON THE GREEN

CLINICS AND EXTERNSHIPS AT VERMONT LAW SCHOOL

Message from the Associate Dean



I participated in the Vermont Bar's Pro Bono Conference hosted at the State House last week. The goal of the conference is to encourage participation in a broad range of pro bono opportunities. While at the conference, I was approached on three separate occasions by VLS graduates who shared how important

Margaret Martin Barry, Associate Dean for Clinical and Experiential Programs their clinical experience at the law school had been for them. One said that she felt she had not only more confidence going into her first law job, but that her clinic experience was where she became excited about the practice of law and able to see herself as a lawyer. I hear similar stories often; it is that sense of excitement about the profession that clinics and externships provide so well for our students.

Despite dire predictions about national enrollment figures, 143 JD students matriculated at VLS this fall (along with an additional 11 LLM and 35 Masters in Environmental Law Program students). This affirmed our sense that a strong cohort of students are dedicated to the kind of service and activism that is at the core of the school's mission.

This JD class is the first class that must meet the new clinic requirement that the school adopted last year: every student must take at least 6 clinic or externship credits prior to graduation. The requirement passed

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[Criminal Law Clinic](#)

by *Brian Marsicovetere, Adjunct Criminal Law Professor*



We are halfway through another semester! For students who are leaning toward a career in criminal defense or prosecution, or for those who are just curious and want to better understand real world criminal law practice, the Criminal Law Clinic allows students to make a difference in currently pending trial court and appeals cases. From the

beginning, students become immersed in day-to-day courtroom and office events; it is an opportunity to

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prior to the ABA's recent adoption of a six-credit clinic requirement in its revised accreditation standards; it is also narrower than the ABA requirement in that it cannot be met by taking simulation courses.

This newsletter provides a window into several of the clinics available to our students: the general civil practice South Royalton Legal Clinic; the Environmental and Natural Resources Law Clinic; the Food and Agriculture Clinic; the Energy Clinic; the Criminal Law Clinic; the Land Use Clinic; and our Externship Program. Not included are clinics that are offered only in the spring – our Legislative and Dispute Resolution Clinics. In each of our clinics, students engage in work that develops their understanding of substantive and procedural law, asks them to use their judgment and creativity, and underscores the importance of professional and ethical standards. The skills transfer well, providing our students with a sound foundation for professional practice and creative problem solving.

I hope you enjoy reading about what is happening in our clinic and externship programs. §

Energy Clinic

by [Samantha Mashler](#), *Energy Masters Fellow, Institute for Energy and the Environment and Energy Clinic*

The Energy Clinic is in the midst of its first semester. As the first clinic of its kind in the nation, it allows students the unique opportunity to work on community-based, environmentally friendly, and socially beneficial energy projects while receiving an education in local energy laws and policies and sharpening important professional skills. Students work on energy projects that resolve energy policy challenges in a sustainable and socially equitable manner. Students gain experience in the practical aspects of real-world sustainable energy projects, from conceptualization to development, contracting, financing, regulatory approval, and final construction.

Our students have had amazing opportunities to work with local residents and community leaders to improve our energy landscape in a manner that maximizes the social and environmental value of our common resources. I cannot express how rewarding it is to be an active part of the change that I want to see in our energy future and to work with faculty and students in the clinic who are dedicated to that goal. §

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begin building skills in a setting that is supervised by instructors with a passion for the criminal law.

Within the first three weeks of this semester, students were on their feet handling arraignments and arguing conditions of release, meeting clients and officers, and getting to know the attorneys in their offices. They also began work on cases in which they will eventually argue motions. This semester, students also had the opportunity to observe a nerve wracking sexual assault trial to a wild conclusion – a hung jury! Each student's clinic experience is influenced by a variety of individual factors, such as prior exposure to criminal law and practice, oral and written advocacy skills, and work ethic; each student has the chance to improve from that base.

My favorite part of the semester thus far was when a student promised the judge during a plea and sentencing hearing that his client would not get into further trouble. What a wonderful teaching moment! And then, as is often the case, the more interesting moments arise outside of the courtroom. For example, at the end of morning arraignments one day, when the students were wrapping up and ready to go back to the office, there was a person for whom the court requested immediate assistance. Turned out the person exhibited signs of mania, and we spent the next half hour counseling the person in an effort to discern whether to call a professional mental health crisis screener, a pretty tough ethical dilemma. Fortunately, we were able to go forward with the arraignment.

The prosecution students have been handling arraignments, arguing conditions of release, negotiating with prevailed in a recent bail argument. Prosecutions students do not argue cases against students handling defense cases; the clinic was set up to avoid the types of conflicts that such adversarial encounters might otherwise engender.

The clinic students handling defense appeals are working hard on search and seizure and evidentiary issues in DUI and marijuana possession cases. The students are raising interesting and important issues, and they are learning advanced appellate strategy and writing. They have been able to watch numerous oral arguments by the appellate defenders and have participated in moots ahead of time. Students were also able to watch closing arguments in a criminal trial, and they have watched cruiser videos and analyzed the search and seizure issues step-by-step. They have the opportunity to return to argue their cases after they submit their briefs and reply briefs. §

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Below, Energy Clinic students meet with local residents at the site of a capped landfill in Post Mills, VT, a proposed location for a new 450kW community solar project. One of the several ongoing projects at the Energy Clinic is the development of solar power on former landfills and other sites with limited land use capabilities as a result of former environmental contamination. §



The Externship Programs

by [Christine Cimini](#), Associate Dean of Research and Faculty Development, Director of JD Externships Programs, Professor of Law

The Externship Program continues to be popular with VLS students. Over 55 students have registered for full- and part-time placements for our spring semester. Below is a comment about her experience by one of our students who is working in Detroit for her fall externship. Please see our soon to be published JD Externship Programs Newsletter for more details.

Lisa Marie Gala, VLS '15, [Detroit Economic Growth Corporation \(DEGC\) – Detroit, Michigan](#):

Urban revitalization and development is my love, so learning how transactional law supports our organization has been fascinating. The stories which denigrate Detroit detract from the unsung real work our General Counsel does to support our business development and project managers in making Detroit a world class city once again. Our 501(c)(4) organization staffs several of our 501(c)(3) projects as well as some assumed functions from the City of Detroit during their bankruptcy. Our organizations engage in joint public sector-private development projects ranging from managing tax incentive districts, brownfield redevelopment, industrial rehabilitation, economic growth projects, entrepreneur incubator funding, green grocer funding to address the 'food desert' which plagues urban Detroit, and more! Downtown projects have been building preservation into office/loft living/hotel renovations, funding the new \$650m Red

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Environmental and Natural Resources Law Clinic (ENRLC)

by [Rachel Stevens](#), LL.M. Fellow, Environmental and Natural Resources Law Clinic

Returning to Vermont Law School as a staff attorney and LL.M. fellow after having attended VLS as a law student and as a master's student has been a wonderful and unique opportunity. The VLS community has nurtured my interest in environmental advocacy and my growth as a legal professional. One of the best experiences I had as a student was my time as a clinician at the Environmental and Natural Resources Law Clinic. I spent most of my third year of law school representing 25 citizens of a Vermont community in land-use permit proceedings against a proposed asphalt plant that would be located in the middle of their residential neighborhood. In this clinical setting, I gained practical experience navigating complex environmental legal issues and advocating for clients, learned the importance of organization and working on a team, and solidified my commitment to a career in public interest environmental law.



My experience as a student clinician has dovetailed well with my current fellowship position because I appreciate the mission of the Clinic and have been able to begin working efficiently in furtherance of this mission from day one. Currently, my principal case involves the appeal of several stormwater discharge permits issued to Jay Peak Resort, a ski resort in northern Vermont, discussed below. I love being able to take ownership of a case involving environmental issues that I care about while having the support of my longtime mentors at the Clinic. While being the lead attorney on a complex case can have its challenges, I see the benefit of my clinical legal education every time I sit down to draft a document and know where to begin, or when I feel confident calling a client or interacting with opposing counsel. My time as student clinician has been invaluable to my practice.

In addition to my professional development as an environmental litigator, I have the opportunity to supervise and mentor student clinicians. Because I am the product of clinical legal education and understand its value, it is important to me to ensure that students get the most out of their semesters at the Clinic. I encourage students to take the lead in team strategy meetings, follow their instincts with legal research, and

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Wings Stadium, and funding M1 light rail public transportation. Also, transforming the prime riverfront real estate from an environmental disaster industrial zone by using brownfield tax incentive credits to spur economic development in the area has been instrumental in the creation of new work/live/play complexes and completion of the walk/hike/biketrail. The legal work which supported these projects has been contracts for large construction development, complex bond and swap issuance, Tigers/Lions/Red Wings sports concession management agreements, professional service agreements, and tax incentive funding. Production of legal memos or letters can range from a response to a deed discrepancy, registering an official position on the Detroit bankruptcy, objections to proposed TIF legislation, and Community Benefit Agreements. My research and analysis included Urban Development Action Grant (UDAG) Funding, Open Meetings Act compliance, liability for third party use of crime deterrent security cameras, and various FOIA requests. I chose DEGC as my Semester in Practice to push the utmost limits of my historic preservation and land use law knowledge by witnessing the transformation that is Detroit. I expected to work on small real estate and brownfield transactions, but my expectations have been surpassed working on breakneck paced deals with city leaders and billionaire investors on the largest of initiatives for the rebirth of a great city. I strongly recommend this experience, it's probably been the the most intense learning experience and best job, paid or unpaid, I have ever held. §

South Royalton Legal Clinic (SRLC)

by [Katelyn Atwood](#), Vermont Poverty Law Fellow, Attorney Vermont Veterans Legal Assistance Project



Katelyn B. Atwood is the new Vermont Poverty Law Fellow in the South Royalton Legal Clinic (SRLC). The two-year fellowship is funded by the Vermont Bar Foundation. Katelyn started work on her project, the Vermont Veterans Legal

Assistance Project, in late August. She will be representing veterans in civil cases and VA Benefits cases, as well as training lawyers throughout the state to prepare them to take on veterans cases. The project was chosen by SRLC in consultation with the VBF.

Katelyn is a 2011 Vermont Law School graduate, and she also holds a Master of Philosophy in Environmental Policy from the University of

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ask questions. I remember what it was like to be a clinic student practicing law for the first time, so I try use this unique perspective to bridge the gap between student and supervisor to give the students the best experience that I can.

What follows is a description of a project the team I supervise is working on at the clinic:

Remediation of Vermont's Impaired Waters

The ENRLC is representing the Vermont Natural Resources Council (VNRC) in the appeal of three stormwater discharge permits issued to Jay Peak Resort. The streams around Jay Peak, a ski resort in northern Vermont, have been impaired by sediment for at least a decade. With this appeal, VNRC hopes to ensure that impaired streams are adequately remediated before additional permits for new development and additional stormwater discharges are issued at Jay Peak.

Throughout the fall, student clinicians Allison Gabala '15, Maryam Khan '15, Samantha Morgan '15, and Daniel Schreiber '15 have drafted memoranda and pleadings; participated directly in client meetings and case development; and conducted extensive research on such topics as the Clean Water Act, the Vermont Water Pollution Control Act, and Vermont stormwater regulations in support of the case.

These experiences have furthered the clinicians' legal education in a real world setting with the support of seasoned attorneys and other clinicians. In particular, Daniel Schreiber commented that he had "learned the importance of using innovative and compelling legal arguments in advocating for the client's best interest and maintaining Vermont's water quality." The team is devoted to helping improve the impaired waterways of Vermont and is excited that the ENRLC has provided them with the opportunity to put their beliefs into action. §



Student Clinicians: Maryam Khan, Daniel Schreiber, and Samantha Morgan visit the VNRC offices in Montpelier, Vermont.

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Cambridge in England. Since graduating from Vermont Law School, she clerked in the New Jersey Superior Court in Burlington County under the Honorable Michael J. Hogan, P.J.Ch. (Ret.), and the Honorable Karen L. Suter, P.J.Ch. After clerking, Katelyn spent two years as an attorney for Montana Legal Services Association. In Montana, Katelyn worked primarily on domestic violence cases, and consumer, housing, and Indian law. Katelyn, a member of the Montana and New Jersey Bars, passed the Vermont Bar Exam and will be admitted this fall.

Katelyn has hit the ground running. In addition to working with SRLC students on veterans cases and teaching in the Clinic's classroom component, she has begun coordinating with Veterans' service providers throughout Vermont to assess veterans needs and to get the word out about the Project. Already, Katelyn has helped a Vermont veteran keep her service-connected VA disability benefits, given presentations about her project to social workers at the VA Hospital in White River Junction, and attended a nationwide conference for veterans advocates at John Marshall Law School in Chicago. Katelyn hopes to raise awareness of veterans issues and prepare lawyers, both student clinicians and active Vermont attorneys, to become strong advocates for veterans.

SRLC, student's view
by Ali Elhindi, VLS '15

I am a political asylee from the Sudan. I came to law school to get a JD so that I can practice immigration law and help prospective political asylees; I know how disorienting the process can be and what that grant of asylum means in one's life. VLS is a great place to learn law (caring professors and a wonderful community). But, in my first and second years, I never felt passionate about what I was learning, and so, despite liking the place, I concluded that the practice of law is not for me. On a recommendation from Professor Cole at the end of my second year, I decided to try the SRLC. I honestly did not think that I would enjoy working at the clinic, but I figured it could not be worse than sitting in class dreading being cold called. Indeed, it was not worse – far from it. I love working at the clinic. I even found out that I have enjoyed working in fields of law that I never thought I would enjoy – family law and disability law! These are two areas in addition to immigration, landlord tenant and other civil practice offered at the clinic. What I have learned is that one should not



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Land Use Clinic

by *Adjunct Professor Catherine Gjessing*, General Counsel Vermont Department of Fish and Wildlife

Students at the Land Use Clinic work on a variety of issues which arise as a result of the Agency of Natural Resources regulatory and land management work. Students work in the Agency's Department of Environmental Conservation and the Fish and Wildlife Department on assignments that include rulemaking; property acquisition, management and disputes; and coordinating and drafting agency filings, motions and legal memoranda for the Act 250 District Commissions, Public Service Board and the Environmental Court. Depending on the commission, board or court schedules, students also prepare for hearings and court proceedings, including witness and exhibit preparation. So far this fall, students have drafted rule making filings for the Agency and for the Vermont Fish and Wildlife Board, have attended rule hearings before the Legislative Administrative Rules Committee, and prepared memoranda on endangered species, adverse possession and easements by necessity, the Lake Champlain TMDL (Total Maximum Daily Load), and impaired water - stormwater, wetlands, Natural Resources damages related to hazardous waste contamination, and Act 250 review and development in a flood plain. In addition, students have attended settlement discussions related to the appeal of agency permits and outreach sessions related to a prospective legislative initiative.



The work each student is assigned can be quite challenging. Allen Smith provides the following overview of his assignments thus far:

“While being in the Land Use Clinic, I have worked on a number of issues related to land use, prescriptive easements, drafting a stipulation related to an easement, FEMA obligations under the Clean Water Act, discharge permits, water quality, Act 250 appeals, TMDL allocations, EPA authority under the Clean Water Act, administrative law, and estoppel against the state. I also sat in on negotiations involving the Jay Peak discharge permit appeal and a permit renewal in an Act 250 zoning case involving Hannaford in Hinesburg, VT. Most recently, I did some research for the Watershed Management division at ANR regarding estoppel against the state due to a change in the Agency's interpretation of a statute (regulating design flow vs. actual flow). Ultimately, I found that an estoppel claim by a municipality against the state

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conflate the study of law with practice. I encourage every single student to try the clinic – especially those who are beginning to think that coming to law school was not the right match for them. §

Food and Agriculture Clinic (FAC)

by [Jamie Renner](#), Assistant Professor, Food and Agriculture Clinic (FAC)



This Fall, Vermont Law School’s Center for Agriculture and Food Systems (CAFS) launched the new Food & Agriculture Clinic (FAC). The FAC is one of the first law school clinics in the country exclusively dedicated to food systems advocacy. Consistent with the mission of CAFS, the FAC promotes environmentally sustainable agriculture, public health, local/rural agricultural economies, food security, and animal welfare. Students in the clinic collaborate with local, regional, national and international partners to develop resources that promote systemic change across these fronts. In addition to systems-advocacy legal skills, students in the clinic also develop advocacy-related business skills, including project financing, project management, media, marketing and branding. FAC students are currently partnering with the Northeast Organic Farming Association of Vermont and the national Farmers Market Coalition to produce Farmers Market Toolkits – guides that will help farmers market leaders across the United States navigate common but complicated business and legal choices regarding governance, risk management, and the use of SNAP/EBT systems. FAC students are also partnering with two New Hampshire-based organizations – BCM Environmental & Land Law, PLLC and Land For Good – to create a comprehensive, on-line “Farmland Legal Tenure” toolkit that will that serve as a “one-stop-shop” for farmers, landowners, and farmer/landowner-advocates seeking legal information regarding how to secure and hold access to farmland in New England. The FAC is also collaborating with the National Farm to School Network to develop an

updated national survey of state Farm to School related legislation. The survey will help legislators, school administrators, and farm to school advocates understand how state legislation can be used to create and support robust farm to school programs. §



Student Clinicians Alona Tate and Kara Shannon, CAFS Director Laurie Ristino, Sen. Patrick Leahy, Dean Marc Mihaly, FAC Professor Jamie Renner, CAFS Professor Laurie Beyranevand, and Chief Justice Paul Reiber. Senator Leahy was on campus to announce \$759,000 in USDA funding for CAFS.

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would not satisfy the elements of estoppel when the language of the statute is clear and none of the facts were hidden from either party. I have also done research in preparation for the Lake Champlain TMDL case, considering both sides of the argument (one allowing the EPA to control point and non-point sources of pollution/assist with implementation measures to address water quality and the other leaving that power solely up to the states). As seen throughout much of the work in environmental and administrative law, it comes down to statutory interpretation, congressional intent, and the scope of agency deference (i.e. Chevron test). The case that is providing a lot of the foundational research for the Lake Champlain TMDL issue is *American Farm Bureau Federation vs. EPA (2009)* (involving Chesapeake Bay TMDL). Overall, I have been very pleased with my experience in the Land Use Clinic. My goal at the clinic is to gain more experience on water quality and energy issues.” §



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