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 McKee (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 Weirman 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. GAUTHER 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

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 (1986), 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.

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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 rulings that permits had been improperly granted. In a state that already hosts thousands upon thousands of miles of pipelines, several factors played into 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 Seashore Pipeline, a 100-mile long, 10-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 800 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.

2018 was yet another busy year for the Tulane Institute on Water Resources Law & Policy here at Chateu 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 Brugueras (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 & Whitelace, P.C.’s plaintiffs’ 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 Girona, 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.
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’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 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.

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 energy sector — 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, 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 reasons: 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.
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 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 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 LDNR 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 inflows 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.

Baton Rouge 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 the 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 Oisín Cullivon. 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.

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 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.

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.

DOCKET HIGHLIGHTS

Updates from the past year at the TELC

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

Upcoming Events

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

Alum Features

“Changing Legal Landscapes for Cross-Border Energy Transactions”
Mar. 28–29, 2019

Energy Law Institute
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 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, terrorist 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. We have been 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 arrest us. 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. 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 arrest us. 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.”

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but it’s also why I come to work each day: by the United States. It certainly is a challenge, responsible parties, and, unlike a state, the multiple governmental and private potential The river has legacy and on-going pollution, Plan. At the same time, I help develop liability sister statute, and the National Contingency cleanup of the Anacostia River’s sediments. 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 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, as it has these responsibilities, but at the same time it’s a municipality that the federal government oversees.

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 which I handled 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. if my, 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 court where the contaminated property is located and assume the place of the municipal prosecutor. Most of these cases (and all of my) 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 Consent Order and Notice of Civil Administrative Penalty Assessment (ACOPA). 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 ACOPA. In these cases, we 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 AOCPA to the Department. I also help the Department obtain access to properties that have been identified as potentially contaminated in order 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 access doing both. I have been given cases brought against the Department in Superior Court that have trial potential. The most recent significant deals with a breach of contract concerning a settlement Agreement where the plaintiff argues it has been released of its obligation to remediate groundwater at its site. I am also handling a 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 implementation of these regulations. In all, what I do here has definitely been informed by my time in the Tulane Law Environmental Clinic, as well as by my elective classes, such as Administrative Law, and Environmental Enforcement. Having taken Administrative Law with Professor Balach was crucial, especially for my understanding of the interaction of administrative remedies, legal agency action, and the rulemaking process.

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, as it has these responsibilities, but at the same time it’s a municipality that the federal government oversees.

I work in a boutique spinoff of Mayer Brown in Chicago. Mostly do securities law, with a focus on black clients and crypto currency. That doesn’t sound like environmental law, does it? On the other hand, the other day I tried title law from the Whanganui [un]Righting 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 registering assets (like a piece of a mangrove forest) and advised to use the term of art) of regenerative assets in New Zealand (recognizing rights of legal personhood in a river). Dean began his career by working on municipal ticketing matters which he handled 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. if my, 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 court where the contaminated property is located and assume the place of the municipal prosecutor. Most of these cases (and all of my) 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 Consent Order and Notice of Civil Administrative Penalty Assessment (ACOPA). 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 ACOPA. In these cases, we 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 AOCPA to the Department. I also help the Department obtain access to properties that have been identified as potentially contaminated in order 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 access doing both. I have been given cases brought against the Department in Superior Court that have trial potential. The most recent significant deals with a breach of contract concerning a settlement Agreement where the plaintiff argues it has been released of its obligation to remediate groundwater at its site. I am also handling a 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 implementation of these regulations. In all, what I do here has definitely been informed by my time in the Tulane Law Environmental Clinic, as well as by my elective classes, such as Administrative Law, and Environmental Enforcement. Having taken Administrative Law with Professor Balach was crucial, especially for my understanding of the interaction of administrative remedies, legal agency action, and the rulemaking process.
Gabriel Scott is working as in-house counsel for Cascadia Wildlands, a nonprofit environmental organization based in Eugene, Oregon. (www.cascwild.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 checking and commenting on development permits, and litigating priority campaigns." Gabe credits Tulane Law with providing a great approach to law, and different outcomes. "Tulane’s environmental law program is as good as anyone’s and our concepts of environmental law, except exposing international students to US international law program in 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!"

Gabriel Scott
L ’12

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 executive retreats for younger Minnesota lawyers—giving attorneys disconnected from their phones, off the grid, and canoeing in the pristine boundary waters canoe area wilderness.

Alyssa Leary
L ’15

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 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. "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."

Professor Oliver Houck

INTERNATIONAL STUDENTS

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.

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

Middle Row (L-R): Sophie Albrecht, Germany, the Hambach Forest case; Luna Evers, Netherlands, the Urgenda Climate Change case; Gwen 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 Rattanatikul, Thailand, the endangered Black Panther case; Enrique Saenz Ramos, Mexico, “Waste Dump of Death” case, Alpuyeca and Tetlama; Florencia Sosa Pinilla, Argentina, the Menosu Riachuelo case, Buenos Aires Marina Graff, Switzerland, the Church Bells case (noise pollution v. religious practice), Wei Xin, China, the Dalian petrochemical expansion; Brian Breussard, United States, the Tasmin Park No-Oil for Nature Proposal, Ecuador.

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.
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 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.

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.
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 in 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.

DANIEL SCHWANK L ’20
Daniel worked at an environmental plaintiffs law firm Walter Wippel & Gorskie. 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, particularly 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 opinion in a matter for summary judgement for a maritime case, as well as conducting legal research on the Louisiana Industrial Tax Exemption Program.

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 waste treatment 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.

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 law and policy, where he compared flood planning legislation and finance and researched the impacts of Murphy v. N.C.A. as 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.

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.

ALEX BLANKENBURY L ’20
Alex worked with the Great Lake Environmental Law Center in Detroit, Michigan, over the summer. The group is a non-profit environmental law 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 in the Great Lakes for a report with American Rivers.
SIRIA-LEENA PENTTITEN

Publications

OLIVER HOUCK

Presentations
- Taking Back Eden, Beijing University Press, Fall 2017 (Chinese edition)
- “Noah’s Second Voyage: the Rights of Nature as Law,” Tulane Envtl. L. J. (Fall 2015)
- “Are We Endangered Yet? Artificial Intelligence and the Human Species,” The Environmental Forum, Nov./Dec 2018
- “Losing Earth: The Golden Moment for Climate Change,” The Environmental Forum, Nov./Dec 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
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

CHRI S 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.

MACHELLE HALL

• Honoree – City Business Class of 2018 Women of the Year

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.

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:

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TULANE INSTITUTE ON WATER RESOURCES LAW & POLICY — GIVING.TULANE.EDU/WATERLAW
TULANE CENTER FOR ENVIRONMENTAL LAW — GIVING.TULANE.EDU/TCEL
CURRENT CURRICULUM OFFERINGS IN ENVIRONMENTAL AND ENERGY LAW AT TULANE

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• ENDANGERED SPECIES SEMINAR
• WATER RESOURCES LAW AND POLICY
• ENVIRONMENTAL ENFORCEMENT
• MARINE POLLUTION
• TOXIC TORT THEORY AND PRACTICE
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• ENVIRONMENTAL LITIGATION PRACTICUM

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• OIL AND GAS LAW
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