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SERIES: ANATOMY OF A
DISASTER**

“Five years ago, to this very hour in the afternoon, I was sitting on my front porch watching the winds of Hurricane Katrina wind down, congratulating myself for having dodged the bullet, oblivious to what was coming and what it might mean. To some extent, we still don’t know. That the levees might fail was unimaginable.”

Five months ago now, in the dead of the night, the Deepwater Horizon exploded. It was equally unimaginable. Equally riddled with human arrogance and error. And we are years from knowing how far it will go. This is very much a game in motion. Following it is the reason for these lectures.”

– Professor Houck, opening the Lecture Series, August 30, 2010

Tulane Law School is hosting a lecture series on the BP blowout that has drawn wide attention. Our largest lecture hall has been filled to capacity, as is an overflow lecture room wired to the event. One hundred and thirty law students have enrolled in the series for credit, with research projects on every aspect of the event. The lectures have been carried live to other law schools, corporate offices, and government agencies around the country. The lecturers, who have donated their services, come from Tulane, LSU, UNO, Cal Berkeley, Nicholls State, and Vermont, leavened by two scientists in private practice. This expertise withal, new

knowns and unknowns are surfacing daily, and one must be able to hold several competing ideas in the head at the same time, some as basic whether the plume sunk or disappeared; government action saved the day or made things worse; the blowout was a project gone awry or the signal of a systemic problem. Stay tuned.

The BP disaster has touched virtually every aspect of the environmental program – the Clinic, the Journal, the Water Policy Institute, the Society, faculty and student research, class hypotheticals, conferences, debates, media events (countless), presentations, and law review articles. On the other hand, and equally important, we have moved forward on other fronts, expanding the faculty, adding new centers, and successfully defending the Clinic from frontal assault in the state legislature. The program, a glimpse of which you will find in this issue, remains diverse.

For information on the Lecture Series including its schedule, webcasts, and suggested readings and research, see www.law.tulane.edu/bp.

SPRING CONFERENCE HITS THE TRIFECTA: JACKSON, SAX AND ALMENDARIZ

Tulane's 15th Annual Environmental Conference, "Bound by Water," drew 400 attendees and a host of star speakers, led by EPA Administrator (and hometown favorite) **Lisa Jackson**, environmental law godfather **Joe Sax**, and EPA Region VI Administrator **Al Almendariz**. The EPA administrators displayed a degree of candor, can-do, and commitment rarely seen. Professor Sax was thought-provoking as always, this time on the nature of seashore property rights. Organized by the Environmental Law Society in collaboration with the Water Law and Policy Institute, the conference theme enabled 16 panels to spin off in such diverse directions as the public trust, geo-engineering, public interest litigation and the future of water resources projects. As always, the program was followed by a 'Stump the Chumps' panel of experts, two bands, and good food. This is, after all, New Orleans.

Our 16th Annual Conference will be held April 1-3, 2011, and will center on Energy and Energy Futures. It is in active planning, and those with suggestions for topics and speakers are encouraged to contact *Conference Chair Sarah Dawkins at sdawkins@tulane.edu*.



Jackson, Davis, Houck and Sax (clockwise)

THE PLAY'S THE THING

The annual Spring Conference Play, "A Bunker in Palms," presented the story of Aesop Steward who, rising from New Orleans to the Presidency of the United States, confronts weapons of environmental destruction. Written, produced and directed by Tulane law students, the play satirized everything in the region from flood protection, to heavy industry, Mother Nature, and law professors.



Mother Nature



The President

NEW FACULTY



AMY STEIN

Professor Amy Stein joins us from George Washington University, where she taught as an Adjunct Professor in the Environmental Studies program and as a Visiting Associate Professor of Legal Research and Writing, Acting Associate Director of the Legal Research and Writing Program, and Co-Director of the Scholarly Writing Program.

A Chicago native, Professor Stein graduated with honors from the Environmental Studies program at the University of Chicago, and the University of Chicago Law School. She focused on environmental public service, completing internships at the White House's Council on Environmental Quality, her U.S. Senator's office, and the Department of Justice's Environmental Enforcement Section.

Joining the Environment, Land Use, and Resources department of the international law firm, Latham & Watkins LLP, she practiced in two offices (Washington, D.C. and Silicon Valley) and in two departments (environmental and litigation), primarily representing Fortune 500 clients on environmental and energy issues. While at Latham, she served on the firm's Recruiting Committee and was actively involved in work-life balance issues, having two children while an associate at the firm.

In her spare time, Professor Stein takes every opportunity to travel with her husband, a New Orleans native, often to places of ecological interest. She spent her honeymoon on an expedition boat in the Galapagos Islands, sailing at night and waking up to a new island each morning. She and her husband also drove the 1,400 mile Alaska Highway, ending their adventure camping in the backcountry of Denali National Park. Certified in scuba diving, she has

explored our underwater environment from Florida to Curacao, and she has completed a sprint triathlon in California.

These days, her free time is spent traversing Star Wars Lego mazes created by her five-year-old son and attending ballet classes with her three-year-old daughter.



COLIN CRAWFORD,

Professor Colin Crawford is the new Director of the Payson Center for International Development, which was recently incorporated into the Law School. Payson is a robust, PhD and MS degree-granting entity in international development with a strong history of applied and evidence-based teaching and research. The challenge will be to preserve that identity while integrating it with the law program — a marriage made easier by Tulane's traditional strengths in international, comparative and environmental law.

Professor Crawford comes to us from Georgia State University in Atlanta, where he co-directed and founded the Center for the Comparative Study of Metropolitan Growth. He has history degrees from Columbia and Cambridge universities and a law degree from Harvard. His comparative environmental law work has, in recent years, brought him primarily to Latin America. In 2005 he was a Fulbright scholar at the Technological Institute of Santo Domingo, in the Dominican Republic. He also leads a three-year grant financed by the US Agency for International Development/Higher Education for Development, to improve the teaching of environmental law in the Dominican Republic, Guatemala and Nicaragua.

PAYSON CENTER: SUSTAINABLE DEVELOPMENT

Until July 2010, the Payson Center for International Development was led by Dr. Eamon Kelly, formerly Tulane's President and later a Payson Center founder. "Dr. Kelly left big shoes to fill," remarked his successor, Law School Professor Colin Crawford, "but he likes to say that 90% of success in life is 'shoe leather.' I intend to follow his advice and work hard to fill those shoes — and wear out my shoe leather."

In Fall 2010, Payson had a record class of incoming candidates in International Development, with 25 Master's level students, and nine new PhD candidates. The Center continues to expand its portfolio of projects in Africa (Rwanda, Uganda) and Asia (Thailand, Vietnam). Crawford also hopes to see the Center work closer to home in Latin America. "We are exploring initiatives in several areas," he reports, "including disaster resilience studies, education and development, and sustainable development capacity-building initiatives." In March 2011 Payson will sponsor, with the Getulio Vargas Foundation Law School in Rio de Janeiro and Law Schools at the University of the Andes in Bogota, Colombia and Rafael Landivar University in Guatemala, the first Pan-American Moot Court. The topic is Sustainable Development Law, and the issues include energy, human rights and environmental law. The Moot Court will be preceded by a one-day conference at which Professor Günther Handl is scheduled to be the keynote speaker.

Future initiatives include expanded course offerings for law and development students, as well as shorter, targeted courses to be offered at locations throughout the world, and internship and study opportunities abroad. Moving in that direction, law student Brandon Sousa was sponsored by the Payson Center to attend a one-week, interdisciplinary seminar on urban expansion and social change in Rio de Janeiro in July 2010. Joint degree candidate Adam Smith has worked with Payson to identify Argentinian and Brazilian internship opportunities beginning in January 2011.

ENVIRONMENTAL LAW CLINIC: Still Standing!

The Tulane Environmental Law Clinic's 2009 academic year ended with a bang—a legislative attempt to destroy the Clinic. In late March, Senator Robert Adley, at the Louisiana Chemical Association's behest, introduced Senate Bill 549 to try to force Tulane University to shut the Clinic down in return for continued state funding of the University. Shortly after the class of 2010 graduated, colleagues were congratulating us for merely surviving. But the upside of a near disaster is that you find out who your friends are, and the outpouring of support from our client base, the legal community, and educators was gratifying.

The outcome was in the balance until a committee hearing on May 19. Residents of communities that have relied on the Clinic overflowed the hearing room. A broad roster of witnesses—from the Louisiana State Bar Association President to a fireman

from the Paincourtville Volunteer Fire Department—signed up to testify in support of the Clinic. Only a few got the chance.

A high point was rousing testimony from Tulane University President Scott Cowen, who reaffirmed Tulane's commitment to public-service even in the face of a threatened loss of \$45 million in state funding. He explained that if Tulane were to shut down its clinics to preserve state funding, "we [would] throw under the bus every indigent person in this state . . . and say we will not represent you because the money is more important. . . . [T]hat is what America is not about." Emphasizing the unfairness of seeking "to punish or severely limit the rights of individuals and organizations who try to enforce regulations and laws," President Cowen did not mince words: "This bill creates a black eye, a serious black eye, for any industry that supports it. . . . [It is]

antithetical to everything that is the foundation of a civil society."

A few days later, the New Orleans CityBusiness paper concurred in an editorial: "By attempting to snuff [the Clinic's] existence, Adley and the LCA were, in effect, thumbing their noses at the law, judicial process and regulation." Two months later, the Federal Bar Association's New Orleans Chapter honored the Clinic with its Camille F. Gravel Jr. Award for pro bono service, with a speech by New Orleans Mayor Mitch Landrieu. One month following—on the first day of our new semester—one of the Clinic's 26 student-attorneys argued and won his first case on behalf of real clients. "It was great to see their reaction," he told the press. "This is the community that they live in."

Environmental Law Clinic 2010-11



“By attempting to snuff [the Clinic’s] existence, Adley and the LCA were, in effect, thumbing their noses at the law, judicial process and regulation.”

– New Orleans CityBusiness

FROM THE CLINIC DOCKET

OIL REFINERY LIABLE FOR VIOLATING CLEAN

AIR ACT: Holding that the Murphy Oil Company “frequently violated its permits by exceeding emission limitations and continued to violate them after plaintiffs filed suit” and that “Murphy has not shown that it has changed the conditions that led to the violations” a federal court found liability under the Clean Air Act. The court rejected the refinery’s argument that the plaintiff neighborhood group was “too disorganized and informal” to have legal standing, holding that “[c]orporate formalities and formal membership structure are not constitutional requirements for associational standing.

EPA OBJECTS TO AIR PERMIT FOR WOODSIDE

LANDFILL: On May 27, 2010, EPA granted a petition objecting to an LDEQ Clean Air Act permit for the Woodside Landfill in Livingston Parish. EPA ordered LDEQ to explain “why it is not necessary to continuously monitor the composition of the gas entering the flare” to ensure that the flare meets Clean Air Act standards.

SLAPP SUIT DISMISSED: On May 20, 2010, a Louisiana district court dismissed a SLAPP suit (“Strategic Lawsuit Against Public Participation”) against a community group and its members who criticized Petroplex International’s plan to build a petroleum storage facility in St. James Parish.

OUTSTANDING NATURAL RESOURCE WATERS

PROTECTED: On May 5, 2010, on behalf of the Little Tchefuncte River Association and others, TELC obtained a court judgment that requires the Louisiana Department of Environmental Quality (LDEQ) to consider alternative discharge locations for a private wastewater treatment facility at Penn Mill Lakes Subdivision, instead of two streams designated as Outstanding Natural Resource Waters.

PLANS FOR NEW COAL-BURNING POWER PLANT

CANCELED: Louisiana Generating canceled plans to build a new 705-MW coal-burning unit at its Big Cajun II Power Plant facility near New Roads, Louisiana. The decision followed TELC’s appeal of the plant’s Clean Air Act permit on January 14, 2009.

NEW ORLEANS SEWAGE TREATMENT COMPLI-

ANCE: On March 23, 2010, Judge Lemmon entered a modified consent decree setting new (post-Hurricane Katrina) schedules for repairing New Orleans’ sewerage pump stations and collection system.

COURT LIMITS CLEAN WATER ACT’S “ADMINIS-

TRATIVE PENALTIES” BAR TO CITIZEN ENFORCEMENT: The U.S. District Court for the Southern District of Mississippi rejected a developer’s argument that an Army Corps of Engineers’ Notice of Violation protected the developer from citizen enforcement for destroying wetlands in



Hancock County, Mississippi. It held, “Because no administrative action for civil penalties was ever commenced by the Corps or EPA, the Section 1319(g)(6) bar is inapplicable.”

ENTERGY MOVES TO CANCEL COAL-BURNING

POWER PLANT PROJECT: On October 27, 2009, Entergy Louisiana, LLC moved to cancel its plan to convert its Little Gypsy power plant in Montz, Louisiana, to a coal and petroleum coke burning facility. LPSC originally approved the project after phase I of an administrative hearing on March 19, 2008. On behalf of its clients, TELC appealed that decision and also issued a notice of intent to sue Entergy on April 1, 2008, alleging that the project’s construction would violate the Clean Air Act because Entergy had not received government-approved limits for mercury and other hazardous air pollutants. Meanwhile, in phase II of the proceedings a TELC student attorney argued that Entergy must show that the project is economically viable. On March 13, 2008, LPSC ordered Entergy to suspend the project pending a review of economic viability. Coal-fired power plants emit large amounts of carbon dioxide—a pollutant strongly associated with global warming.

TELS

FALL 2010 CALENDAR

AUGUST 30
Organizational Meeting

SEPTEMBER 4
Wolf River Cleanup

SEPTEMBER 25
“Beach Sweep”,
Lake Pontchartrain

SEPTEMBER 26
Environmental Dessert Cook-off

OCTOBER 10
350.org, Climate Change Event

OCTOBER 20
Screening of “Crude”

OCTOBER 31
Levee Bike Trip

NOVEMBER 10
Environmental Careers Panel

NOVEMBER 18
Red Creek Paddle



Current
TELS
Officers
2009 – 2010



Re-cycle



Wind Power

JUST DESSERTS

The 2009 Fall Environmental Dessert Competition received 23 entries, including a chocolate rendition of mountaintop mining and a gelatinous pudding of the Louisiana Coast. This Fall’s contest will doubtless have several BP blowout-related items, some perhaps in flames.

WATER LAW AND POLICY INSTITUTE ADDRESSES NATURAL RESOURCE DAMAGES

The blowout of the BP Deepwater Horizon rig unleashed 200 million gallons of oil on the marshes and estuaries that fringe the northern Gulf of Mexico, environments that were already facing extreme challenges. So, what happens when bad things happen to places already in trouble? How do we identify and value them? How do we accommodate future losses not known to us today? And how should response plans jibe with broader efforts to heal broken ecosystems? The answers are not obvious, but these are the sorts of questions the Tulane Institute on Water Resources Law and Policy is helping address.

The Institute has been a pioneer in the field of integrating coastal restoration with damage mitigation, its experience dating back more than a decade. Under normal conditions, after a spill the “responsible party” (BP in our case) works with a handful of governmental agencies that are “trustees” of the natural resources to hammer out an assessment of what was damaged and how to compensate for it. This discussion would not include the public or most of the affected communities, would not normally reference broader plans to restore the coast, and could take years to play out. The Institute has developed process recommendations that are both more comprehensive and expeditious. The success (or failure) of the NRDA process in this incident could determine not only the future of coastal Louisiana but also the future of Natural Resource Damages in the events to come.



KATRINA LITIGATION UPDATE: TRUTH STRANGER THAN FICTION

When we last heard from them, recent grads Machel (Lee) Hall, 2008, and Todd Campbell, 2007, were immersed in *Comer v. Murphy Oil*, one of the most celebrated and controversial climate change cases to date. Plaintiffs in *Comer* allege property damages caused by industry contributions to climate change and the intensity of Hurricane Katrina. The case had been dismissed at the trial court level on grounds of political question and “standing”, a judgment that was reversed on both counts by a three judge panel of the US Fifth Circuit Court of Appeals, reinstating the case. The defendants, including the largest carbon emitters in the country, petitioned for rehearing en banc, which was granted, and in so doing the panel decision was rescinded.

Now comes the strange part. One by one, Fifth Circuit judges began recusing themselves, in all probability due to investments in the defendant industries, leaving the en banc panel with a bare quorum of nine judges. Then the eighth judge recused, putting the case in limbo. Remarkably, without a quorum, the seven judges proceeded to rule that they had no jurisdiction to rule (with no apparent consideration of adding a sitting judge from another jurisdiction), and, here is the final touch, refusing to reinstate the opinion of its panel, and leaving the district court opinion, rejected on review, as the law of the case.

On occasion, as Mr. Bumble of Dickens’s *Oliver Twist* said, “the law is a ass.”

NEW COURSE: STREAM WALKING AND GENETIC DRIFT, WHERE LAW AND BIOLOGY MEET



Professor
Tom Sherry

What do habitat/species ratios and the equation for destructive alleles have to do with the management of nature? Quick answer: everything. For this reason, students in the spring 2010 offering of Biodiversity Law took a second course concurrently, Conservation Biology, capped by, of all things, an exam featuring graphs and mathematics not seen by most of us for years. We survived and were astonished by the degree to which legal decisions on endangerment, diversity and sustainability depend on data analysis.

The seminar closed with a field trip to Mississippi for a look at restoration projects for the endangered long leaf pine ecosystem, now largely eliminated from the Gulf Coast south. It was a hot day in April. We found a stream, took off our shoes, and started wading north to where a road was said to be. The stream bottom was clay and sand; overhanging trees kept us in dappled shade. The road, in fact, existed ... just a couple of miles farther than we'd been told. For a few hours we were away from everything, part of a beautiful living system that has been with us for far longer than we have been with us. But for how much longer? That is the question.



Stream walk



Gopher Tortoise burrow

BOOK REVIEW: DOWN ON THE BATTURE



"I'd never let myself write something personal," says Professor Houck, "but this one just slipped out". *Down on the Batture* (UMiss 2010), published on the heels

of Houck's *Taking Back Eden* (Island 2010), steps away from legal history to muse on events at the margin of New Orleans, the narrow strip of land and trees between the Mississippi River and the levees designed to keep it at bay. Here we find alligators, winos on the lam from alimony, families hunting rabbits with golf clubs, and a soft litany of the environmental abuses we take for granted, including oil development, on which Houck relates:

"And so it is that south Louisiana may sink into the Gulf of Mexico with hymns to oil development and climate change on its lips, never making the connection between the two. Many years ago, new to the state, I attended the Mardi Gras celebration in Washington DC ... under the banner of that year's theme, "Louisiana Naturally!". Several hours of drinks, business and finger food finally yielded to the main event, the presentation of the Queens. Spotlights lit up the stage, and out came the selected daughters of the assembly, each dressed in a white, off-the-shoulder gown reminiscent of Gone with the Wind. On top of which, they carried little plastic oil rigs. Looking back, they seem a kind of metaphor."

THE JOURNAL

The *Tulane Environmental Law Journal* recently welcomed 12 new juniors bringing our team to 23 members. Special projects this year include increased electronic access and a full volume on the Deepwater Horizon disaster. Volume 24 will include the Oil Pollution Act, the Coastal Zone Management Act, the impact of the spill on various cultures along the Gulf Coast, Maritime issues related to the spill, and NEPA worst-case analysis. See below for a snapshot of our previous issue on water.



TELJ Super-Board



Tulane Environmental Law Journal

Now in its 24th year of production, the *Tulane Environmental Law Journal* continues to provide its readers with in-depth analysis of cutting-edge issues in environmental law.

Last year's articles in Volume 23 included the following topics, among others:

Andrew Franz

CRIMES AGAINST WATER: THE RIVERS AND HARBORS ACT OF 1899



Alfred R. Light

THE INTERGOVERNMENTAL RELATIONS OF WATER POLICY AND MANAGEMENT: FLORIDA-HOLLAND PARALLELS



Joseph L. Sax

THE ACCRETION/AVULSION PUZZLE: ITS PAST REVEALED, ITS FUTURE PROPOSED



A. Dan Tarlock

FOUR CHALLENGES FOR INTERNATIONAL WATER LAW



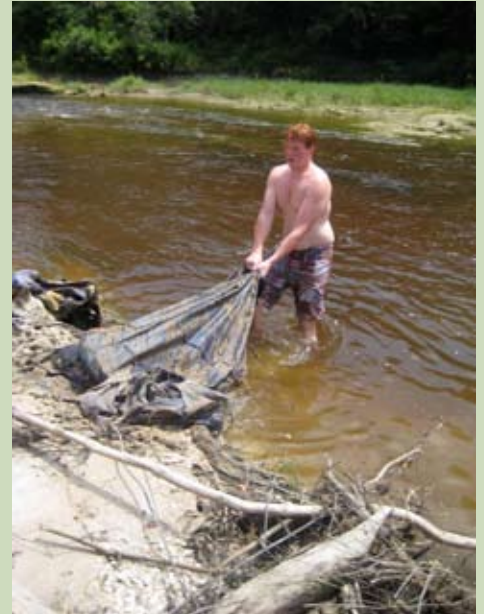
Deborah Clarke Trejo

IDENTIFYING AND VALUING GROUNDWATER WITHDRAWAL RIGHTS IN THE CONTEXT OF TAKINGS CLAIMS—A TEXAS CASE STUDY



Canoes On A Mission

A warm September day brought out a dozen TELS paddlers and an equal number of large garbage bags for a river cleanup on Wolf Creek, a sandy stream through the piney woods of Mississippi. We managed to stretch a five mile meander into an all-day exercise, sunning on the beaches, surfing the clay rapids, braving a (rather high) rope swing and erecting a 10 person pyramid on a record first try. As it turned out, the bags were superfluous because the major trash of the trip consisted of an automobile grille, the bumper, a canvas tarp, an enormous glass canning jar and a four-foot plastic spoon. With more time we might have been able to assemble a functioning machine. At the end of the day, we had the satisfaction of leaving one tiny piece of the planet in slightly better condition. Which seems to be the point of what we do, no?





NEW COURSE: COMPARATIVE ENVIRONMENTAL, JAPANESE STYLE



Professor Hitoshi Ushijima

A teaching visit by Professor Hitoshi Ushijima of Chuo University featured a course on Comparative Environmental Law from a seldom-seen perspective. The Japanese approach to environmental protection de-emphasizes mechanisms like prescriptive federal permitting and citizen suit enforcement that are the twin drivers of American policy, substituting in turn a very place-based, negotiated process involving direct discussions between industry and developers and local communities. While the scales in such a balancing act would appear to be (and in fact are) skewed in favor of parties with financial and technical resources, the results in particular cases show important concessions on land use, emission reduction and mitigation. The culture of social harmony – hardly found in the US in any field of endeavor – remains strong, and, as evidenced by certain industry-community agreements reproduced and discussed in class, acts as a check in ways it would not here at home.

As always, a course in comparative anything forces a re-examination of the way Americans do things, and to what extent our approaches are exportable to others. And, just perhaps, what we can learn in turn.





The Balmacedas

OUR TEAM IN SANTIAGO

Nicholas Balmaceda, LLM [2000], Santiago, Chile, writes: “In a funny turn of events, now I find myself coauthoring a paper with my [wife] Ale. She teaches in the Faculty of Agronomy and I teach in the Law school at our alma mater (Catholic University). We found a common ground for our work: urban infrastructure and green areas. We have been requested to analyze why urban forestry is a good idea and whether there are regulatory changes necessary to do so. Of course there are many good reasons to plant more trees in the cities, but one that we are specially working on is compensation for carbon emissions. Santiago was declared a carbon-saturated area, and as a result any industries wanting to start or increase carbon emission need to offset them. One way to do it is by reforestation, which has begun in the outlying areas, but not in the city proper. We will recommend it.”

OUR MAN IN MANILA



Francis Tolentino LLM 2009, SJD pending, has been appointed head of Metro Manila Development Authority (MMDA) which exercises regulatory and supervisory authority over the delivery of

metro-wide services within the Philippine capital. The center of political and private business in the country, it comprises seventeen (17) local government units. The Metro Manila-wide services include: development planning; transport and traffic management; solid waste disposal and management; flood control and sewerage management; urban renewal, zoning and land use planning; health, sanitation and pollution control and public safety.

Have we left anything out? Needless to say, the tasks are immense and their success will depend on Francis’ intellect, political skills and work ethic which were made manifest during his studies with us here over this past year. We wish him godspeed.



PUBLIC ASSURANCES

“A fine powder covered parts of St Bernard Parish after Chalmette Refining lost power early Monday ...”, reported the Times Picayune on September 7. A company spokesman said that the powder was not hazardous and safe to wash from cars and buildings. Asked about the contents of the powder, he replied that “he didn’t know exactly what substances [were] in the dust”.

We feel reassured.

COVERING THE (EXPANDING) HORIZON: COURSES & PROFESSORS

The addition of new faculty has widened the range of environmental courses, providing depth in places where the field is headed and will long reside. We offer 18 environment law classes each year, as of this Fall:

Faculty:

Adam Babich:

Environmental Law Clinic, Clean Air Act, Hazardous Waste Management, Pollution Control, Administrative Law, Environmental Federalism

Elizabeth Calderon:

Environmental Law Clinic, primary issues Clean Water Act and Solid Waste

Colin Crawford:

Payson Center, Sustainable Development

Mark Davis:

Water Resources Institute, Water Law

Gunther Handl:

International Environmental Law, Law of the Sea, Trade and the Environment

Oliver Houck:

Natural Resources, Clean Water Act, Wildlife and BioDiversity, Coastal and Wetland, Comparative Environmental Law, Environmental Human Rights

Lisa Jordan:

Environmental Law Clinic, primary issues Clean Water Act, NEPA, and Hazardous Waste

Stacy Seicshnaydre:

Land Use Planning

Edward Sherman:

Class Actions

Amy Stein:

Energy and the Environment, Pollution Control, Climate Change, Administrative Law

Corinne Van Dalen:

Environmental Law Clinic, primary issues Clean Air Act and Land Use

Adjunct Faculty:

Shaun Clarke:

Criminal Environmental Law

Joshua Force:

Marine Pollution

William Goodell and Patricia Murray:

Toxic Tort Litigation Practicum

Alida Hainkel:

Oil and Gas Law

David Hunter:

Advanced Oil and Gas

Damon Kirin:

Toxic Tort Theory and Practice

Steven Klein:

Natural Resources Taxation

Stan Millan:

Environmental Law Enforcement; Hazardous Waste Management

Michael Pappas:

Fisheries Law and Management

Lloyd Shields:

Historic Preservation Law

Joel Waltzer:

Native American Law

Delicanna Winders:

Animal Law

Paul Zimmering:

Advanced Energy Regulation

FACULTY PUBLICATIONS

Adam Babich

Articles

Conflicts, Controversy, And Law School Clinics, Clinical Law Review, (Forthcoming Spring, 2011)

Illegal Permit? Who Are You Going To Call? Your Local Environmental Law Clinic! Environmental Law Reporter. (Env. Law Inst.) (Nov. 2009)

Colin Crawford

Books and Articles

DERECHO, DEMOCRACIA Y ECONOMÍA DE MERCADO [Law, Democracy and the Free Market] (with Daniel Bonilla Maldonado and Carmen Gonzalez, eds. and co-authors of introductory chapter, *El Neoliberalismo Neoclásico, El Libre Mercado y Sus Críticos*, (Universidad de los Andes)) (Bogotá, Colombia 2010)

JUSTICIA COLECTIVA, MEDIO AMBIENTE Y DEMOCRACIA PARTICIPATIVA. LA CORTE CONSTITUCIONAL Y LA LEY FORESTAL [Collective Justice, The Environment and Participatory Democracy: The Constitutional Court and The Forestry Law], author of article-length introduction, *Social and Cultural Protection and Environmental Justice: Lessons of the Colombian Model* (Siglo del Hombre/Universidad de los Andes)(Bogotá, Colombia 2010)

DERECHO AMBIENTAL: UNA INTRODUCCIÓN (Environmental Law: An Introduction), ed. and author of introductory essay, *The Promise and Peril of Environmental Law: Challenges, Conflicting Objectives and the Search for Solutions*. Includes essays by Garrett Hardin, Carol Rose and Christopher Stone. Published in the *Nuevo Pensamiento Jurídico* (New Legal Thought) series, (Siglo del Hombre/Universidad de los Andes) (Bogotá, Colombia: 2009)

Engaging Students In Unexpected Ways: Interdisciplinary, Community-Based, Global, and Activist Models, in *Transcending Boundaries and Spaces in Law Teaching: Essays from the Vulnerable Populations, Economic Realities Teaching Conference* (Carolina Academic Press, 2011) with Deirdre Bowen, Daniel Bonilla Maldonado, Kathleen Neal Cleaver, and James Forman, Jr.

Wastewater Resources: Rethinking Centralized Wastewater Treatment Systems, Land Use Planning and Water Conservation, 43 *Urban Lawyer* ## (2011)(forthcoming)

The Challenges of Climate Change Regulation for Governments on the Political Left: A Comparison of Brazilian and United States Promises and Actions (with Solange Teles da Silva), 22 *Pace Int'l L.R.* ## (2011) (forthcoming)

Other Research

Our Bandit Future? Cities, Shantytowns, and Climate Change Governance, 36 *Fordham Urb. L.J.* 211 (2009)(invited conference paper)

Defending Public Prosecutors and Defining Brazil's (Environmental) "Public Interest": A Review of Lesley McAllister's Making Law Matter: Environmental Protection and Legal Institutions in Brazil (Stanford University Press, 2008), 40 *Geo. Wash. U. L. Rev.* 619 (2009)

A Response to Professor McCallister's Reply to My Review of Making Law Matter, 40 *Geo. Wash. U. L. Rev.* 687 (2009)

Mark Davis

Articles

Introduction, *Tulane Environmental Law Journal Special Issue on Water*, Summer 2010.

To the Heart of the Matter: Coastal Restoration and the Future of New Orleans, Brookings Institution and New Orleans Community Data Center, (pending).

Resilience and Opportunity: Lessons from the U.S. Gulf Coast after Katrina and Rita, Rutgers University Press (pending).

Günther Handl

Articles

Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992, *United Nations Audiovisual Library of International Law* (2010).

In Re South African Apartheid Litigation and Beyond: Corporate Liability for Aiding and Abetting under the Alien Tort Statute, *German Yearbook of International Law* (2010).

American-Mexican Boundary Disputes and Cooperation, in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2010, online edition, [www.mpepil.com]

Northwest Passage (Canadian-American Controversy), in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2009, online edition, [www.mpepil.com]

Morgera, Corporate Accountability in International Environmental Law, in 19 *Review of European Community and International Environmental Law* 126 (2010).

Oliver Houck

Books and Articles

DOWN ON THE BATTURE, University of Mississippi Press, 2010.

TAKING BACK EDEN, Island Press, 2009.

The Clean Water Act Returns (Again) Part I: TMDLs and the Chesapeake Bay (publication pending)

There Ought to be a Law: Worst Case and the Deepwater Horizon Blowout (publication pending)

From Sacred Places: The Story of Nikko Taro and the Taj Mahal, *Hawaii Law Review*, Summer 2009.

A Case of Sustainable Development: The River God And The Forest At The End Of The World, *Tulsa Law Review*, Spring 2009.

How'd We Get Divorced?: The Curious Case of NEPA and Planning, *Environmental Law Reporter*, July 2009.

Other Research

Book Review: For Love or Money: The Morality of the Regulated State (publication pending)

Who Will Pay To Fix Louisiana?, *The Nation*, July 2010.

Book Review, Oil Over Again: Exxon Valdez, BP and Beyond, *The Environmental Forum*, July/August 2010.

The Three Katrinas: Hard Cases Make New Law, *National Wetlands Newsletter*, July/August 2010

Book Review, The Teapot Dome Scandal, *The Environmental Forum*, November 2009.

Nature or Nurture: What's Right and What's Wrong with Adaptive Management, *Environmental Law Reporter*, October 2009.

The Messenger, *The Environmental Forum*, September 2009.

Amy Stein

Articles

Climate Change Under NEPA: Avoiding Cursory Consideration of Greenhouse Gases, *Colorado Law Review* (2010)

State Fish Stocking Programs at Risk: Takings Under the Endangered Species Act, *Duke Env'tl. Law and Policy Forum* (2010)

Proof is in the Pudding: Alumni Notes

The real measuring stick of any program is not its personnel but its outcomes . . . in this case more than 2,000 environmental law alums now out in practice and the world. They are also teachers, legislators and entrepreneurs, particularly in the energy and clean energy sector. The updates below provide a snapshot of their actions—ever expanding, ever more diverse—that we have to believe are improving our chances to live with and on the planet.

Eric Ames, Santa Fe, NM [1990] with the New Mexico Environment Department has been going after 13 sour gas plants in Southern New Mexico that have been flaring thousands of tons of excess emissions for years – it has been a hard fight but has been quite successful.

Dana Atchison, New Orleans, LA [1998] As Senior Counsel for Entergy Corp., Dana has been enjoying his work on intellectual property and privacy law; also on the board of directors for New Orleans Medical Mission Services and ran an eye clinic for them in Chinandega, Nicaragua last May.

Benjamin Bada, Luxembourg, Belgium, [LLM 2009] is doing micro-insurance for poor people, the equivalent of microfinance but in insurance matters. He is also applying to the UN for a position in Environmental and Human Rights.

Paul Bettens, Antwerp, Belgium [LLM 1994] is still practicing Maritime Law and falling in love with Venezuela, literally: he will marry a Venezuelan this October. He finds that “environmental protection “does not exist” in the country, and he has “plans and dreams to become useful over there in that respect”.

Jon Brooks, New York NY [1984] in private practice on land use, energy and environmental issues; he has recently won a case vindicating the First Amendment rights of street vendors.

Alfred Brownell, Liberia [LLM 2002] Now an environmental justice lawyer, he led a briefing this spring on Bridge-stone/Firestone’s continued environmental destruction and child rights violations, cohosting with The Institute

for Policy Studies, the International Labor Rights Forum, and Africa Environmental Watch. Brownell is the president and founder of The Association of Environmental Lawyers of Liberia (Green Advocates), and he is a leading lawyer in the case against Firestone.

Pedro Brufao-Curel, Galicia, Spain [LLM 1998] has been dealing with hydropower reform and water business corruption. He leads the legal team of RIOS CON VIDA (“Rivers with Life”, www.riosconvida.es, an NGO awarded the National Environmental Prize). One result is a new wave of case-law requiring environmental flows, without compensation, in old water permits to conform to the EU Water Framework Directive. Much of this has been published in his books: “The Environmental Reform of Water Permits” and “Clean Waters, Clean Hands: Corruption and Irregularities in Spain’s Water Management”.

Brett Buchheit, Denver, CO [LLM 2007] Practicing land use law; also reports of camping at 10,000 feet (and a few inches of snow) while on a fishing excursion in Flat Top Wilderness Area near Steamboat.

Dave Buehler, New Orleans, LA [1986] Is doing what he loves most... maritime and coastal zone management law. He is also doing a lot of pro bono and reduced fee work representing widows, orphans, and abused women.

Warren Burke, Washington, DC [1997] is with the U.S. Congressional Office of Legislative counsel and organized a panel on Katrina litigation at the Federal Bar Association annual meeting in New Orleans this fall.

Patricia Prato Casado, Venezuela [LLM 2009] Patricia Prado Casado founded a non-profit environmental organization called Reforesting Earth in her home country of Venezuela. It has already received donations by supporters eager to get involved. She also just published an article on the Orinoco Heavy Oil Belt.

Carmen Conaway-Mediavilla, Venezuela [LLM 2002] I have two kids, Rafa is 4 years old and Carmencita 14 months old; “I started to work last week at my husband’s law firm; I am also teaching part-time at the Catolica Law School.”

Anthony Cooke, Herndon, VA [1995] Has recently taken the wheel as Assistant General Counsel of Product and Regulatory Affairs at Volkswagen Group of America.

Patricia Cornette, Boone, NC [LLM 2005] is working in renewable energy and related research at Appalachian State’s Research Institute for Environment, Energy, and Economics. She is also Co-PI on a EPA Methane to Markets grant for a project being conducted in Brazil.

Diana Csank, Washington, DC [2010] Diana has begun working with the President’s Council on Environmental Quality in Washington, D.C. She also helped to plan the ABA Section of Environment, Energy, and Resources Fall Meeting in New Orleans Sept. 29 - Oct. 2.

Theresa Duckett, Chicago, IL [2002] Practices environmental law with Locke Lord Bissell & Liddell and has recently been working on issues under the Endangered Species Act.



Richard Exnicios, New Orleans, LA [1998] is practicing land use insurance and juvenile justice law, and ran this fall for a Juvenile Court judgeship.

Daniel Fort, St. Louis, MO [2004] Serves on the board of the Great Rivers Habitat Alliance, which is dedicated to fighting irresponsible development within the confluence flood plain in Missouri.

Charles Freeman, Seoul, Korea [2002] Is rocking and rolling on the guitar with the 8th Army Band.

Jon Goldfarb, Charleston, SC [2002] Is running a construction company and is also advising a chemical company which has developed an organic filtration material that has been sold into the oil and gas industry to filter water and other materials around the world.

Nicole Heyman, New Orleans, LA [2008] Is loving work with the Vacant Properties Campaign, and still finding time for the occasional marshland paddle.

Andrew Homer, Los Angeles, CA [2008] is serving as Vice Chair for the

ABA SEER Superfund and Natural Resource Damages Committee, drawing heavily on his experiences in the Environmental Law Certificate program and the Environmental Law Clinic in his role as an associate in the Environment, Land Use & Natural Resources department at Pillsbury.

Lisa M. Houlihan, Alameda, CA [2000] After nine years as a Coast Guard JAG, Ms. Houlihan now practices environmental law as a civilian for the Coast Guard. She has been advising on issues related to the Deepwater Horizon spill.

Andrew Jacoby, New Orleans, LA [2008] has joined the local firm of Jones Swanson with a strong environmental and toxic tort practice, and much BP work. He is also writing an article now on the BP spill and Due Process concerns in class actions that could arise.

Fedyayev Ilya, Russia [LLM 2005] Ilya Fedyayev survived the Moscow fires, despite suffering record highs and low hanging smoke without a fan or air conditioning (none were to be had in the beleaguered city). He continues to work for CARBO Ceramics making products for the oil industry.

Courtney M. LeBoeuf, San Francisco, CA [2003] Is alive and well and specializing in environmental litigation at Edgcomb Law Group. Her campaign to become Honorary Batgirl of the Oakland Athletics baseball team was a success!

Jordan Lesser, Ithaca, NY [2009] Has taken a position as legislative aide to Barbara Lifton, Assemblywoman representing the 125th district for the New York State Assembly.

Peter Luce, Washington D.C. [2008] Is working on behalf of the Navajo Nation to protect their ownership rights to coal reserves that involves “[t]he entire history of US-Native American relations, the Southwest Power-Industrial Complex, Water Law, the Clean Air Act, Sierra Club’s opposition to gigantic coal-fired power plants, the Central Arizona Project, The Colorado River Basin, the Mohave and Navajo Generating Stations, etc.” and he feels very fortunate to be a part of it.

Gary Lucks, Oakland, CA [B.S. 1982] is the Principal Attorney/Scientist of Beyond Compliance, and has co-authored “California Environmental Law and Policy: A Practical Guide”

that covers the entire field of California environmental, land use, and natural resources law in non-technical language to benefit project applicants, planners, consultants, and attorneys.

Joel Merkel, Seattle, WA [2005] Has accepted a position as Assistant General Counsel for the Summit Power Group in his hometown. Summit Power is working on developing cutting edge clean energy facilities, helping to develop a robust clean energy economy.

Elizabeth Nagelin, Pasadena, CA [2007] Couldn't be happier while working on a big NEPA case at the Silverstein Law Firm.

Glen Nazurak, Canada [LLM 1994] Glen Nazurak left BP Canada Energy in November, 2009, and now works with Conoco as a legal consultant.

Elizabeth Nicholas, Washington, DC [1998] After a stint with the U.S. DOJ Takings Team, has returned with enthusiasm to the advocacy side as staff attorney for the Defenders of Wildlife in Washington.

Lieutenant Commander Brandy Parker, Washington D.C. [2007] was sad to leave New Orleans, and before her promotion was working as a legal

advisor to the Unified Area Command for the Deepwater Horizon Spill – which found her performing ‘legal triage’ to shore up authority and review ‘short-fused’ field regulations.

Galahad Pe Benito, Manila, Philippines [LLM 2003] writes “Back here in far-away Manila, I authored two books dealing with environmental law. One concerns the Environmental Compliance Certificate, and the other concerns Philippine laws on pollution. I continue to be active in the environmental movement, serving as Legal and Environmental Consultant of the Archdiocese of Manila and numerous environmental groups. We have been opposing oil depots, the construction of large dams, and the proliferation of GMOs. In addition, I continue to teach Environmental Law at Far Eastern University-Institute of Law. My Tulane education has been helping me a lot in my environmental advocacy and it just feels good to be of service to the environment and to Mother Earth.”

Crissy Pellegrin, Dallas, TX [2003] is now a senior attorney with the EPA Office of Counsel, Region V.

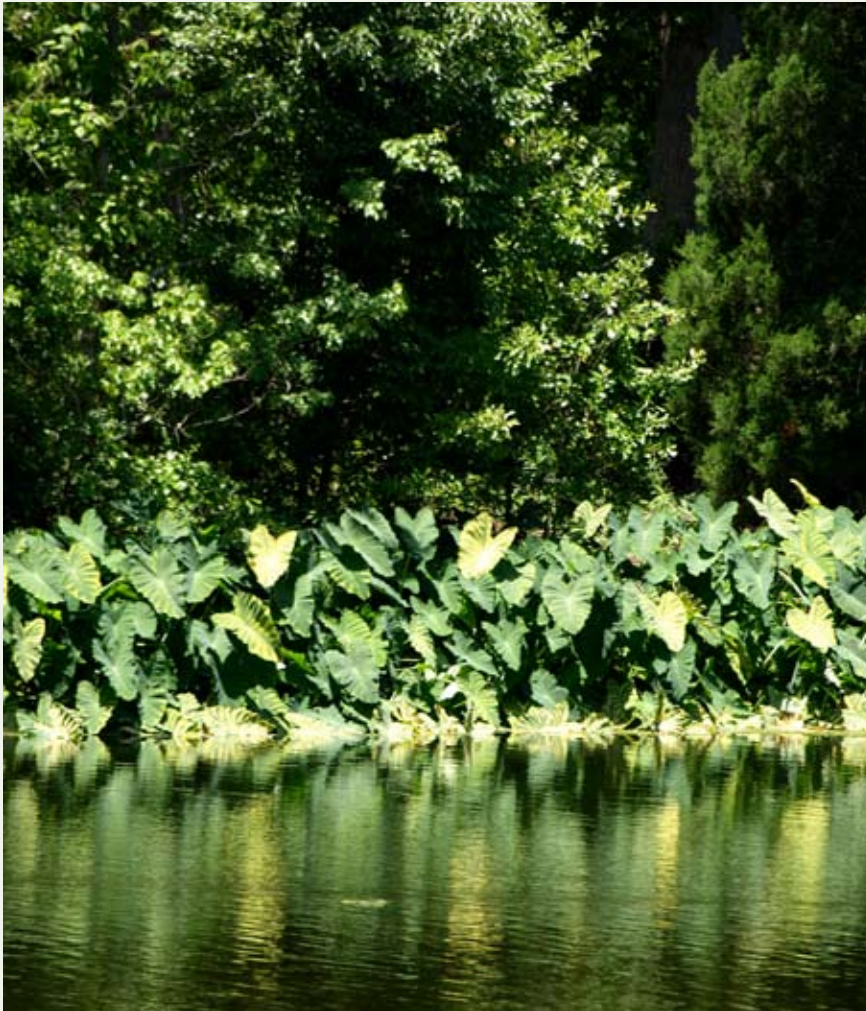
John Pint, Boston, MA [2004] Is focused on intellectual property law at Proskauer Rose. He is working with several small start-ups who are developing enviro-friendly products – one of which reduces light pollution from obstruction lights on wind turbines, while not reducing their effectiveness at warning aircraft. Another is developing methods of increasing efficiency of solar cells to make them more commercially viable. He is on the lookout for IP clients in the environmental space!

Robert Rios, San Antonio, TX [1998] After having practiced as a litigator in San Antonio since graduation, Roberto is now campaigning for Judge of the 73rd District Court of Bexar County, Texas. A recent campaign event was a crawfish boil held by his friend and fellow Tulane Law alum Marc Ledet.

Elizabeth Barrett Ristroph [2004] has been spending time in the Arctic as Assistant Borough Attorney at North Slope Borough, working on writing a new land-use code and coping with the impending offshore drilling.

Rene Rocha, Lubbock, TX [2010] is in the process of building a Concentrated Solar Power Plant, which is planned to use solar energy to produce steam that will power a turbine driven generator.





David Roman-Vargas, San Juan, Puerto Rico, [1994] continues to direct the environmental certificate program at the University of Puerto Rico and to lead student trips to Latin America and China.

Martin Scharrer, Germany [LLM 2009] Martin Scharrer recently began work at an investment company in Munich, where he is helping to set up closed investment funds for investing in renewable energy projects (especially photovoltaic power plants). He works in setting up contracts and performing due diligence, working with lawyers and construction companies in the countries where these plants are build.

Kristin Schlemmer, New Orleans, LA [2010] Will be headed to San Antonio to clerk on the Fifth Circuit for Judge Garza in the 2011-2012 term, as soon as she finishes her stint here in New Orleans with Judge Feldman for the U.S. District Court for the Eastern District of Louisiana. She adds: "Yesterday I visited Jean Lafitte National

Park and found myself swept with memories of our Biodiversity seminar. What a beautiful little slice of species-rich Louisiana marked with some signs of trouble – invasive species galore, suburban encroachment, and even a bit of oil floating on the water. I'm so glad to have finally made it out there."

Andrew Seidel, Denver, CO [2009] Is the Blumel International Environmental Law Scholar at the University of Denver Law School. He has been exploring the wilds of Southern Colorado.

C. Russell H. Shearer, Rockville, MD [1993] Has been working as the Vice President of New Reactor Programs for ISL and is responsible for its technical-support assistance to the US Nuclear Regulatory Commission in evaluating design certification and license submissions. He enjoys the operations side of the law and consulting on compliance before bad surprises arise.

Allison Sondak, New Orleans, LA [2002] Has recently returned to New Orleans and has been working with the Center for Biological Diversity on its successful campaign to prevent BP from harming sea turtles during their oil burn-offs.

Luis Vera-Morales, Mexico City, Mexico [LLM 1993] Reports that his law firm, Vera, Carvajal and Sosa, has been named the Joint Environmental Law firm of the year in Latin America.

Jeannice Williams, Chicago, IL [2008] Had a "wonderful experience" clerking for Judge James Beaty in the Middle District Court of North Carolina, and is now an associate at Schiff Hardin pondering the issues of RICO.

Greg Young, Nashville, TN [2001] is the proud parent of two boys and is happy despite the notion of free time being a thing of the past. During the spring flooding in Tennessee he spent time helping out in the community to set his neighbors right again. He is practicing environmental law and is also the general counsel to the Tennessee Wildlife Federation.

Tulane Environmental Law News

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The Tulane Environmental Law Society would like to thank everyone who contributed to this issue.

Tulane's Environmental Law Program

The Tulane Environmental Law Program is one of the largest and most diverse in the United States. Each year, Tulane graduates more than forty Juris Doctor and a dozen Masters candidates with specialties in environmental law. What distinguishes Tulane's program in addition to the experience of its **faculty** is the scholarship of its **journal**, the strength of its **clinic**, the projects of its **institute**, and the momentum provided by an engaged group of **students**. These five components of Tulane's program – in the extraordinary setting of Post-Katrina New Orleans, the Lower Mississippi River and the Gulf Coast – provide a unique academic experience for those with an interest in environmental law and sustainable development policy. For more information, contact the Law School's admission office at John Giffen Weinmann Hall, Tulane University, 6329 Freret Street, New Orleans, LA, 70118, 504.865.5930, or its web site at www.law.tulane.edu.



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