

[Of Counsel, Environmental Lawyer Serves Clients at the Intersection of Climate Change and Energy Needs, \(Jan. 1, 2021\)](#)

Of Counsel

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Over the years, perhaps more than most other practice areas, the environmental law area has seen dynamic change and growth with myriad twists and turns that require lawyers in the space to work hard to keep pace by tracking the ever-evolving regulatory framework and learning new strategies and skills. And, as we enter 2021 with a new administration, new changes and challenges will continue to keep environmental lawyers very active.

Nearly two decades ago, Philadelphia's Cozen O'Connor set out to expand the range of services they offer clients by diversifying their scope of practice. The firm brought in Peter Fontaine to develop and grow an environmental law group—and it seems that was a very smart move, considering the high regard colleagues and counterparts have for Fontaine and his team.

As chair of Cozen's environmental and climate change practices, Fontaine has earned a reputation within the profession as a thought leader on climate change. What's more, he gets what so many others don't get: Climate change constitutes an "existential threat" to the planet, as he told *Of Counsel* last fall when interviewed for an article about a distinction the firm received for its record on climate change matters. [See the lead story in the November issue regarding *The 2020 Law Firm Climate Change Scorecard*, generated by Yale law students.]

Clearly, clients value the expertise and experience Fontaine brings to their matters. "Pete has represented [our company] for a number of years in several complex regulatory and litigation matters," says Paul Wise, president of Lancaster, PA-based Eurofins Environment Testing America. "I've gotten to know him quite well. He's a smart, responsive, and creative lawyer, whom we trust to handle our most significant legal matters. I wouldn't hesitate to recommend Pete to anyone requiring a capable and tireless lawyer to handle a significant legal exposure."

Recently *Of Counsel* talked with Fontaine about his career, his most significant case, his likes and dislikes about the legal profession, and other topics. What follows is that edited interview.

Advocate, Writer, Environmentalist

Of Counsel: Why did you want to become a lawyer?

Peter Fontaine: No one in my family had been a lawyer. My dad was a first-generation college student in his family. I guess I came around to wanting to go to law school for a couple reasons. I was always a pretty good arguer and advocate. And, I enjoyed writing, which I thought would be a good skill set to bring to the field of law. I also wanted to use my skills to help people and to have a career where I was interacting with other people and coming up with solutions that would be helpful. I always found that I felt best when I was in a position to help and to provide whatever I could bring to the table to make a situation better. So, I thought law was a good direction to go in.

I always was somebody who very much enjoyed the outdoors and was concerned about environmental problems. Having grown up in the late 60s and early 70s, I was a young kid when the environmental movement really took off, and it had a big impact on me. I was born on Cape Cod and lived there until I was nine, and then we moved to New Hampshire and I spent a lot of time outdoors.

So when I decided to go to law school I learned about environmental law and thought that that was really a good marriage of some of my personal interests and skills. And, what better place to study law than in Washington, DC at George Washington University where we had great faculty and

opportunities to work in the field while going to law school? It really was a combination of things that inspired me to pursue a legal career and attend GW.

OC: Did you go to the EPA right after law school?

PF: I had a professor at GW, Professor Arnold Reitze, who steered me toward getting some practical experience. I ended up clerking with the United States Environmental Protection Agency after my second year of law school. And I really loved it. After that I got an offer through the honors program to come in as a full-time lawyer in the Office of Enforcement. It was an interesting time because it was in the fall of 1990, which coincided with the reauthorization of the Clean Air Act, one of the nation's landmark and probably most important environmental statutes. That new law had many new programs and requirements that had to be implemented by EPA, so there was an opportunity to hit the ground running and work on a new statutory mandate; it was very exciting for me to be there. As a young lawyer, I had an opportunity to work on Clean Air Act matters, and that was really great.

Gaining Experience, Building Network

OC: How long were you there and where did you go after that?

PF: I was at the EPA for four and a half years, from 1990 to the middle of 1994. I worked my way through a couple of different positions, including on a new multimedia task force that the Office of Enforcement had set up. I ended up being a special assistant to the director of the Office of Civil Enforcement at the agency.

But then I started to get a little restless. I wanted more variety and more opportunity to really dig into cases and to be in a position to use my legal skills as opposed to administrative skills. My wife wanted to move back home to the Philadelphia area, so we made the big decision to move out of Washington, DC.

I landed a job with a law firm in Philadelphia that unfortunately no longer exists, but it was a very good firm of about 120 lawyers, called Cohen Shapiro. They had a talented environmental group, so I joined that group in 1994.

I ended up leaving after only about a year. I had an opportunity to go to another firm and Cohen Shapiro actually hit some rough waters economically. It was a law firm that was in a lot of turmoil. Some significance lawyers had left and it was struggling. An opportunity came up for me to go to another firm in Philadelphia called Eckert Seamans, which still exists. It's a Pittsburgh-based firm, and they had a Philadelphia office that I joined as a young associate. I was there for about three years.

I went to another firm after that called Montgomery McCracken, which is another Philadelphia firm. I was there for four years and was elected to partner. Then an opportunity presented itself for me in 2002 to go to Cozen O'Connor, which was in the process of diversifying its services and was building a real estate practice and a corporate practice and they didn't have an environmental capability. So, I came over and started the environmental practice and I've been here ever since.

Standing Up for Academic Freedom

OC: When you think about some of the cases you've handled over the years, what's one that really stands out in your mind as being intriguing or intellectually stimulating or perhaps very helpful to a person or the common good?

PF: Okay, here's a case that stands out. In 2011 I was asked to represent a climate scientist at Penn State University, Dr. Michael Mann who had been at the University of Virginia and left in 2005 to accept a faculty position at Penn State. Then several years later there was a false controversy

that arose when emails from climate scientists were stolen from a university in the UK called East Anglia. They were stolen on the eve of the 2009 Copenhagen Climate negotiations by the UN. They were posted on the Internet and a couple of emails were cherry-picked. It's still not known who did it, but whoever it was weaponized the emails to make it seem like the research on paleo climate, which is the study of the diverse climate before the temperature records, had improprieties. It was a false controversy but it actually resulted in a lot of work investigating that.

In 2010 the attorney general for Virginia, Ken Cuccinelli, subpoenaed the University of Virginia with a civil investigative demand [requiring] UVA to turn over all of Dr. Mann's emails, which he had compiled in conducting his research during his six or seven years as a faculty member there. Incidentally, Dr. Mann is a preeminent scientist. He was just elected to the National Academies of Science, which gives you an indication of his standing in the scientific community. The Cucinelli subpoenas were rebuffed by UVA, and ultimately they were able to convince the court that it was an improper fishing expedition by Cucinelli.

But shortly after that another organization was formed, the American Tradition Institute, which was a libertarian, free-market, very, very conservative organization. It submitted a Freedom of Information Act request to UVA seeking the same emails of Dr. Mann. UVA was in the process of working out disclosing these emails to the American Tradition Institute, and it was going to have a very damaging impact on academic freedom and the right of scholars to have free exchanges of ideas with cooperating colleagues and others with whom they're doing research and scholarly activities. It was quite clear that the purpose of the group in trying to obtain those emails was to attempt to damage reputations and further extend this false controversy of there being questions about the research.

So long story short, I represented Dr. Mann in that case, intervened in the case on his behalf, and over the next couple years we were able to convince UVA that disclosing the emails would cause irreparable damage to the principles of academic freedom and to Dr. Mann's specific academic freedom and in fact the standing of faculty at state colleges and universities in Virginia. We convinced the court that the email exchanges are the raw materials of scholarship that should be protected under a specific provision in the Virginia Freedom of Information Act.

OC: That's a fascinating case, Pete. How did it turnout?

PF: We prevailed at the trial court level and then it went up on appeal to the Virginia Supreme Court, and we prevailed again. The case, which was handed down in 2014, stands for the proposition that there is a very important interest in protecting academics and scholars who are doing research. At least under Virginia laws, those correspondences and emails that lead to research and published science should be protected.

I never thought that I would be litigating Freedom of Information Act cases, but it ends up being one of the high points of my career because it will have a long-standing impact and reinforce this notion that Freedom of Information laws are important for a variety of reasons, but they shouldn't be used in a way to subvert academic pursuits and academic research. I think there's a whole question as to whether public universities should be subject to State Freedom of an Information Act laws.

That's one case that I'm particularly proud of and I have to say that it wasn't just me. Several lawyers within the University of Virginia office of general counsel deserve much of the praise for achieving that result.

The Bad, The Good

OC: Thank you for that great example of your work. To shift gears ... what is it about the legal profession or working as a lawyer that you don't like? What is something you'd like to see change?

PF: I think there's increasing economic pressure on law firms, at least large law firms, to continuously work as hard as possible to increase profits. We all want profits and we all want to make more money and provide for our families, but sometimes I think that can become a little myopic. I believe there is a need to balance those profit motives with the need to focus on quality-of-life issues and the satisfaction that people have in working in a professional organization.

I have been very happy at Cozen O'Connor; it's an exceptionally well-run law firm. Michael Heller and our management team have done a terrific job. So it's not a specific criticism of the firm, but profession-wide I do think that there's a lot of economic pressure and too often I find that to be something that takes away from the enjoyment in practicing law. I think we need to do some things because that's the right thing to do. I've been lucky because I have had opportunities to do that at Cozen O'Connor, to take on matters that might not be the most profitable, to say the least, but are important for larger reasons. I feel lucky in that regard.

OC: Now let's flip it over and talk about what you really appreciate about the legal profession and being a lawyer. What is it that you like?

PF: I think that lawyers in the legal profession really make a huge difference in our civil society. It sounds cliché but I do think that lawyers serve a very vital role in protecting society and protecting core values, which, let's face it, are sometimes under assault. So the opportunity to serve in what I think is still a noble profession and to be able to work on cases that make a difference and work with people who are exceptionally talented—my colleagues that I work with in our environmental practice are all just terrific people and very, very smart lawyers who have interesting perspectives on legal problems and challenges. I just find it to be extremely stimulating. I've been at this for 30 years now and I still like getting up in the morning and working on solving problems with clients and with colleagues, and that's very rewarding to me.

I had a conference with my financial planner today, and we were talking about where things stand right now. I'm 56 years old, and as I said, I've been doing this for 30 years. He asked me, "Are you going to retire soon?"

I was taken aback and I said, "No, I don't have any plan of retiring soon because I still enjoy what I'm doing." A big part of that is being able to work on things and work out solutions with clients and my colleagues; I really enjoy what I do. Specifically, with environmental law, I love the intersection of science and policy and law. As we learn more about the interaction of humans and the environment and the impact on human health and the environment, we increasingly see that it's a constantly evolving area. I like the science aspect of it and the dynamic nature of it.

OC: In the environmental arena the changes that have taken place in the last four years have been monumental, and I'm sure that things are going to change quite a bit for you and your practice group. What's going to change in your practice?

PF: First and foremost I think that there will be a much greater emphasis in the Biden Administration on the values associated with protecting the environment and human health. I think that's going to result in a concerted administrative effort to unwind the fairly extensive effort by the Trump administration to roll back various environmental laws and regulations ranging from methane emissions from the natural gas sector to fuel economy standards in the motor vehicle sector to the Clean Power Plan in the electricity sector to mercury standards. The list goes on. There have been literally dozens of rules that have been repealed or modified by the prior administration that the Biden Administration is going to work to restore pretty quickly.

OC: So that will generate work for you and the team you lead? Are going to be busy?

PF: Yes, we'll be very busy, and we're more than ready to help clients however we can.

—Steven T. Taylor