



TULANE ENVIRONMENTAL LAW NEWS

A PUBLICATION OF THE TULANE CENTER FOR ENVIRONMENTAL LAW
VOL. 22 | SPRING 2019

A WORD FROM THE DEAN

I'm happy to announce the creation of a new Tulane Center for Environmental Law. Tulane has long been renowned in environmental law, with high-impact faculty scholarship, a highly regarded clinic, the influential Tulane Institute for Water Resources Law and Policy, a dedicated student-led society and journal, the award-winning Environmental Law & Policy Summit, and a certificate of specialization and LLM degree in the field.

The mission of the new Tulane Center for Environmental Law will be to serve as an organizing hub to support these existing resources and as a platform for building significant new strength in the field. The center's formation was enabled through a generous gift from Doug McKeige (L '86), and the center will be one of the Law School's significant fundraising priorities in Tulane University's \$1.3 billion "Only the Audacious" capital campaign, formally launched last December. Ultimately, the goal of both the center and the ambitious fundraising effort is to enhance and preserve Tulane's national and international leadership in environmental law for the decades to come.

Professor Mark Davis, the longtime director of the Tulane Institute for Water Resources Law and Policy and more recently of Tulane University's ByWater Institute, has agreed to serve as the founding director of the new center for Environmental Law. The Center will occupy dedicated new quarters in the Law School Annex next to Weinmann Hall, along with the new Tulane Center for Energy Law, launched last January. A formal event to celebrate the launch of the Tulane Center for Environmental Law is scheduled for March 21, 2019, in connection with Tulane's 24th annual Environmental Law Summit. Please mark your calendars now. In the meantime, please join me in thanking Professor Davis for taking on this important new leadership role for the School.

Dean Meyer, Tulane University Law School

CELEBRATE WITH US!

JOIN US IN COMMEMORATING THE LAUNCH OF THE
TULANE CENTER FOR ENVIRONMENTAL LAW

WITH KEYNOTE SPEAKER JOHN BEL EDWARDS, GOVERNOR OF LOUISIANA

THURSDAY, MARCH 21, 2019 AT 5:30 PM

TULANE UNIVERSITY LAW SCHOOL

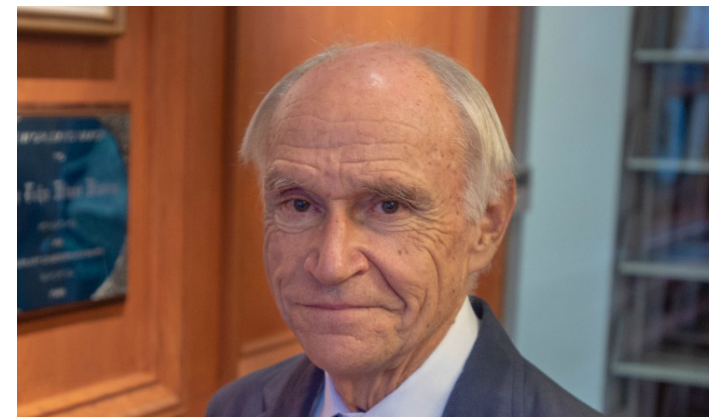
WENDELL H. GAUTHIER MOOT COURT ROOM 110

RSVP TO LAUREN GLASER AT EVENTS@TULANE.EDU OR (504) 314 - 7639

INTRODUCING THE CENTER FOR ENVIRONMENTAL LAW



Mark Davis, Director of the Tulane Institute on Water Resources Law and Policy and the ByWater Institute



*Oliver Houck, Professor of Law,
David Boies Chair in Public Interest Law*

Tulane's Environmental and Energy Program launched in 1983 by offering a JD Certificate in the field. As the curriculum grew toward a steady-state of 20 course offerings per year, it added E & E Masters and SJD programs (1984), the Environmental Law Society (1986), Environmental Law Journal (1988), Environmental Law Clinic (1990), Environmental Law Summit, (1992), and a series of institutes focused initially on Louisiana issues, then internationally, and most recently the Institute of Water and Policy (2007). Each of these operations has earned its spurs, but the world has changed, the ante has gone up, and challenges to the environment call for a yet stronger response. Our answer is the creation of an Environmental Law Center that will address issues that are more systemic, chronic, intransigent, and call for many forms of intervention from technical assistance to expert testimony, amicus briefs, white papers, legislative and administrative proposals, coalitions with related parties, and greater involvement by our students and the school itself.

The interim director of this Center is Mark Davis, who has proven his competence in the Water Institute and has ideas of his own on first initiatives. I leave them to him, with an offer to assist if and as I can. Let me close by saying that we continue to evolve here, and we look forward to working with colleagues in law, science and other disciplines towards the goal of a healthy environment and just resolutions for all.

The maiden voyage of the Center for Environmental Law has been an eventful one, in a good way. Designed to flesh out the already strong bones of the Tulane's environmental law program the CEL is built on two truths: First, that environmental law is rapidly evolving and becoming more important; and second, that Tulane is one of the handful of institutions the world will be looking to for leadership as environmental law and practice become much more dynamic and interdisciplinary. This will mean combining traditional environmental law with private law, natural law, public trust concepts, and the rights and experiences of indigenous people, to name just some examples, in new ways but that always hold the that promise of enriching the experience of students, faculty and alumni. This will be bold work the seeds of which are being planted. Some of those seeds while take time to germinate while others are already bearing fruit, including:

- Inauguration of a \$1,000 prize for the best comment submitted by a 2L student to the Tulane Environmental Law Journal as judged by a distinguished panel of faculty members, alumni, and practitioners.
- Support for the student led Energy and Environmental Law Society.
- Support for the annual Summit on Energy and Environmental Law, one of the most highly regarded student organized programs in the nation.
- Arranging for student participation in the U.S. Business Council on Sustainable Development national meeting held in New Orleans in January 2019.
- Travel support for student attendance at the American Law Institute Environmental Law seminar in Washington, DC.
- Development of expanded internship and externship options for environmental law students.
- Coordination with TLS faculty on course development concepts for the environmental law program.
- Compilation of the annual Environmental Law Newsletter—yes this newsletter.

Midway through its first year, the CEL has already earned its stripes but it has only begun. In the end, its potential will be defined in large measure by how it engages with students, faculty and alumni—this is their (your) CEL as much as it is a program of TLS. So, if you have suggestions or comments about CEL, let us know by contacting its director, Mark Davis, at msdavis@tulane.edu.

2019 COASTAL UPDATE

Chris Dalbom

It was quite a year. In Louisiana's ever-morphing, ever-contentious effort to "Save the Coast," 2018 felt like the year that the full range of public and private rights and interests came together in ways that brought property ownership (private and public), public access, oil and gas development, community vulnerability and adaptation, and the matter of how to pay for everything that needs doing to the same table. Sometimes the context was purely local, and sometimes it was part of bigger statewide or national dramas. Whichever was the case, they provided powerful reminders that environmental and coastal law are not abstract things that exist apart from our lives. Coastal change, energy policy, climate change and the challenges facing communities and families are very real as a brief, partial review of some key events demonstrate.

The Bayou Bridge Pipeline spent a good deal of the year in the news, thanks, in part, to efforts from the Tulane Environmental Law Clinic's representation of environmental organizations and St. James Parish residents. The Bayou Bridge permitting from the Corps of Engineers was challenged in Federal court, and its permitting from the Louisiana Department of Natural Resources was challenged in state court. Trial judges in both the state and federal cases halted construction on the pipeline only to have appeals courts, first, overturn the injunctions and, second, overturn the rulings that permits had been improperly granted. In a state that already hosts thousands upon thousands of miles of pipelines, several

factors played in to the attention given to Bayou Bridge. First, Bayou Bridge is part of the same company and network as the Dakota Access pipeline, where Standing Rock activists protested and are now being given years in prison. Second, it crosses private property in the Atchafalaya Basin where landowners do not want to grant access, highlighting the fragility of property rights in the face of the desires of the industry and federal energy policy. Third, Bayou Bridge has been met with its own force of peaceful protesters who have been arrested as well. Additionally, a new law passed by the Louisiana Legislature that has changed protesting "critical infrastructure" such as pipelines from a misdemeanor to a felony. So, the fragility of the right to free speech in the face of the desires of the industry has also been put on display.

On another front, the Plaquemines Parish port authority (Plaquemines Port and Harbor District) tried to place a massive crude oil export facility in the same place where it tried to develop the RAM coal export terminal just upstream of the CPRA's planned Mid-Barataria Diversion Project, the contentious crown jewel of the state's Coastal Master Plan. That facility would have to be serviced by the Seahorse Pipeline, a 700-mile long, 30-inch-wide pipeline that would go from Oklahoma to St. James

Parish and on to the Plaquemines Parish export site.

In more recent news, an LNG export terminal planned for Plaquemines Parish, in addition to directly impacting over 800s acres of wetlands, will need to be accessed by the Gator Express, a pair of 42-inch-wide natural gas pipelines that will run through Barataria Basin for 27 miles to connect with the Tennessee Gas and Eastern Transmission pipelines. If it is able to go forward without any legal challenges in the coming years, it would be quite a surprise.

In a mostly positive development, U.S. District Court Judge Jane Triche Milazzo ordered pipeline companies to restore 9.6 acres of wetlands where their canals had expanded beyond the borders agreed to in their contracts with landowners. While many concentrated on the fact that the judge awarded only \$1,102 in damages, the fact that the judge ordered the restoration of wetlands where a canal had widened several times more than its original width shouldn't be lost. Enforcement of the original contracts that allow so many pipelines to be cut through privately owned wetlands has been lax for so very long that forcing pipeline companies to restore back to within the agreed upon measurements could lead to a total of thousands of acres of coastal wetlands being restored.



From left to right: Jamie Huffman, Senior Research Fellow; Mark Davis, Director; Christopher Dalbom, Assistant Director; Kristen Hilferty, Senior Research Fellow

INSTITUTE ON WATER RESOURCES LAW AND POLICY

Chris Dalbom

2018 was yet another busy year for the Tulane Institute on Water Resources Law & Policy here at Chateau d'Eau with new hires, a promotion, and continued work towards implementing law and policy that properly reflects the vital role water plays in our society. Over the summer, two of our postgraduate research fellows moved on to greener pastures. Sam Bruguera (L '17) moved back to Los Angeles and is currently a law clerk with the Los Angeles Superior Court. Katherine Van Marter (L '16) headed east and is an associate attorney in Davis & Whitlock, P.C.'s plaintiff's environmental litigation practice. We were lucky to have both Sam and Katherine with us and we have been lucky to replace them with two new postgraduate research fellows. One, Kristen Hilferty (L '17), is a former student researcher at the institute who spent a year clerking for Judge Marc Amy at Louisiana's Third Circuit Court of Appeal before returning to us. Our second new fellow is Jamie Huffman, a 2018 William & Mary Law School graduate who brought with her

extensive experience working on coastal issues in the Chesapeake region. Jamie has already accepted a position as an associate at Morgan, Lewis & Bockius to start in the fall of 2019. Finally, Chris's title was changed from Program Manager to Assistant Director to better reflect the added responsibilities he has taken on.

The Institute's long term programs continued to grow and change in 2018. Mark Davis is still the reporter for the Louisiana State Law Institute's Water Code Committee, and the work powering that committee is still being done within the Institute by Mark, Chris, fellows, and student researchers. The comparative water law research phase of the project included surveys of water law in all fifty states and several countries, longer looks at several states, and deep dives into water law and management in France, Mississippi, Arkansas, Virginia, and Minnesota. Deep dives were capped off with visits to state administrative agencies in the other four states, but, unfortunately, not France. Work now will be focused on applying what we have learned from all of the comparative research

to shaping what will be a purposeful set of laws intended to allow the state to administer its water resources while taking advantage of twenty-first century science and technology and in a manner that protects the resources that both Louisiana's ecosystems and economies rely on.

The Financing the Future work that analyzed available funding for Louisiana's coastal restoration and proposed new funding sources for the state has led to a Tipping Points project focused on finding ways for coastal parishes and towns to meet their increasing obligations to provide (read: fund) adaptation and resilience work on behalf of their residents. This Tipping Points work has yielded a series of white papers intended to aid coastal communities in extending their lifespans in the face of coastal collapse and global warming. This work will continue in 2019 and include further exploration of the avenues available to coastal political subdivisions as well as teaming up with social scientists from various disciplines and institutions.

In 2018, the institute, once again, collaborated with and advised decisionmakers from around the country on creating pathways to implement plans for water management and coastal adaptation. We worked with leaders from as far away as the Hampton Roads region of Virginia to as near as the cities of Gretna, Westwego, and New Orleans. The most in-depth relationship formed was probably when Mark Davis served on the infrastructure team of Mayor-Elect Latoya Cantrell's transition team as she took over the New Orleans city government.

TULANE CENTER FOR ENERGY LAW INSTITUTE

A Year in Review

The first year of the Tulane Center for Energy Law is now almost behind us. This first year has been a period of planning, growing and executing. We have recruited a senior research fellow with research and teaching focus on U.S. energy markets. We have welcomed the first externally funded, long-term visiting research fellow who will participate in both teaching and research, Dr. Tade Oyewunmi. Dr. Oyewunmi's research project relates to law and policy issues arising from decarbonization and recent technological developments in natural gas and electricity supply markets and industry. He will also participate in teaching during his 14 months here with the center.

We have introduced new energy law courses to the Tulane Law School course offerings, spanning from an introduction to International and Comparative Energy Law, large-scale energy projects, energy investment protection, sustainable energy law and policy, and comparative energy law.

On the research front, the center has published fifteen new articles in its first year. Of these, thirteen were published in international peer-reviewed journals like Journal of World Energy Law and Business, Journal of Energy and Natural Resources Law, European Law Review, Utilities Law Review, International Energy Law Review. Two other articles have been published in general publications like Financial Times. The subject matter of these studies ranges from oil and gas, to pipelines, to LNG, to international investment law and WTO law, to renewable



Professor Kim Talus

energy and theory of energy law.

In November 2018, the center co-hosted their first event, the China Energy Law and Trade Forum, with the Freeman School of Business Energy Institute. Plans for the first annual Tulane Energy Law Conference on March 28 – 29, 2019 are currently on-going. The theme of the conference is “The Changing Landscape for Cross-Border Energy Transactions.” The forum will gather global experts from industry, government and legal academics to discuss current pressing energy challenges and opportunities in areas like: international developments of LNG markets; international investment disputes and energy investments; and hot compliance issues on the global energy landscape.

Industry and other stakeholders have benefited from the work done at the Tulane Center for Energy Law from the very beginning. The first year saw practical assistance and cooperation with a major oil and gas company; European Commission; Japanese Fair Trade Commission; and the World Bank.



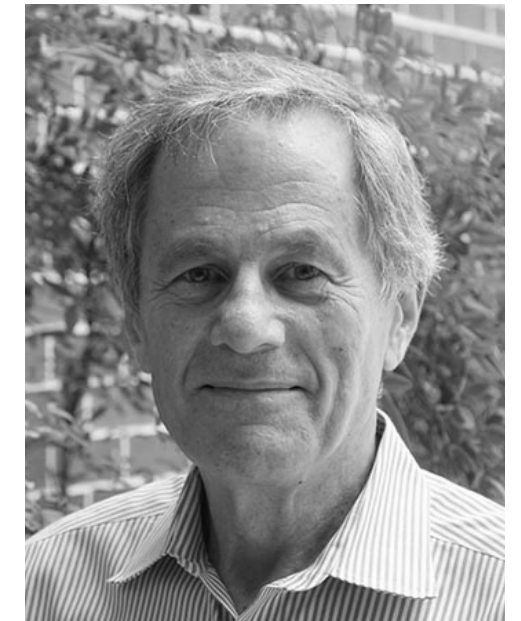
Professor Sirja-Leena Penniten

Prof. Sirja-Leena Penniten, of the Center for Energy Law, will publish a new book in 2019. The objective of the book is to provide for a comprehensive overview of the application and interpretation of the free movement provisions — the cornerstone of the EU's internal market — in the energy sector by the European Court of Justice. Although the Court's application and interpretation of the free movement provisions has played a key role in the overall course of market integration within the EU, this process has largely bypassed the energy sector.

The book examines, in particular, what restrictions can be placed on the principle of free movement of goods and capital in the context of the energy sector; and analyzes the balance established through the justification framework in the Court's case-law between shared EU energy policy objectives and Member States' national regulatory diversity, and examine the nuances in the balance conditioned by the political and economic context that has arisen during decades of development of the energy sector. Given the uniqueness of the EU legal order, analyzing the Court's application and interpretation of the free movement provisions is important for the following reason: in determining the scope of application of a particular provision and providing an interpretation of it in the light of the particular context of the case, the

Court at the same time defines the scope of justification of Member States' national rules and the extent to which EU law impacts upon their (regulatory) autonomy.

Finally, by taking into consideration that the European Court of Justice has often been characterized as being the driving force of the European integration, the book sheds light on the impact of the Court and its rulings in the energy sector, and in the liberalization efforts of the sector, in particular.



Professor Robert Sloan

Professor Sloan has joined the Law School's new Energy Center as Senior Research Fellow. As the former general counsel of both Entergy Corporation and General Electric Industrial Systems, he will be teaching courses dealing with issues across the energy field here and abroad while at the same time assisting with the planned dramatic expansion of the Law School's energy law, regulation and policy portfolio. In addition to this, Professor Sloan plans on maintaining his current active writing and speaking schedule in the overall energy law field across the globe with a particular emphasis on the challenges faced in the operation of the entire nuclear fuel cycle.



SWEARING-IN CEREMONY SEPT. 14, 2018



Back Row, L-R: Machel Hall, Portia Mastin, Tristan Danley, Henry Dahlen, Zeke Maggard, Brian Broussard, Denman Mims, and William Vargas
Front Row, L-R: Drew Renzi, Corinne van Dalen, Julissa Hunte, Elizabeth Livingston de Calderon, Louisiana Supreme Court Justice Guidry, Dean David Meyer, Margaret Wilbourne, Emily Dombrowski, Adrian Lopez, Emily Werkmann, and Megan Miller

TOP, L-R: Tristan Danley, Henry Dahlen, and Brian Broussard

BOTTOM, L-R: William Vargas, Drew Renzi, Megan Miller, Portia Mastin, Zeke Maggard, Adrian Lopez, Julissa Hunte, and Emily Dombrowski

ENVIRONMENTAL LAW CLINIC

TELC Welcomes a new community outreach director

Dr. Kimberly Terrell joined the Tulane Environmental Law Clinic (TELC) this past October as the director of community outreach. In this role, she works to empower concerned citizens with the knowledge and resources needed to protect the health of their environment and local community. This work entails many different responsibilities, from teaching communities how to stay informed of environmental issues or how to find out what pollutants are being emitted in their neighborhood, to guiding potential clients through the process of requesting TELC legal assistance.

Kim earned a PhD in conservation biology, a field of biology focused on protecting nature, from the University of New Orleans in 2011 and dual bachelor's degrees in biology and political science from Tulane University in 2005. As a Tulane student, she was awarded the university's Environmental Stewardship Award for her work in developing Campus Cats, a program to humanely reduce local stray cat populations. Kim's graduate research was conducted at the Smithsonian Conservation Biology Institute (Washington, DC) and focused on endangered cat species. She was subsequently awarded a David H. Smith Postdoctoral Conservation Research Fellowship to study the effects of climate change on amphibians in the eastern United States. Kim has been active in science-based outreach since she was a graduate student and has had the privilege of working with diverse audiences, from under-served public school children in southeast Louisiana to forest managers in Beijing, China.

Throughout her experience as a scientist, Kim



has always felt strongly connected to the culture and environment of the Gulf Coast. More recently, she gained a better understanding of the potential synergies between law and science through her efforts to combat discrimination in the field of scientific research. Inspired by these collective experiences, Kim joined the Tulane Environmental Law Clinic, where she applies her science-based perspective and outreach experience to help give a voice to marginalized and resilient communities. Kim

considers herself a native of the Mississippi River Basin, having lived most of her life in New Orleans, Chicago, and Memphis.

Baton Rouge District Court Vacates Permit for Sand and Gravel Mine on the Fenceline of Residential Community

On October 31, 2017, Louisiana’s 19th Judicial District Court vacated an LDEQ minor source air permit that the agency had granted to Southern Aggregates LLC for a sand and gravel mine adjacent to the Oak Hills residential subdivision in Livingston Parish, Louisiana, because LDEQ had failed as public trustee of the environment. The court’s written ruling stated that LDEQ’s “conclusion that the social and economic benefits of th[e] permit significantly outweighed the environmental impact cost cannot be supported without determination of the economic impact the project will or may have upon neighboring landowners.” TELC represented Save Our Hills, Louisiana Environmental Action Network, and Oneil Couvillion. On appeal by the mine operators and LDEQ, the First Circuit reversed the district court’s ruling. TELC filed a writ of certiorari with the Louisiana Supreme Court to challenge the First Circuit decision, which is pending.



DOCKET HIGHLIGHTS

*Updates from the past year
at the TELC*

Baton Rouge Court Vacates Construction and Operation Permit for Oil and Gas E&P Waste Transfer Station

On August 30, 2018, Louisiana’s 19th Judicial District Court vacated a Louisiana Department of Natural Resource’s (DNR’s) permit to FAS Environmental Services, LLC for construction and operation of a new E&P Waste Transfer Station in the town of Belle River on the Gulf Intracoastal Waterway and the Atchafalaya Basin. The court reversed DNR’s decision and vacated the permit, holding that DNR failed to require compliance with its flood related spill protections and failed to meet its public trust duties by disregarding the environmental, social and economic impacts that the FAS trucks would have on a Belle River residential area. This represented the second time TELC successfully challenged the permit for this facility. TELC represented Louisiana Environmental Action Network, Concerned Citizens of Belle River, Hazel Cavalier, and the Atchafalaya Basinkeeper.

St. James Parish District Court Invalidates Decision of Louisiana Department of Natural Resources to Issue Coastal Use Permit for Construction and Operation of Pipeline Ending in St. James, Louisiana

On May 15, 2018, Louisiana’s 23rd Judicial District Court ruled in favor of the plaintiffs and invalidated the LDNR’s decision to issue a coastal use permit to Bayou Bridge Pipeline, LLC, to construct and operate a crude oil pipeline through the Coastal Zone of Louisiana and terminating in the town of St. James. The court held that LDNR failed to apply mandatory coastal use guidelines designed to protect public safety and the environment and thereby eliminated the increased protections which should have been afforded to the community prior to issuing a permit to transport crude oil through the neighborhoods of St. James Parish and coastal areas. The court remanded to LDNR with a specific order that it require the pipeline company to develop effective environmental protection and emergency or contingency plans relative to evacuation in the event of a spill or other disaster prior to the continued issuance of the permit. Though the Fifth Circuit Court of Appeal reversed the 23rd JDC decision in our clients’ favor on January 30, 2019, following the 23rd JDC decision St. James Parish finally ended years of inaction and took concrete steps to develop an evacuation plan for the people of St. James. TELC represented Pastor Harry Joseph, Sr., Genevieve Butler, Humanitarian Enterprise of Loving People, Gulf Restoration Network, Atchafalaya Basinkeeper, and Bold Louisiana.

Baton Rouge Court Vacates Air Permit for Petroleum Storage and Terminal Facility

On May 10, 2018, Louisiana’s 19th Judicial District Court vacated LDEQ’s decision to issue an air permit that would allow NuStar Logistics, L.P. to expand its operations and increase emissions in the town of St. James. LDEQ had issued the permit without providing any basis for its decision or showing that it had complied with its public trustee duty, requiring it to consider the effect of the expansion and increased emissions on the adjacent residential neighborhood and to conduct a cost-benefit analysis. The court remanded the matter to LDEQ for reconsideration and decision. TELC represented Louisiana Environmental Action Network (“LEAN”), Humanitarian Enterprise of Loving People (“H.E.L.P.”), Harry Joseph, and Genevieve Butler.

Town Improves its Sewerage System

On November 3, 2017, the U.S. District Court for the Southern District of Mississippi issued a consent decree agreed to by the Gulf Restoration Network and the city of Centreville, Mississippi. The decree requires the town to make improvements to its sewerage system that will reduce stormwater inflow and infiltration and prevent sewage blowouts. The agreement also provides for additional testing, improvements to manholes, changes in the way the town enforces sewerage violations on private land and other methods of improving the sewerage system. TELC represented the Gulf Restoration Network.

Clockwise, from left to right:
Student attorney Henry Dahlen and TELC intern Theo Hilton with Oakville community members

Longtime clients of the Residents of Gordon Plaza, Inc. attend a client meeting at Tulane Law School.

Julissa Hunte (L’19) interviews a client to gather a standing declaration for a case that concerns RCRA claims.

Student attorneys Allison Skopec (L’18) and Ashlyn Smith-Sawka (L’18) with client member Rickey Robertson at Fort Polk, La.



24TH ANNUAL
TULANE
ENVIRONMENTAL
LAW SUMMIT
MAR. 22–23, 2019

LAUNCH OF THE
CENTER FOR
ENVIRONMENTAL
LAW
MAR. 21, 2019

“CHANGING LEGAL
LANDSCAPES FOR
CROSS-BORDER
ENERGY
TRANSACTIONS”
MAR. 28–29, 2019

ENERGY LAW
INSTITUTE

UPCOMING
EVENTS

ALUM FEATURES

ALFRED BROWNELL
LLM '02

JASON TOTOIU
L '04

WESLEY ROSENFELD
L '12

JESSE HUDSON
L '16

BETH PRUGH
L '15

DEAN BOYER
L '15

BRETT KORTE
L '14

ALYSSA LEARY
L '15

GABRIEL SCOTT
L '12



“I have witnessed firsthand the stigmatization, threats, violence and criminalization of indigenous peoples, local communities and defenders in my native Liberia.”

ALFRED BROWNELL LLM '02

You’ve read about Alfred Brownell before - in our 2002 newsletter, we profiled the Tulane alumnus and the organization he co-founded, the Association of

Environmental Lawyers of Liberia, or Green Advocates. Brownell is widely recognized as one of the leading defenders of environmental and human rights in Africa. As a litigator, he has served as lead counsel not only to Green Advocates, but also to its community partners, which together represent thousands of indigenous peoples in West Africa. He has championed the recognition of the

customary land and property rights of local communities and indigenous groups against logging, the palm oil industry, and big agro. He is currently the Distinguished Scholar in Residence at Northeastern University School of Law Program on Human Rights and the Global Economy. Now, seventeen years later, we present to you an update, in Alfred’s own words, of his experiences.

A Lawyer’s Nightmare: What I Faced When I Defended Indigenous Peoples and Local Communities in Liberia Against False Charges

This week, Victoria Tauli-Corpuz, the UN Special Rapporteur on the Rights of Indigenous Peoples, in her recent report “They Should Have Known Better,” which focuses on the threats, violence, criminalization and murder of indigenous peoples, human rights and environmental defenders, said, “A global crisis is unfolding - right before our eyes.”

As one of the several global spokes persons selected for this report, I have witnessed firsthand the stigmatization, threats, violence and criminalization of indigenous peoples, local communities and defenders in my native Liberia.

My own experiences for the last fifteen years have confirmed that a classic response from governments and businesses in recent time is not just to characterize legitimate grievances by indigenous peoples and local communities as anti-government, anti-development, and anti-investment. They are waging wars against indigenous peoples and individuals who are protecting the planet and its people by criminalizing their legitimate grievances and then threatening, arresting, intimidating, and imprisoning those who dare challenge this mode of development. The intent is clear. Asphyxiate free speech in the bud and quash any attempts by communities and indigenous peoples to participate in any decision-making process related to their land and natural resources.

In most Western countries, this is what activists would refer to as a SLAPP Suit. A civil lawsuit, normally filed by corporations against activists to “silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.” In Liberia and several developing countries, given that corporations have virtually

captured the apparatus of most states, governments are increasingly using the criminal justice system to aid and abet corporations in silencing complaints, grievances and protest from indigenous peoples. Instead of being the subject of civil actions by a private party, they are now facing the full police powers of the state.

We have spent months and months defending local communities and indigenous peoples against frivolous criminal charges. It’s a strategy the governments and businesses have used often to silence any protest or advocacy actions by these communities. It is exhausting, and it is exhaustive. It takes a toll on our time, staff members, and meager financial resources. The government and their business partners love to see us spinning around moving from one community to another defending our community clients. After we have secured bonds or bail, the government never come back to pursue charges. Instead, most of the time, they re-arrest under different criminal charges, which requires additional bail bonds and responses from us. Sometimes they impose capital offenses so that the communities or indigenous peoples do not qualify for bail or bond. It’s been charges after charges as an attempt to break down the moral and motivation of communities and indigenous peoples.

It’s a lawyer’s nightmare. You are trapped in this vicious circle of defending your clients against criminalization and there is hardly time to pursue their complaints in a judicial forum.

As an activist, environmental, and human rights defender, I have experienced firsthand these attacks in their various forms. Not only have I defended indigenous peoples and local community clients from frivolous criminal charges such as murder, attempted murder, theft of property, terroristic threats, economic charges, criminal trespasses and sedition, I along

with my staff members and colleagues at Green Advocates have also faced some of these same charges in attempt to break us down and weaken the legal firewall we have built to protect communities, indigenous peoples, and individuals who have the courage to defend the planet and its peoples. A number of times I was unable to go to court to defend my community clients because I was accused as the one inciting them.

In recent weeks we have read reports from several organizations related to the mass murders of rights defenders across the globe, most of them indigenous peoples and local land rights defenders. Even though those who defend the planet and its peoples are now becoming statistics, I know for certain that there are thousands of others whose names will never appear. They are the faceless and nameless heroes and heroines of our struggle. For example, Fred Thompson, a local land rights defender in his native Butaw in Liberia, was arrested, allegedly flogged, tortured, and sent to prison. He died in prison and despite requests for an independent investigation, the government of Liberia refused. Fred Thompson is not mentioned in any international report or counted as one of the defenders murdered.

There’s also Anna Tue, Beatrice Koon, and Maronlyn Chea, all indigenous Butaw Kru women land rights defenders, from Butaw, Sinoe County, Liberia. Anna and Beatrice were disrobed, stripped naked, and thrown in the back of a police jeep while still naked and imprisoned—despite the lack of charges against them. Their only crime was protesting the grabbing of their customary lands.

Maronlyn Chea was in her ninth month of pregnancy when she was arrested, allegedly flogged, and imprisoned for a protest she had no idea was even occurring. She had traveled from her village to visit a local clinic along with her husband. Despite her pain and agony and numerous complaints for

medical attention, her request was denied. It took the intervention of the chief justice of the Liberian Supreme Court—who was on a visit to inspect judicial facilities and stumbled into the prison quarters when he heard her cries of agony—to get her released. Despite his intervention, prison authorities demanded she pay bribes for her freedom. Friends and relatives had to secure loans to help her.

I have witnessed firsthand how governments and business have used the media to stigmatize and vilify defenders. There are media reports that local communities and indigenous peoples have rejected us in their communities. In 2016, all of my colleagues at Green Advocates and me were the subject of judicial harassments. We were forced to flee Liberia, went underground into exile. The government of Liberia issued three warrants for our arrest, one of the warrants directed to all security and police commanders to search for and have us arrested. Security personnel broke into my house and arrested my uncle. His only crime was that he was my uncle, and could not provide information on my location. He was forced to pay a fine for his release. Several media organizations carried stories that we had played “tricks” and created “false alarms.”

I have also faced stigmatization when media institutions in Liberia ran stories that I was involved in corrupt practices in the misapplication of donor funds. Even though one of the funders wrote a letter defending our financial records and stated that we are regularly audited, these media institutions did not retract their stories.

What makes this possible is the extent to which transnational corporations have captured and hold captive the apparatus of the state. I am aware of a number of high-level security meetings and investigations conducted against me and my organizations between 2011

and 2017 to link us to frivolous crimes. I have been directly threatened with sedition and economic sabotage by a very high-level top government official. We have been accused of behaving as a supranational body undermining the sovereignty of Liberia.

During the 2015 Butaw, Sinoe community protest actions, not only did a transnational corporation ferry in elite police and army units using its private helicopter and plane, it accommodated the troops, provided logistical support and food. Besides, its private militia jointly patrolled and led the arrest and detention of poor villagers. During that incident an opened-ended arrest, search

and seizure writ was issued by the court against several towns and villages without any limitations.

My story and the story of my colleagues and community clients are just the tip of the iceberg of what is happening at this very moment across the globe as you are reading this.

The cycle of murders, violence, stigmatization, threats and criminalization must stop. The state must uphold its duty to protect, respect, promote and fulfill rights. It must also recognize the rights of millions of peoples who depend on their customary land and territories.



Professor Brownell was honored by Dr. Jill Biden, former Second Lady of the United States, as the inaugural Institute of International Education Scholar Rescue Fund Beau Biden Chair at the IIE’s annual gala in New York on October 16. The chair is awarded to an IIE-SRF fellow for the pursuit of justice and dedication to the most vulnerable populations. “Throughout his years of public service, Beau Biden worked tirelessly to defend the most vulnerable. Alfred Brownell honors Beau’s legacy through his scholarship and activism in the field of environmental law and indigenous land rights, courageous work that puts Alfred’s life and career in danger in Liberia. IIE-SRF is privileged to support Alfred, and we honor Beau by so doing,” said IIE-SRF Chairman Mark Angelson at the ceremony.

JUSTIN TOTOIU L ’04

Since graduating from Tulane Law School in 2004, I have practiced public interest environmental law. It has been filled with wins and losses, hopes and frustrations, all-nighters and nights camping under the stars. Through it all, I have realized it is the only job for me. I share with you what I have learned along the way and offer a few words of advice for my future colleagues.

I remember Professor Houck saying environmental law is about alternatives. I certainly agree. As an environmental lawyer many of my days are spent researching, developing, and proposing alternatives. We often must advocate against the shiny new object that goes before a county commission or water management board. The one that promises more jobs, a better quality of life, and greater economic prosperity to the region. We have the herculean task of convincing those in power to opt instead for the alternative that preserves our state’s natural environment – an environment whose health and our dependence upon as a species is often not understood, much less appreciated. We use the tools we learned in legal writing, oral advocacy, and negotiation to do this. We write comment letters, lots of comment letters, with lots of footnotes. We often wonder if they will ever be read, let alone thoughtfully considered by government agencies. We have meetings, lots of meetings, as we offer less harmful alternatives for decision-makers to consider. And we talk, we talk a lot. Many times, our voices are the only three minutes a board of county commissioners will hear in defense of a little patch of woods slated for development. (It may be the very same patch of woods we build forts in as kids). Most often they pick the shiny new object and the promises are rarely ever realized. But sometimes minds are changed and better



things happen.

As a lawyer with the Everglades Law Center for the past twelve years (and most recently as the organization’s Executive Director) I had the good fortune to work with a small team of talented attorneys committed to protecting Florida’s environment and communities. We saw our share of legal victories and our legal work often had cascading effects. On more than one occasion government decision-making came full circle—wetlands once slated for development were ultimately protected as local parks, natural areas, and even a national wildlife refuge. Some are now used for the restoration of America’s Everglades. These are the best kinds of wins, the best kinds of alternatives we could ever envision, especially when you are outnumbered, underfunded, and the chips are stacked against you (spoiler alert, 3Ls, this is almost always the case in this line of work).

Many of the challenges we face seem insurmountable. In the case of the St. Lucie Estuary and Indian River Lagoon, I witness every summer the waters I grew up on as a kid being devastated by the discharge of billions of gallons of polluted water from Lake Okeechobee instead of being cleaned up and sent south where it once flowed. The algal blooms, the fish kills, the health warnings, and the “lost summers” that we cannot spend with families and friends did not come about overnight. They are the product of misguided government policies that have forced the state’s coastal communities to shoulder most of the burdens for decades.

There is no easy fix for the Everglades. The water needs to be stored, treated, and redirected

– a huge and expensive re-plumbing job on the grandest scale. It requires bold action by elected officials, not merely photo opportunities and stopgap measures, every election cycle. And as the National Academy of Sciences recently noted, it will require flexibility and adaptation as we face our biggest challenge yet – rising seas brought about by climate change. But with endless pressure from environmental lawyers, coupled with the tremendous efforts of thousands of environmental advocates, business owners, and families, we are making progress towards restoration as new projects are being funded and projects are breaking ground.

As a public interest lawyer, I have learned this much. You must demonstrate patience while the next restoration project makes its way through the halls of Congress but never lose that sense of restlessness, which fuels the fight for tomorrow. You must appreciate how the system works but never take the first “no” for an answer. You will also realize that your views will not always be popular; be accepting of criticism. Opponents may see your solutions as not being “practicable.” What did we learn in our natural resources class about the word “practicable?” You may even be called names. Yes, even a tree hugger. I know, the nerve, it’s 2018, people! Wear those as a badge of honor.

But if you are good with all of this, you will join a tightly knit and passionate network of like-minded people across the United States and abroad. And together you will effect change, one species, one wetland, one forest at a time.

In July I said goodbye to my friends and colleagues at the Everglades Law Center and joined the Center for Biological Diversity as a senior attorney. In my new role I will be advancing protections for endangered species and public lands in Florida, North Carolina, and across the southeastern United States. I am excited. The center is full of super sharp people, doing incredible work, and serving as tireless advocates for life on Earth for more than 25 years. I can’t wait to get started and I thank Tulane Law School for preparing me for where I am today.

WESLEY ROSENFELD L '12



For the past four years, I have worked for the District of Columbia's Department of Energy and Environment. As an assistant general counsel, I enforce and provide guidance on the district's environmental laws, with a focus on contaminated sites, pesticides, and hazardous waste. My job is particularly interesting because of the unique status of the District of Columbia: it is treated like a state under federal environmental laws, so it has those responsibilities, but at the same time it's a municipality that the federal government oversees!

The most exciting part of my job is guiding the agency through its investigation and cleanup of the Anacostia River's sediments. I provide legal advice to the agency to help it comply with CERCLA, the District of Columbia's sister statute, and the National Contingency Plan. At the same time, I help develop liability cases against potential responsible parties. The river has legacy and on-going pollution, multiple governmental and private potential responsible parties, and, unlike a state, the district's river bottom is owned and managed by the United States. It certainly is a challenge, but it's also why I come to work each day: District residents have a right to enjoy the public resource that is the river.

I wear many legal hats at the agency. I provide enforcement strategy advice, perform legal review of administrative fines and orders, negotiate administrative settlements, and edit and review agency rulemakings for legal sufficiency. I also help staff that are starting to administer new environmental laws, such as electronic and paint product stewardship.

Working in a city that is treated like a state, but is not actually a state, makes things interesting and sometimes quite complicated from a legal perspective, but it's a very satisfying and intellectually rewarding position!

JESSE HUDSON L '16



I work in a boutique spinoff of Meyer Brown in Chicago. I mostly do securities law, with a focus on blockchain and cryptocurrencies. That doesn't sound like environmental law, does it? On the other hand, the other day I cited case law from the Whanganui iwi litigation in New Zealand (recognizing rights of legal personhood in a river) for work I am doing on a project for securitization (tokenization, to use the term of art) of regenerative assets (like a piece of a mangrove forest) and advised on the inclusion of stewardship clauses in the shareholders agreement. When advising a client financing a hemp project impacting indigenous peoples in Canada, I referred to

what I learned at Tulane 2L summer in the Amazon rainforest about the right to prior consultation under ILO Convention No. 169. I continue to work pro-bono with a Shipibo-Conibo lawyer, Demer, in Pucallpa, Peru. I have a simple message for you: do not despair if you end up working at a securities firm or, God forbid, doing insurance defense. Though environmental law is not my core practice, it is at my center; the lessons and perspective of environmental law inform my conduct and my competencies as an attorney.

BETH PRUGH L '15



When I first came to the Environmental Enforcement Section of the Division of Law for the Office of the Attorney General, I began my career by working on municipal ticketing matters where I aided the New Jersey Department of Environmental Protection (DEP or Department) in enforcing the New Jersey Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11 et seq. A DEP agent would issue a ticket to a responsible party for a Spill Act violation, much like a police officer issues a traffic ticket. I would then communicate with the municipal court judge and responsible party, explaining our authority under the Spill Act, the details of the matter, and the resolution sought. I would then appear in the appropriate municipal court where the contaminated property is located and assume the place of

the municipal prosecutor. Most of these cases (and all of my own) never see trial, as we are usually able to negotiate a settlement through an Administrative Consent Order (ACO).

Since then, I have been given cases where the responsible party challenges an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA). These matters come before the Office of Administrative Law (OAL), where the responsible party exhausts administrative remedies by requesting a hearing on the validity of the AONOCAPA. In these cases, I attend pre-hearing conferences and attempt to reach settlement by negotiating penalties; when the responsible party agrees to an ACO, they must both complete the remediation and pay the negotiated penalty. However, where we cannot settle, I have made several motions for summary decision, as it is often the case that the key facts are not in issue, and so the matter can be summarily decided. Where I have been successful in our motions for summary decision, the OAL has ordered the responsible party to conduct the remediation and pay the penalties assessed in the AONOCAPA to the Department.

I also help the Department obtain access to properties that have been identified as potentially contaminated in order for DEP to do a preliminary assessment or a site investigation. I help DEP obtain access by either negotiating Access Agreements or by submitting an Order to Show Cause for access to the site in Superior Court. I have had success doing both. Currently, I have been given cases brought against the Department in Superior Court that have trial potential. The most recent summons deals with a breach of contract concerning a Settlement Agreement where the plaintiff responsible party argues it has been released of its obligation to remediate groundwater at its site. I am also handling an appeal which raises the issue of whether or not the Department has issued a final agency decision from which the appellant has the right to appeal from. This appeal also involves a gap in the current regulations governing mandatory remediation timelines, and DEP's public comment process concerning the revision of these rules.

In all, what I do here has definitely been informed by my time in the Tulane Law

Environmental Law Clinic, as well as by my elective classes, such as Administrative Law and Environmental Enforcement. Having taken Administrative Law with Professor Babich was crucial, especially for my understanding of the exhaustion of administrative remedies, final agency action, and the rulemaking process.

DEAN BOYER L '15



Dean Boyer currently works in Guangzhou, China, as an attorney for Anderson & Anderson LLP. Anderson & Anderson is a boutique international law firm with offices in the US and Asia. Prior to working in the firm's headquarters in China, Dean spent nine months at the firm's office in Ulaanbaatar, Mongolia. In that time, Dean worked with a major Mongolian corporation to issue bonds on the Singapore Stock Exchange and also assisted a Mongolian company with a multi-million-dollar commercial arbitration. While in Mongolia, Dean took in the vast countryside while dog-sledding, horseback riding, rafting, hiking, and cycling.

In China, Dean's practice focuses on international commercial litigation and arbitration, cross-border financing, private international law, fin-tech, and international environmental law. He is currently involved in arbitration in Hong Kong involving a dispute

over the sale of a tungsten mine. In China, Dean spends his spare time eating as much Cantonese food as possible, playing badminton, and trying to learn Chinese.

In 2019, Dean will relocate to New York to work at Anderson & Anderson's Manhattan office and continue to work assisting companies with legal matters in the US, China, Hong Kong, Mongolia and elsewhere.

BRETT KORTE L '14



Brett Korte joined the University of California, Irvine Environmental Law Clinic as a clinical fellow in March 2018. He helps supervise student attorneys representing public interest groups in a variety of environmental law matters, including issues relating to environmental justice, land use, and water pollution. This semester, for example, the ELC is assisting a client advocate for robust implementation of the California Coastal Commission's first-ever environmental justice policy.

Previously, he was a staff attorney and the director of professional education at the Environmental Law Institute in Washington, D.C., where his research and policy work focused on environmental justice, sustainability, and natural resource management. He received his JD and a Certificate of Specialization in Environmental Law from Tulane University

Law School in 2014 where he was a student attorney with the Tulane Environmental Law Clinic and chaired Tulane Environmental Law Society’s 2013 Summit on Environmental Law and Policy. Brett is a member of the Missouri bar.

ALYSSA
LEARY
L ’15



Alyssa is an attorney with Zimmerman Reed LLP, a complex litigation firm headquartered in Minneapolis. Her practice is focused on consumer protection and environmental law, where she regularly represents individuals injured by large corporations. Most recently, her time has been dedicated to representing farmers whose crops were damaged by the herbicide dicamba. The case is pending as a class action against Monsanto and BASF, and the numerous related cases from across the country are being coordinated in an MDL (Multidistrict Litigation) in St. Louis, Missouri. My fellow Tulane Law alums Paul Lesko and Rene Rocha also serve on the Plaintiffs’ Executive Committee. Outside of her practice, Alyssa partnered with the company Lodged Out to launch what she hopes is the first of many wilderness retreats for younger Minnesota lawyers—getting attorneys disconnected from their phones, off the grid, and canoeing in the pristine boundary waters canoe area

wilderness.

GABRIEL
SCOTT
L ’12



Gabriel Scott is working as in-house counsel for Cascadia Wildlands, a nonprofit environmental organization based in Eugene, Oregon. (www.cascawild.org) Cascadia’s mission is to defend the forests and wildlands of the Pacific Northwest – once a blanket of old-growth rainforest – in the forests, in the courts, and in the streets. Gabe’s responsibilities include closely monitoring the legal docket of federal agencies like the Forest Service, field-checking and commenting on development permits, and litigating priority campaigns. “Working for a public interest nonprofit is incredibly rewarding and always interesting,” says Scott. “Yesterday I was collaborating with foresters and biologists on a timber sale; today I’m drafting appellate briefings for one of our active cases; and tomorrow I’ll be in the woods leading a public hike to a threatened forest.” Gabe credits Tulane Law with providing a great and unique education. “Tulane’s environmental law program is as good as anyone’s and our maritime law program is better than anyone’s,” he says. “The world needs more good lawyers, and Tulane graduates have the tools they need to help save the world!”

STUDENTS
IN ACTION



Emily Werkmann – 1st Place, LSBA Env. Section writing competition (Spring 2018) - Emily Werkmann (L ’19) tied for first place for the 2018 Louisiana State Bar Association Environmental Section paper competition for her paper titled: Don’t Fret About Climate Change Deniers: Judicial Activism Through Court Orders and a Proposed Expansion of the “Public Trust Doctrine.” She received a cash prize and was invited for a tour of the LSU Mississippi River Model in Baton Rouge.

INTERNATIONAL
STUDENTS

Professor Oliver Houck

There is nothing so refreshing as exposing international students to US concepts of environmental law, except perhaps learning from them about their own. This has been the function of a special seminar for Masters of Law candidates for over twenty years, at first limited to

“This year’s tranche was outstanding: in numbers, talent and diversity. The 11 students involved represented no fewer than 11 countries, a record for the program.”

environmental and energy degree students and more recently expanded to include comparative law students as well. This year’s tranche was outstanding: in numbers, talent and diversity. The 11 students involved represented no fewer than 11 countries, a record for the program. The seminar consists of two parts, the first a discussion of readings from *Taking Back Eden*, case histories of unique environments, citizen actions, legal actions and judicial review in eight countries ranging from the US to Canada,

Chile, Russia, Greece, India, the Philippines and Japan. For the second part students research and make presentations on similar cases in their own or neighboring countries, stories that highlight different approaches to law, and different outcomes as well. By way of example, this list of 2018 students and their topics: Sophie Albrecht, Germany, the Hambach Forest case; Luna Evers, Netherlands, the Urgenda Climate Change case; Gwenn Le Garrec, France, international jetport case at Notre-Dame-des-Landes; Anna Catalina Nieto, Colombia, the Rio Atrato Rights of Nature case; Adoja Quaicoe, Ghana, “Saving the Lungs of West Africa” forest cases; Cherchirat Rattanakikul, Thailand,

the endangered Black Panther case; Enrique Saenz Ramos, Mexico, “Waste Dump of Death” case, Alpuyeca and Tetlama; Florencia Sosa Pinilla, Argentina, the Menoza-Riachuelo case, Buenos Aires Marina Graff, Switzerland, the Church Bells case (noise pollution v. religious practice), Wei Xin, China, the Dalian petrochemical expansion; Brian Broussard, United States, the Yasuni Park No-Oil for Nature Proposal, Ecuador. Needless to say, we all learned.



Back Row (L-R): Sophie Albrecht, Enrique Ramos, Cherchirat Rattanakikul, Marina Graff, Chris Dalbom, Florencia Sosa Pinilla, Wei Xin, Adjoa Ouaique, Catalina Nieto

TULANE ENVIRONMENTAL LAW JOURNAL

*Andrew Taylor,
Editor In Chief*

Now in its 30th year, the Tulane Environmental Law Journal accepted twelve new junior members this year; that brings our total membership to twenty-three. We're in the midst of modernizing and revamping the TELJ. Perhaps the primary element of that modernization is a move to a primarily open-access model for the journal, including archived issues. We want to make the journal easier to access and cite, while also saving some paper. Along with Vice Dean Dombalagian, we are redesigning our website, as well as developing a conservative social media presence. Further, we think that the new Center for Environmental Law will provide a helpful platform and partner for various environmental law undertakings; we're grateful for that newfound resource.

Our Winter 2018 issue features a lead article by Prof. Babich, which examines the legislative history of the Clean Air



From left to right: Ariel San Miguel, Senior Business Editor; Marshall Garbus, Senior Managing Editor; Brandon Faske, Senior Articles Editor; Andrew Taylor, Editor in Chief; Lee Sharrock, Senior Notes and Comments Editor

Act in an effort to strip away unfounded narratives and get at the genuine legislative intent behind the act. Prof. Adam Babich is also the journal's new advisor, while Prof. Oliver Houck retains emeritus status. The second article is by Jordan Lesser, a Tulane alumnus and legal counsel for the New York State Assembly, and concerns Namibian law, wildlife conservation, and possibilities for environmental courts. The winter edition will also contain student-submitted case

notes and recent developments.

We are also in the midst of planning a drinking water themed spring issue, an effort spearheaded by alumna Lisa Boyle (L '90). Ms. Boyle is intimately involved with drinking water issues, particularly in California. The spring issue will likely cover a myriad of drinking water issues, many of which will be applicable to Louisiana and the nation as a whole. The spring issue will also publish student-composed comments and recent developments.

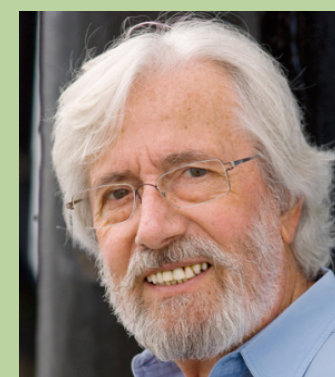


Back Row (L-R): Megan Kilmer – Summit Technology Chair, Daniel Stein Executive Summit Chair, Dalton Luke – EELS President, Daniel Schwank – Summit Speaker Chair, Mathias Bartlett – EELS Vice President and Summit Design Chair
Front Row (L-R): Lisa Diaz – Summit Travel & Transportation Chair, Chandler Farnworth – Summit Outreach Chair, Anna Ferriera – Summit Speaker Chair, Chiara Kalohjera-Sackellares – Summit Logistics Chair, Alex Blankenburg – EELS Treasurer and Summit Finance Chair, Hannah Lafrance – Summit Logistics Chair

TULANE ENVIRONMENTAL & ENERGY LAW SOCIETY

*Dalton Luke,
President*

The Environmental and Energy Law Society (EELS) serves the law students who are interested in working in environmental or energy law. Throughout the school year, EELS holds social events, guest speakers and volunteering activities. In the spring, it hosts the annual Tulane Environmental Law and Policy Summit. This year, EELS has held social events for members, had first-year students assist in the planning of the summit, including outreach, speakers, and funding, and hosts law firm events for members interested in the environmental law field. In the spring, the organization plans to hold a crawfish boil social for its members after the annual summit, as well as participate in volunteer opportunities around New Orleans.



The 23rd annual Tulane Environmental Law Summit went off without a hitch. Completely organized and run by Tulane law students, and free and open to the public, the 2018 summit welcomed over 400 attendees to 22 panels featuring over 80 speakers and two keynote addresses. Lawyers looking for CLE credits, environmental groups, scientists, corporations, undergraduate and graduate students, policy wonks and (for Jean-Michel Cousteau) scuba-diving enthusiasts attended panels on the rights of indigenous peoples, the future of solar energy, and evolving protections for both national monuments and endangered species. Environmentalist, activist, and film producer Jean-Michel Cousteau delighted as the first keynote address. He spoke with passion about his work to protect our oceans and shared exclusive footage of his recent ocean adventures for his upcoming movie with a packed audience. Our second keynote speaker was Maya K. van Rossum, veteran environmentalist, litigator, and current Delaware Riverkeeper, who set out an inspiring new agenda for environmental advocacy, called The Green Amendment movement. She discussed the constitutional right to a healthy environment, which she secured for Pennsylvanians in the 2013 watershed legal victory Robinson Township v. Commonwealth.

A RECAP: THE 23RD ANNUAL TULANE ENVIRONMENTAL SUMMIT

GREEN SUMMERS: GETTING A TASTE OF ENVIRONMENTAL LAW

PORTIA MASTIN

L '19

Portia worked as a legal intern with the Gulf Restoration Network doing permit review and writing comments to state agencies. She was also a representative of GRN and the Tulane Environmental Law Clinic (where she is currently a student attorney) at state Water Quality Stakeholder Meetings in Baton Rouge several times over the summer.

DALTON LUKE

L '20

Dalton worked for Valero Energy Corporation at its headquarters in San Antonio, Texas in the company's Regulatory and Litigation Department. His daily work included drafting filings for state and federal energy and environmental natural resources divisions, as well as drafting compliance memoranda for plant managers to inform them of various regulations they must follow in the shipping, receiving, and refining of petroleum products. His largest project over the summer was performing a document review in a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), where he helped to prove the

statute of limitations in a lawsuit with the United States for its operation of various oil refineries during World War II.

MADELINE WEISBLATT

L '19

Madeline spent half of her 2018 summer as an extern with environmental law group Our Children's Trust, which filed the famous constitutional climate lawsuit Juliana v. U.S. in 2015. She has in turn brought the externship position to Tulane's Career Development Office to be passed on to future Tulane students.

DAN STEIN

L '20

Dan externed at the Arctic Centre at the University of Lapland in Rovaniemi, Finland. The bulk of their work was related to law of the sea issues in the Baltic and Arctic Oceans, but he helped with one environmental law project – the Arctic Council, based in Norway, is a soft-law forum for the arctic states to exchange ideas about Arctic governance. Finland currently holds the rotating chairmanship. As part of that role, they are preparing and offering a guide to best practices for environmental

impact assessments for proposed arctic projects. While at the Arctic Centre, He summarized the existing EIA regimes for all the arctic states, both at the national level and for certain tribes and provinces which have independents or separate processes. These summaries will eventually be part of Finland's official submissions as part of the Arctic Council's official recommendations for EIA best practices in the Arctic.

CHANDLER FARNWORTH

L '20

Chandler worked as a research assistant for the Tulane Institute on Water Resources Law and Policy, where she compared flood planning legislation and finance and researched the impacts of Murphy v. NCAA on environmental law. She also worked as a judicial intern for the 10th Judicial District in Colorado. This fall she will assist Professor Talus in drafting course materials for his spring semester course, Transnational Energy Projects and the Law.

ALEX ORTIZ

L '20

Alex recently co-founded and runs a small 501(c)(3) nonprofit: The Ecological Sciences Communication Initiative, or Eco-SCI. In addition to providing major outreach to get citizens motivated in taking part in environmental programs and administrative processes to protect waters and wetlands in Texas, the organization also engages in policy work through significant legal and policy commentary on matters like the recent EPA rule change concerning the removal of some wetlands from the definition of "Waters of the United States" as well as various permitted dredge and

fill activities under section 404 of the Clean Water Act.

PAUL KIEFFER

L '20

Paul interned with the EPA. in Washington D.C.. My assignment was within the Office of Criminal Enforcement, which allowed him to expand his knowledge of environmental legislation beyond civil enforcement. The work consisted of researching and writing legal memoranda on environmental legislation. He also assisted attorneys in Criminal Enforcement in researching and writing portions of an arrest directive for EPA law enforcement officials.

MARGARET WILBOURNE

L '19

Margaret worked half of her summer as a legal intern with the Gulf Restoration Network, focusing on Clean Water Act issues and investigating lapsed state agency reporting under the Administrative Procedures Act.

DREW RENZI

L '19

Drew worked in the Office of General Counsel for the District Department of Energy & Environment. He worked closely with attorneys as well as policymakers on a number of agency programs, including the DC Green Bank and Clean Energy DC. He also provided legal opinions related to interagency procedures and policies, as

well as cost recovery enforcement issues. Drew intends to continue working in the environmental and energy field upon graduation in Spring 2019.

DANIEL SCHWANK

L '20

Daniel worked at an environmental plaintiffs law firm Waltzer Wiygul & Garside. The firm has offices in New Orleans and Mississippi and specializes in environmental and maritime law. The firm has a wonderful relationship with the communities it's located in, specifically with those that live and work in coastal communities. Using his legal education to help individuals in those communities was particularly fulfilling. As a clerk in the Westbank office, he assisted in writing an opposition to a motion for summary judgement for a maritime case, as well as conducting legal research on the Louisiana Industrial Tax Exemption Program.

ALEX BLANKENBURG

L '20

Alex worked with the Great Lake Environmental Law Center in Detroit, Michigan, over the summer. The group is a non-profit environmental legal organization that deals with issues ranging from clean water to solar energy in the city of Detroit and its surrounding communities. This summer she worked on topics involving Michigan's new and improved Safe Drinking Water Act along with civil rights issues surrounding a hazardous waste treatment plant in the city of Hamtramck. She also contributed to a chapter on blue-green algae

bacteria in the Great Lakes for a report with American Rivers.

EMILY WERKMANN

L '19

While working as a summer associate at a law firm in New York, Emily had the opportunity to work on a pro bono assignment involving environmental law, energy law, and the Clean Air Act. She specifically researched California's exception to the Clean Air Act, which allows California to enact and impose stricter air pollution standards than the federal government. She reported her findings to the law firm's Los Angeles office, allowing her to learn more about the complexity of environmental laws and working with lawyers in an office across the country.

CHIARA SACKELLARES

L '19

Chiara worked for the first half of the summer at the Port of New Orleans, assisting legal counsel in various litigation matters. In one instance, she researched liability for hazardous substance remedial action under RCRA claims. She also wrote memoranda concerning tort actions for asbestos and benzene. The second half of the summer was spent at a small firm in Chicago, where she gained experience in maritime law and tort litigation.

GUNTER HANDL

Publications

- *Managing The Risk Of Offshore Oil And Gas Accidents: The International Legal Dimension* (Co-Editor With K. Svendsen) (Edward Elgar Publishing, 2019)
- “Allocating Transboundary Loss From Offshore Oil And Gas Accidents,” In G. Handl & K. Svendsen, Eds., *Managing The Risk Of Offshore Oil And Gas Accidents: The International Legal Dimension* (Edward Elgar Publishing, 2019)
- “The Human Right To A Clean Environment And Rights Of Nature: Between Advocacy And Reality” In K. Von Der Decken, A. Von Arnault & M. Susi, *The Cambridge Handbook On New Human Rights. Recognition, Novelty, Rhetoric* (Cambridge University Press, 2019).
- “High Seas Governance Gaps: International Accountability For Nuclear Pollution,” In Robert C. Beckman, Millicent McCreath, J. Ashley Roach, And Zhen Sun (Eds.), *High Seas Governance: Gaps And Challenges* 195 (Brill/Nijhoff, 2019)
- “The Integration Of Environmental Principles Into The Policy And Practice Of Multilateral Development Banks,” In L. Kraemer & E. Orlando, Eds., *Encyclopedia Of Environmental Law: Principles Of Environmental Law* 627 (Edward Elgar Publishing, 2018)
- “Sustainable Development: General Rules Versus Specific Obligations” And “Compliance Control Mechanisms And International Environmental Obligations”, In D. Freestone, Ed. *Sustainable Development and International Environmental Law* 45 And 861, Respectively (Edward Elgar Publishing, 2018).

Presentations

- “Rights Of The Environment/Rights Of Nature,” Presentation At Conference On New Human Rights For The 21St Century, Tallinn, Estonia, 2022 September 2017.
- “Overview Of The International Normative Setting For Epr,” At International Conference On Nuclear Emergency Preparedness And Response, Singapore, 10 July 2018.

KIM TALUS

Publications

- “Contribution of law and lawyers to LNG market developments: model diversion clause for LNG sale and purchase contracts” (forthcoming, OGEL 2018)
- “WTO Panel Report in the EU – Third Energy Package and Commission proposal to amend the 2009 Gas Market Directive,” *Journal of Energy and Natural Resources Law* (forthcoming 2018, with M. Wustenberg)
- ‘Discriminatory nature of the proposed changes to the gas market directive – extension to external pipelines or only one of them?’ *Utilities Law Review* (2018)
- “EU Energy Law and the Nord Stream 2 Pipeline Project: from Applicability to Legislative Action” *International Energy Law Review* (2018)
- “WTO law perspective on EU-Russia energy trade: worlds apart or minor differences?” *Journal of World Energy Law & Business* 11 (2018) 4, 360-371. (with M. Wustenberg)
- K. Talus, “A Treatise for Energy Law,” *Journal of World Energy Law & Business* 11 (2018) 1, 34-48. (with Raphael J Heffron; Anita Rønne; Joseph P Tomain; Adrian Bradbrook)
- K. Talus, “Regulating emerging technologies: how bad regulation can prevent commercializing useful innovations in waste-to-energy conversion,” H. Post (ed) *From Waste*

FACULTY NOTES

- to Energy* (Eleven International Publishing 2018, with T. Turunen)
- K. Talus (et al), Micro-grids to improve rural distribution networks’ resilience to weather, EL-TRAN Policy Brief 3/2018 (www.el-tran.fi)
- Kim Talus and Bent-Ole Mortensen, “Gas pipeline proposal take power from EU states,” *Financial Times*, 10 June 2018.
- K. Talus and R.J. Heffron; “Editorial for OGEL 3 (2018) - International Energy Law” OGEL 3 (2018)
- K. Talus and R.J. Heffron; “What is ‘International Energy Law’ or ‘Energy Law’?” OGEL 3 (2018)
- K. Talus and E.G. Pereira; “Introduction to Upstream Petroleum Law and Regulation” OGEL 3 (2018)
- Other

- 2018 – Kim Talus was the lead author in the creation of model destination/diversion clause for LNG sale and purchase agreements. Working group organised by the European Commission and Ministry for Economy, Trade and Industry of Japan.
- 2018 – Legal opinion by Kim Talus for the Parliament of Finland on the investment protection chapter of the EU – Canada trade agreement (CETA)
- 2017 – 2018 – Participation in a study for the World Bank on the investment climate in Finland for renewable energy and energy efficiency investments, Phase 2 (Regulatory indicators for sustainable energy)

SIRIA-LEENA PENTTITNEN

Publications

- Penttinen, Sirja-Leena, “The Next Chapter in the Saga of Renewable Energy Support Schemes: Still ‘a Certain Degree of Mystery’ after Essent Belgium II,” 1 (42) *European Law Review* (2018), pp. 106 - 119. Republished also in 7 *European Current Law* (2018), pp. 637-648.
- Penttinen, Sirja-Leena, “Sustainability in the Energy Sector: Policy Directions and Implementing Measures,” 3 (16) *Oil, Gas and Energy Law, Special Issue in International Energy Law* (2018), pp. 1-22.
- Penttinen, Sirja-Leena, “Towards more market-based renewable energy investments in Europe,” Tulane Environmental Law Summit conference paper, 2018.
- Penttinen, Sirja-Leena, “The Gradual Hardening of Soft Law: The Renewable Energy Support Schemes and the Renewable Energy Directive under Revision,” forthcoming in *Utilities Law Review* (2018).
- Penttinen, Sirja-Leena and Reins, Leonie, “System Boundaries of Nearly Zero-Energy Buildings in the European Union — Rethinking the Legal Framework for Active Consumer Participation” (forthcoming, currently in peer-review).

ADAM BABICH

Honors

- Fellow, American College of Environmental Lawyers
- Publications
- “Back to the Basics of Antipollution Law,” Tulane Env'tl. L. J. (forthcoming)
- “The Unfulfilled Promise of Effective Air Quality and Emissions

- Monitoring,” Georgetown Env'tl. Law. Rev. (forthcoming Dec. 2018)
- “Develop Nuggets, Unpack Weasel Words & 8 More Deposition Suggestions to Minimize Frustration,” 65 LA. B.J. 92 (Aug. 2017)
- Presentations
- Speaker, Legal Impacts of Increased Public Availability of Air Quality Data, Rocky Mountain Mineral Law Foundation Institute on Air Quality Issues Affecting Oil, Gas, and Mining Development and Operations, Denver, CO (2/6/18)
- Speaker, Environmental Law Update, Tulane Law School 28th Annual CLE by the Hour, New Orleans, LA (12/28/17)

OLIVER HOUCK

Presentations

- *Taking Back Eden*, Beijing University Press, Fall 2017 (Chinese edition)
- “Shintech: Environmental Justice at Ground Zero,” 31 Geo. Env'tl. L. Rev. ____ (Spring 2019)
- “Noah’s Second Voyage: the Rights of Nature as Law,” 31 Tulane Env'tl. L. J. (Fall 2017)
- “Are We Endangered Yet?: Artificial Intelligence and the Human Species”, The Environmental Forum, March/April 2019
- ”Losing Earth: The Golden Moment for Climate Change”, The Environmental Forum, Nov/Dec 2018
- “The Wild Trees and The Man Who Planted Trees”, The Environmental Forum, July/Aug 2018
- “A Tale of Two Cities: Water and Grass in the American West”, The Environmental Forum, Jan/Feb 2018
- Essay: El Segundo Viaje de Noah” Revista Aranzadi de Derecho Ambiental, University of Sevilla, December 2017
- “The Children’s Climate Case: Our Obligation to Future Generations”, The

- Hill, Nov 2018
- Awards and Presentations
- First Annual Alumnus Award for Achievement in Environmental Law, Georgetown Law Center, January 2019
- Louisiana Bar Foundation, Louisiana Distinguished Professor 2017, April 2018
- Svetlana Kravchenko Award for Distinction in International Human Rights, University of Oregon, Mar. 6, 2018

MARK DAVIS

Honors

- Cantrell Transition Team
- Reappointment to Louisiana Water Resources Commission
- Appointment to Governor’s Advisory Commission on Coastal Protection, Restoration, and Conservation
- 2019 New Orleans City Business Leader in Law Award
- Publications
- M. Davis (et al), “Institutionalizing Resilience in U.S. Universities: Prospects, Opportunities, and Models,” Volume 52, Number 2, March/April 2018. 5 pages.
- M. Davis, (et al), “Insurability of Coastal Communities: Financing Options for Coastal Protection and Restoration in Louisiana.” This part of a continuing series of white papers published by the Tulane Institute on Water Resources Law and Policy, February 2018. 14 pages.
- M. Davis, (et al), “Taken by Storm”, Tulane Env'tl. L. J. Volume 29, Issue 2, Summer 2017. 14 pages.
- M. Davis, (et al), “Financing the Future III: Financing Options for Coastal Protection and Restoration in Louisiana.” This is an issue paper published by the Tulane Institute on Water Resources Law and Policy released January 18, 2017. 49 pages.

ROBERT SLOAN

Publications

- *Multinational Storage of Spent Nuclear Fuel and Other High-Level Nuclear Waste: A Roadmap for Moving Forward* (American Academy of Arts and Sciences, 2017)

Presentations

- Workshop on Approaches to Financing a Multinational Repository – Challenges and Alternate Approaches, Dec. 11, 2018

CHRIS DALBOM

Honors

- Appointed to the Isle de Jean Charles Academic Advisory Committee

LISA JORDAN

- In 2018, TELC Director Lisa Jordan spoke at the Southern Clinical Conference as a panelist on the topic of SLAPPs (Strategic Lawsuit Against Public Participation). She also served on the Environmental and Climate Justice in New Orleans panel for the 2018 Tulane Environmental Law and Policy Summit.
- She continues to supervise the clinic’s work on behalf of an African-American community in the Upper Ninth Ward of New Orleans located on the former Agriculture Street Landfill, a Superfund site. The lawsuit seeks fully-funded relocation for these residents, who bought their properties unaware of the site’s toxic waste and contaminated soil.

CORINNE VAN DALEN

Presentations

- Prof. Van Dalen co-presented at a National Environmental Policy Act Workshop in April 2018 at the Tulane River and Coastal Center New Orleans, Louisiana. She discussed state litigation involving Louisiana’s NEPA-like laws and environmental justice issues. The event was co-sponsored by: The Partnership Project, Natural Resources Defense Council, Tulane ByWater Institute, Tulane Institute on Water Resources Law and Policy, and Grand Canyon Trust.
- Prof Van Dalen presented to members of the Sierra Club Delta Chapter at the Audubon Zoo Auditorium in Sept. 2018. The presentation covered recent court decisions for cases handled by the clinic.

LIZA DE CALDERON

- Prof. Elizabeth Livingston de Calderon was named to the City of New Orleans’ Ethics Review Board in late 2017 and will serve until 2023.

MACHELLE HALL

- Honoree - City Business Class of 2018 Women of the Year



PLEASE CONSIDER DONATING TO THE TULANE ENVIRONMENTAL LAW PROGRAM

EACH OF THE STUDENTS AND FACULTY YOU’VE SEEN IN ACTION IN THIS ANNUAL REPORT RELY UPON

THE DONATIONS OF OUR GENEROUS SUPPORTERS. YOU MAY DONATE TO EACH OF THE ORGANIZATIONS BELOW BY

GOING TO THE CORRESPONDING WEBPAGES:

TULANE ENVIRONMENTAL LAW CLINIC — [GIVING.TULANE.EDU/ENVIROCLINIC](https://giving.tulane.edu/enviroclinic)

TULANE INSTITUTE ON WATER RESOURCES LAW & POLICY — [GIVING.TULANE.EDU/WATERLAW](https://giving.tulane.edu/waterlaw)

TULANE CENTER FOR ENVIRONMENTAL LAW — [GIVING.TULANE.EDU/TCEL](https://giving.tulane.edu/tcel)

CURRENT CURRICULUM OFFERINGS IN ENVIRONMENTAL AND ENERGY LAW AT TULANE

ENVIRONMENTAL COURSES

- ADMINISTRATIVE LAW
- POLLUTION CONTROL
- LAW OF THE SEA
- ENDANGERED SPECIES SEMINAR
- WATER RESOURCES LAW AND POLICY
- ENVIRONMENTAL ENFORCEMENT
- MARINE POLLUTION
- TOXIC TORT THEORY AND PRACTICE
- HISTORIC PRESERVATION
- NATIVE AMERICAN RIGHTS
- NATURAL RESOURCES LAW
- INT'L ENVIRONMENTAL LAW
- ENVIRONMENTAL LITIGATION PRACTICUM

EXPERIENTIAL LEARNING OPPORTUNITIES

- ENVIRONMENTAL LAW CLINIC
- LEGISLATIVE ADVOCACY
- DIRECTED RESEARCH

INTERNATIONAL COURSES

- ENERGY/ENVIRONMENT LLM SEMINAR
- EUROPEAN ENERGY/ENVIRONMENTAL LAW

ENERGY COURSES

- INT'L AND COMPARATIVE ENERGY LAW
- OIL AND GAS LAW
- LARGE ENERGY PROJECTS PRACTICUM
- ENERGY INVESTMENT PROTECTION
- ENERGY REGULATION
- SUSTAINABLE ENERGY LAW AND POLICY
- ENERGY INVESTMENT PROTECTION





TULANE CENTER FOR ENVIRONMENTAL LAW

LAW SCHOOL ANNEX

6325 FRERET STREET

NEW ORLEANS, LA 70118