



LOUISIANA COASTAL UPDATE 2017: THE LITIGATION AND THE PLAN

TULANE'S ENVIRONMENT & ENERGY PROGRAM

The Tulane Environment & Energy Law program is one of the largest and most diverse in the world. The program's strengths include its faculty, the Environmental Law Clinic, the scholarship of the *Tulane Environmental Law Journal*, initiatives of the Institute on Water Resources Law & Policy, the enthusiasm of the Environment & Energy Law Society and the engagement of its JD, LLM and SJD students. Located in the extraordinary setting of post-Katrina New Orleans, the Lower Mississippi River and the Gulf Coast, Tulane provides a unique academic experience in environmental, energy and sustainable development law and policy.

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Tulane Environment & Energy Law News
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The Tulane Environment & Energy Law Society thanks all contributors to the 2017 newsletter.

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The prognosis for the Louisiana coast is grim: fast disappearing, industry canals widening, sea levels rising, storm floods increasing, and a state agonizing slow to acknowledge even the fact of climate change. Responses have come on two fronts, in lawsuits seeking restoration monies from oil and gas companies for their contribution to coastal loss (up to 80 percent of it in some parishes), and in state master plans that, with increasing focus, attempt to stem the tide. Both feature Tulane law alums on all sides.

By Oliver Houck

THE LITIGATION: GOOD IDEAS STAY ALIVE

When last seen, the New Orleans levee board (now, the Southeast Louisiana Flood Protection Authority) had filed a lawsuit against 87 oil and gas corporations over the impacts of a host of oil and gas pipelines, access canals and drilling sites between the City and the Gulf. It alleged what has become a commonplace here, that these activities destroyed the 50-mile storm buffer below New Orleans, putting City

protections going forward at increasing cost...and risk.

As things turned out, the case never got to trial. Removed from state to federal court (on the dubious proposition that state tort and nuisance issues were federal), it was then dismissed on the grounds inter alia that there was a "lack of propinquity" between the wetland loss and the City's levees, and that a statute specifically protecting levees (although contained in a flood control act) applied only to navigation structures instead, which would have

ended the matter, but didn't.

Starting long before the levee board case, private landowners had begun suing oil and gas companies for similar damage to their own wetlands. These "legacy" cases dribbled forward with mixed results until two major verdicts against Shell and Exxon-Mobil awards shook the state into action, pitting two state icons against each other, private property rights versus oil and gas. In compromise, these cases continue but under conditions for state approvals that soften the remedies.

In 2017 the state issued its third, 5-year coastal master plan and it does one thing well: It tells the truth about sea level rise and it is daunting. Even were the plan executed (estimated cost: \$50 billion), we will experience a net loss of over 2,000 square miles in the next forty years.

Following this precedent, coastal parishes also began filing claims for harms to parish resources. The latest count is up to six parishes, with two more pending in Lafourche and New Orleans. Governor John Bell Edwards (a former state senator who at one point in the debate over industry proposals to kill these suits turned to his colleagues and asked (rhetorically): “Who runs this place?”), moved to intervene in them on the parishes’ side, and after a kerfuffle with the Attorney General, has formally joined them.

And so, the battle continues. Amidst the fray it is easy to lose sight of a principle rather elemental to law and a fair society: You break it, you fix it. Whether this applies to the most powerful industry in Louisiana remains to be seen.

THE MASTER PLAN: NEW IDEAS GROW HARD

The first plan to save the coast was not prepared by the State of Louisiana. Rather, it was put together in the 1980’s by several coastal scientists, environmental lawyers (including the undersigned) and public interest groups. Called “Here Today and Gone Tomorrow”, it proposed three remedies: open up the levees, backfill the old canals, and limit the new ones.



All remain available today.

In 2017 the state issued its third, 5-year coastal master plan and it does one thing well: It tells the truth about sea level rise and it is daunting. Even were the plan executed (estimated cost: \$50 billion), we will experience a net loss of over 2,000 square miles in the next forty years. Touted as a “Blueprint for Success”, this is apparently what success means. Even if the needed monies, magically, appear.

A major element of the plan, indeed its most expensive project, is a \$15 billion (and rising), 50-foot high, 100 mile long, levee along the Gulf of Mexico, sticking out into the water like a glass jaw. The probabilities of building and maintaining such a structure on sinking soils, against rising seas, and facing major hurricanes are at best conjectural, but big-ticket items have their own momentum. Seemingly beside the point is that the levee threatens over 100,000 acres of wetlands, more than the entire plan aims to restore. .

There are also items that the new plan, like its predecessors, fails to touch at all. One is oil and gas, where its section on financing describing every possible source of support mentions no contribution from industry at all. Nor does the Dead Zone at the mouth of the Mississippi, which reached a historic high this past year, fare better. Louisiana has even gone to court to prevent the federal government from curbing the nutrients from upstream states that are causing the problem, which simply perpetuates the problem.

Most problematically, the master plan fails to address the consequences of the very thing it is predicting. Sea levels are rising. The rates of rise are rising. The coast is sinking. Communities are already at risk. The best the 2017 plan can offer them is an unspecified, unfunded, community “dialogue”. What they need is a real option so that they too can plan. One hopes that the next five-year plan, in 2022, will offer it to them.

ENERGY: NEW TEAM AT THE HELM



Kim Talus and Sirja-Leena Pettinen

Kim’s work has centered largely on energy markets, as will his initial teaching at Tulane. Sirja-Leena has focused inter alia on renewables and energy efficiency, and she will offer such a course as well in the coming year.

The Tulane Environment and Energy Program will receive a shot in the arm with the arrival of Kim Talus, Co-Director of the University of Helsinki Center for Climate, Energy and Environmental Law, and his wife Sirja-Leena Pettinen, a lecturer at the University and instrumental at the Center as well. Kim’s work has centered largely on energy markets, as will his initial teaching at Tulane. Sirja-Leena has focused inter alia on renewables and energy efficiency, and she will offer such a course as well in the coming year. Both will be involved in the creation of an Energy Law Institute here, similar to the

already existing Institute for Water Law and Policy.

On the personal side, Kim and Sirja-Leena add these notes: The “birth of a son on August 25, 2017”, “we love to cook together”, and “we both run and look forward to the New Orleans Marathon”. We’re looking forward to having both of them with us.

TULANE HOSTS SYMPOSIUM ON THE (LEGAL) RIGHTS OF NATURE

Something is happening. A court in Argentina grants a writ of habeas corpus to a chimpanzee, held in captivity. A court in Columbia follows, this time with a bear, characterizing it as a “sentient being” A court in New Zealand ratifies a consent agreement according the Whanganui River its own right to life The Constitutional Court of Columbia follows with the Atrato River, and the courts of India with the Yamuna and Ganges.

Then come entire countries. The Ecuadorian constitution is amended to recognize rights in all of nature, the Pachamama, upheld in several subsequent court judgments. Bolivia follows suit. Two dozen local communities in the US pass rights-of nature ordinances, while at the other end of the spectrum, a series of international charters and declarations do the same

Where this all comes from and where it may be going, is the subject of a symposium on the Rights of Nature, Policy and Law, hosted by Tulane Law School on October 27, 2017. The event, organized by the Community Environmental Legal Defense Fund (CELDF), features a one-day public session in three parts – existing law, rights of nature laws, and implementation – anchored by keynotes by Karenna Gore, director of the Center for Earth Ethics at the Union Theological Seminary, and Winona LaDuke, Native American activist and director of Honor the Earth. Panelists will come from, inter alia, Ecuador, Nepal, Australia and Sweden, in addition to US participants. Admission is free and open to the public, but advance registration is recommended. Inquiries can be addressed to Thomas Linzey at tal@pa.net. A registration page may be found on CELDF’s website, <https://celdf.org>.



TAKING BACK EDEN TOPS THE CHARTS IN CHINA

In the first two months of publication in 2017, the Chinese translation of Professor Houck’s legal histories of environmental cases around the world was reported by its translator, Professor Mingqing You, LLM TLS 2005, to be the number one best-seller on Amazon/China and several leading bookstores.

A subsequent note from Wang Jing, Editor, University of Peking Press, reads: “I’d like to express my respect and admiration to those environmentalists fighting for change. Environmental problems are increasingly serious in China and we need to take more actions.” Which is to say that the written word carries.

STUDENTS PLACE 1ST IN NATIONAL AND STATE WRITING CONTESTS



Brian Broussard

Two Tulane students received top honors for essays on environmental issues of considerable importance, and controversy. The ABA Section of Environment,

Energy and Resources announced in July that **BRIAN BROUSSARD ('18)** was the winner of its Public Lands Student Writing Contest for a piece entitled Unchartered Waters: The Scope and Revocation of Presidential Withdrawals Under the Outer Continental Shelf Act Sec. 12 (a), tracking the hotly-contested withdrawals of national monuments created under the OCSLA and Antiquities Act.



Coleman Torrans

Also in July, **COLEMAN TORRANS ('18)** won first prize in the Louisiana Bar Association Environmental Essay contest with his paper entitled “Resolving the

Boot”, concerning the ownership of coastal wetlands created and restored (with billions of dollars of public money) under the Louisiana RESTORE ACT. State law, he argues, should favor public interests given the critical importance of these resources, the heavy public investment in bringing them back to life, and the responsibility of private landowners for permitting them to be destroyed in the first place,

Together, they have set a high bar for new students to clear.

TULANE ENVIRONMENTAL LAW CLINIC



Adam Babich, joining the classroom faculty

LAYING DOWN MY SWORD AND SHIELD

Adam Babich

This summer I stepped down from directing the Tulane Environmental Law Clinic to become a full-time classroom teacher. Professor Lisa Jordan took over as TELC’s director. You may remember Lisa as the lawyer who supervised students’ work on the famous “Shintech” case. In that case, TELC’s clients challenged Louisiana’s 1997 issuance of a permit for a chemical plant to emit vinyl chloride into the ambient air of Convent, Louisiana. On behalf of St. James Citizens for Jobs and the Environment and others, TELC achieved a victory. EPA issued a formal objection to the permit, granting (in part) a joint TELC-Greenpeace petition. The rest is history. The case inspired a made-for-TV movie, a political backlash, and myriad books and articles about environmental justice. Shintech built its facility somewhere else.

I became TELC’s director in May 2000—three years after the EPA Shintech order. The case was still a hot topic. Had TELC gone too far? Were TELC student attorneys heroes for protecting their clients? Villains for thwarting industrial development?

Just this summer, a Tulane Law

The year 2017 has seen the passing of the guard for this flagship Tulane program to new and experienced hands, and the continuation of an active docket.

School alumna shared with me her opinion that TELC’s 20-years ago victory was contrary to the public interest. She believes the community would be better off if the facility had been built. Whether she’s right or not, however, is irrelevant to whether TELC handled the case appropriately. TELC’s job was never to represent “the public interest” or “the community.” Like any law firm, TELC serves specific clients. Those clients call the shots in terms of the lawful goals of representation (although ideally clients develop their goals in consultation with TELC). TELC’s lawyers and students would not take a case in which they believed the clients’ position to be unjust. Once TELC accepts a case, however, the fundamental duty of its students and supervisors is to pursue lawful client goals. This is true without regard to the views of other people or institutions (including alumni, donors, and TELC’s students and lawyers). TELC student attorneys are honor-bound to put their clients first.

If TELC has a single-minded focus on achieving client goals, how can it claim to be a “public interest” organization? The answer is that lawyers believe in the adversary system. The ABA Model Rules’ preamble explains, “when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and ... assume that justice is being done.” Lawyers know that the adversary system works best when the voices of people on all lawful sides to a controversy are heard. Thus, the Model Rules instruct lawyers “to ensure equal access to our system of justice,” even for people “who are unable to afford legal services” or whose cause is “the subject of popular disapproval.” An ABA ethics opinion instructs law school clinics to “encourage, not restrict, acceptance of controversial clients and cases.” The Rules encourage “Pro Bono” representations, that is work for “persons of limited means” and for “organizations seeking to secure or protect civil rights, civil liberties or public rights.”



Tulane Environmental Law Clinic 2017, Students, and Faculty

A core TELC mission is to train strong, competent lawyers who take these and other values of the legal profession seriously.

My seventeen years of directing TELC were a challenge and an adventure. Helping law students find their voices as advocates while expanding access to the justice system is—to borrow Ira Gershwin’s words—nice work if you can get it. Regardless of whether TELC wins or loses specific cases, its work to expand access to the legal system improves environmental decision-making in Louisiana. This is because TELC provides its client base with a realistic chance of judicial relief, which in turn provides government and industrial decision-makers with an incentive to take seriously the concerns of ordinary Louisiana residents. The U.S. Court of Appeals for the Fourth Circuit explained, “The comment of an ordinary citizen carries more weight if officials know that the citizen has the power to seek judicial review of any administrative decision harming him.” TELC’s services make a difference in people’s lives.

I step down as TELC’s director with mixed emotions. I am eager for a change after 30-odd years as an environmental litigator. I am also aware that such an opportunity to teach and advance the legal profession’s core values is unlikely to come more than once in a lifetime. My consolation? TELC is in good hands.



Lisa Jordan, taking the helm

CLINIC DOCKET HIGHLIGHTS

Expanded Landfill Buffer

On March 16, 2017, Louisiana’s 19th Judicial District Court entered a Consent Judgment resolving a clinic lawsuit over the Industrial Pipe landfill, on the border of the historic, African-American community of Oakville in Plaquemines Parish. It requires expansion of the buffer between the landfill and the community from 50 feet to 300 feet, a six-fold increase. It also prohibits storage of waste and cover material in the buffer area. Student-attorneys have represented this community on this landfill for decades; the Judgment provides it final relief.

Abuse of the U.S. Army Corps of Engineers General Permit for Wetlands Development

On January 30, 2017, the Clinic settled a federal lawsuit against a Corps New Orleans general permit (NOD-13) for wetlands destruction associated with construction of oilfield roads, drilling locations, pits, ring levees, and related facilities. A “general permit” allows the Corps to approve projects without public notice, an opportunity for public comment, and a project-specific assessment. In exchange for the dismissal, without prejudice, the Corps revoked NOD-13 for use in the Atchafalaya Basin, the nation’s largest river swamp and central to Louisiana’s Cajun culture. Further, NOD-13 is not available for use elsewhere pending reevaluation by the Corps. Clinic clients were the Atchafalaya Basinkeeper, the Louisiana Crawfish Producers Association – West and the Gulf Restoration Network.

Favorable Appellate Court Decision on Red Snapper Management

On January 17, 2017, the U.S. Court of Appeals for the Fifth Circuit affirmed approval of Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. The Amendment enhances protection of the overfished red snapper and promotes an equitable division of the quota for the recreational sector of the fishery between federally permitted charter boats and private anglers. Clinic students represented the Charter Fisherman’s Association.

Reformed Methanol Plant Air Permit

On August 31, 2016, EPA granted the lion’s share of a petition that TELC submitted on behalf of Sierra Club and the Louisiana Environmental Action Network, objecting to a Clean Air permit for proposed methanol plant in St. James, Louisiana. The state had granted the permit without requiring state-of-the-art technology to limit release of volatile organic chemicals, greenhouse gases, and other chemicals. EPA agreed with petition that permit limits were not adequate to keep emissions below required thresholds because key requirements were not enforceable, and did not cover other emissions at all.

TULANE INSTITUTE ON WATER RESOURCES LAW & POLICY

The past year we have helped shaped the course of state restoration and protection. We are also positioning Louisiana to take greater responsibility for its water resources and, by extension, its future.

Milestones

“Financing Options for Coastal Protection and Restoration in Louisiana” (Financing the Future III), January 2017.

This paper spurred conversation in local and national media, but more importantly the Louisiana Coastal Protection and Restoration Authority integrated recommendations for approaching financing issues from the paper into the 2017 Coastal Master Plan. The full body of work (a series of three white papers) was initially received with ambivalence but more recently the State has credited the Institute’s work as raising crucial issues that must be dealt with, and begun discussions to do so.



Pathways to Decisions

Having plans is one thing, implementing them is another. Now that the City of New Orleans has developed more comprehensive plans for water stewardship and community resilience, it is crucial to identify responsibilities and timelines for things to happen, which we are trying to nudge forward. At the same time, now that the State has decided to take the lead in implementing key coastal restoration projects (i.e., not relying on federal agency as a partner) it has discovered that it must comply with an array of federal laws, which in turn call for clear, focused lawyering. Which, again, is why we are here.

Tipping Points

This project, a spin-off of the above series, focused on the impacts of a changing coast on tax bases, financing and insurability of governments and businesses alike ... now reaching tipping points that need to be addressed. As things stand, for example, the Plan relegates most of the “nonstructural” responses to coastal change to local governments to figure out and fund. For much of our coast this is the only option available and the costs will be counted in the billions of dollars, dollars few—if any—local governments have the present ability to raise. For our part, we are building collaborations with other Tulane departments, The Water Institute of the Gulf, the City of New Orleans, and others (including the insurance and financial sectors).

Mark Davis, founding director of the Tulane Institute on Water Resources and Law Policy, has been appointed director of Tulane University’s ByWater Institute. Opened in August 2016, the ByWater Institute brings scholars from across disciplines together to address threats of rising water from coastal erosion, natural disasters and a changing environment.

Institute for Water Policy and Law Faculty and Fellows



FACULTY NOTES

Environmental Law Faculty and Fellows

ADAM BABICH

PUBLICATIONS

Develop Nuggets, Unpack Weasel Words & 8 More Deposition Suggestions to Minimize Frustration, 65 LA. B.J. 92 (Aug. 2017)

PRESENTATIONS

Environmental Law Careers Panel, Federal Bar Association New Orleans Chapter, Environmental Law Committee, New Orleans, LA (3/23/17)

Sierra Club v U.S. Dept. of Energy-Regulation and Redress, Rocky Flats: Causes of Action, University of California, Irvine, Irvine, CA (11/18/16)

MARK DAVIS

PUBLICATIONS

Mark Davis and Christopher Dalbom, *“Taken by Storm”*, published in Tulane Environmental Law Journal Volume 29, Issue 2, Summer 2017. 14 pages.

Mark Davis and Nolen D. Boyer, *Financing the Future III: Financing Options for Coastal Protection and Restoration in Louisiana*, by This is an issue paper published by the Tulane Institute on Water Resources Law and Policy released January 18, 2017. 49 pages.

PRESENTATIONS

August 31, 2016. Louisiana Water Network meeting, Lafayette, LA.

October 13, 2016. Anba Dlo Water Symposium. New Orleans, LA.

October 25, 2016. America’s Wetland Foundation Coastal Leadership Roundtable, Baton Rouge, LA.

November 7, 2016. Greater New Orleans, Inc/Coalition for Coastal Resilience and Economy--Financing Task Force

December 12, 2016. Restore America’s Estuaries/The Coastal Society 2016 Summit.; Dec 14, 2016, Moderator, closing plenary

GUNTHER HANDL

PUBLICATIONS

Nuclear Off-Site Emergency Preparedness and Response: Some International Legal Aspects, in J. Black-Branch & D. Fleck, eds., Nuclear Non-Proliferation in

International Law, Volume III: Legal Aspects of the Use of Nuclear Energy for Peaceful Purposes 311 (2016)

The Integration of Environmental Principles into the Policy and Practice of Multilateral Development Banks, in L. KRAEMER & E. ORLANDO, EDS., ENCYCLOPEDIA OF ENVIRONMENTAL LAW (2017)

The Right to a Clean Environment and the Rights of the Environment, in K. ODENDAHL, A. VON ARNAULD & M. SUSI, NEW HUMAN RIGHTS FOR THE 21ST CENTURY (2018)

PRESENTATIONS

“The Right to a Clean Environment and the Rights of the Environment,” Workshop on “New Human Rights for the 21st Century,” Kiel, September 24, 2016.

“Towards an International Legal Instrument on Liability and Compensation for Damage from Offshore Activities?” Oslo-Southampton-Tulane Colloquium, Winchester, October 14, 2016.

“Basic Public International Law Concepts bearing on State Responsibility and Liability,” Workshop on Civil Liability for Nuclear Damage, National University of Singapore, Energy Studies Institute/Center of

International Law, January 24, 2017.

“Compensability of Pure Environmental Loss,” Seminar on “Policy and the Arctic: Quest for Knowledge,” May 10, 2017, Fairbanks, AK

“Gaps with respect to HNS & Nuclear Pollution of the High Seas,” Conference on High Seas Governance: Gaps and Challenges, Singapore, April 24-25, 2017

“Catastrophic Nuclear Accidents: Mass Tort Claims in a Transboundary Context,” National University of Singapore, July 6, 2017.

OLIVER HOUCK

PUBLICATIONS

Los Derechos de la Naturaleza Como Ley, University of Sevilla, Fall 2017

The Vieux Carre Expressway, Tulane Environmental Law Journal, Winter 2016

Willow Springs: A Louisiana Civil Action”, Loyola Law Review, Summer 2016

The Reckoning: Oil and Gas Development in the Louisiana Coastal Zone, Tulane Environmental Law Journal, Winter 2015

BOOK REVIEWS

“Resurrection Science: De-extinction and the Future of Wild Things,” Jul/Aug 2017

“Eruption: The Mt Saint Helens Story,” Mar/Apr 2017

“Rattling the Cage,” Jan/Feb 2017

“Astoria,” Sept/Oct 2016

“The Beekeeper’s Lament,” May/Jun 2016

“Tom’s River,” Jan/Feb 2016

PRESENTATIONS

Keynote Speaker, “Three Seminal Louisiana Cases,” American College of Environmental Lawyers, Oct 2016

Opening Speaker, “Retrospective on Takings,” Conference on Litigating Takings Challenges to Land Use and Environmental Regulation, Tulane Water Resources Inst, Nov 2016

Keynote Speaker, “Update: Clean Water Act TMDL Program,” Chesapeake Bay Foundation, April, 2016“

ALUMNAE PROFILES



Elizabeth Teel Galante, JD '91, LLM '99

Social Justice and Green Energy

After honing her trial skills in the New Orleans District Attorney’s Office (more than 75 jury trials, some front page headlines) Elizabeth returned to Tulane to teach and help direct the Environmental Law Clinic during its first environmental justice litigation. She also worked with well-known trial lawyer Allan Kanner to secure natural resource damages for the states of New Jersey and Oklahoma.

After Hurricane Katrina she opened the international non-profit Global Green’s Gulf Coast office, which brought actor Brad Pitt, national philanthropic investment and international expertise towards rebuilding with greater resiliency. In the process she launched New Orleans’ energy efficiency program, building zero energy, LEED Platinum housing in the Lower 9th Ward. For these contributions she was recognized as a Champion of Change by the White House, and joined Aspen Institute’s Henry Crown Fellowship, connecting community leaders from around the world.

She then became Vice President of Business Development for New Orleans-born company PosiGen Solar: making solar and energy efficiency

available all families in Louisiana, who struggle with some of the most expensive utility bills in the nation. New Orleans has the 2nd worst energy poverty in the country, leaving lower income families unable to pay for other basic needs. PosiGen’s innovative model offers 100% financing to 100% of homeowners in Louisiana, providing dramatic savings they can reinvest in themselves and their communities. PosiGen has since taken this model to Connecticut where the state’s clean energy finance arm earned Harvard’s 2017 Innovation in Government award. To date, the company has brought solar and energy efficiency to more than 10,000 homes, and average family savings of more than \$1000 a year in energy ‘bills.

Admittedly, growing a solar business in Louisiana is a challenge, opposed by the oil and gas industry and large utilities that see clean energy as a threat to their bottom line. On the other hand, a growing number of utilities are adding clean energy to their portfolios, and solar energy is one of the fastest growing industries in the world. With or without federal support, it is certain to be an important part of our future.

On the personal side Elizabeth and her husband, Scott Galante, JD '00, Co-Director of Tulane’s Trial Advocacy program, enjoy serving on non-profit boards, biking a “ridiculous number of miles” to support cancer charities, and helping to open New Orleans’ Seven Three Distilling, bringing cheer.



Russell Shearer LL.M. '93

Nukes, Chemical Warfare and Edward Abbey

Russell is Vice President, General Counsel, and Secretary of ISL, Inc., an employee-owned engineering and MIL-SPEC manufacturing company in the nuclear, defense, and space sectors. He also has Profit and Loss responsibility for the Company’s business in ESH&Q performance excellence, focused on managing event precursors rather than on what then happened. All of which, he says, is an admission that his father—a senior mechanical engineer—was correct in recommending a bachelor’s degree in engineering instead of politics.

It did not start out that way. Russell began his career—at age twelve—on a congressional campaign, one leading to another, winding up on a U.S. Senator’s staff and watching unwise development and unachieved opportunities for corporate stewardship, which spurred him to law school. One law degree led to a second at Tulane in the environment program, which, in turn, induced him to volunteer for the Sierra Club Legal Defense Fund, and then for the Natural Resources Defense Council.

After clerkships with Delaware Supreme Court Justice Andrew G.T. Moore, a Tulane graduate, and then with appeals judge, Hart T. Mankin

(who also served as matchmaker by introducing him to his wife), he became house environmental counsel to a Department of Energy nuclear weapons plant in South Carolina. “Three years with Dr. Strangelove (and broadly applicable skills in WMDs)”, he writes, led next to the environmental departments of two international law firms in Washington, D.C.

Meanwhile, Russell was able to take on a pro bono NEPA case against a federal-aid highway in South Carolina, which remains in his mind. “In a moment reminiscent of Alice and Humpty Dumpty in THROUGH THE LOOKING GLASS”, court refused to find that the government improperly segmented its review, despite its own documents stating that it had in fact separated a single, continuous and inter-dependent highway into two parts. Following which, though, the highway administration, implemented changes requiring in more robust reviews.

President George W. Bush’s election—along with two years volunteer moonlighting on his campaign—brought Russell back to government. The “mysterious logic of appointments” propelled him to the second in the WMD trifecta, chemical weapons and the Department of Defense, and not to lawyering but to senior management. After three years overseeing the destruction of the Nation’s chemical weapons stockpile, he returned to DOE, serving as the chief environment, safety, health, and quality officer for the nuclear weapons, national laboratory, nanotechnology, nuclear R&D, and petroleum-reserve complexes. Since the end of the Bush Administration, Shearer has been employed by ISL.

He has also been employed, in the company of his wife and two daughters, exploring some of the venues of legendary figures in natural resources law. Last year he sent in a framed photograph of the cabin (still standing) in which Ed Abbey

lived and wrote his inimitable *Desert Solitaire*. It was accompanied by an Abbey exhortation to green advocates: “You will outlive the bastards!”



Kristen Schlemmer, JD 2010

Nudging Houston Forward

It is August 27 in Houston. Harvey is closing out its second day of steady rain. Buffalo Bayou, lined by chemical tanks and refineries, is at least 15 feet higher than usual. Three more days of rain are expected. As an environmental attorney here, the issues dominating the news now are questions my colleagues and I grapple with daily: Why did previously dry neighborhoods flood in 2009 (and again in 2015, 2016, and 2017)? How much longer will aging dams hold? Will our government (finally) consider climate when rebuilding this region? As a potential disaster unfolds here in Houston, I can’t help but think of New Orleans. It was there I decided to pursue a career in environmental law, and I can’t help but consider how the Katrina and Deepwater Horizon disasters played into that decision. Litigation from these events dominated much of my clerkship year. Paying attention to the environment seemed, at the least, extraordinarily important.

Tulane also taught me environmental law can be fun. With my classmates, I collected data about whistling ducks along the banks of the Mississippi; researched the use of mitigation banking in protecting endangered species; organized a panel on agriculture and climate change for the annual Summit; paddled in the

Pearl River swamp; and harmonized, doo-wop style, about lead toxicity in a play written by a classmate. I was hooked.

Set on practicing in my hometown of Houston, this land of hydrocarbons and climate-denying Ted Cruz did not match my own. So, I clerked for federal Judge Feldman in New Orleans and then ventured west to San Antonio to clerk on the Fifth Circuit. By 2012, I returned to Houston to start a job at Susman Godfrey, known for throwing associates in front of a jury in their first year, and which, at the time, had gained attention for its work opposing coal permits and other forays into climate change litigation. By the summer of 2016, with trials, oral arguments and countless depositions under my belt, I felt ready to go. Because Houston’s public interest law options had changed little, I joined a for-profit law firm, Irvine & Conner PLLC.

Our clients include a mix of non-profit organizations dedicated to environmental and wildlife protection and private landowners with environmentalist leanings. I’ve since represented neighborhood groups affected by flooding, by unprecedented fracking, and by a two-month-long fire at a wood-processing plant; rice farmers opposing a pipeline project; and activists in a frivolous defamation lawsuit.

This variety reflects the range of environmental problems faced by Houston, the nation’s fourth largest city, but as well the relative lack of local environmental lawyers focused on solving those problems. Which must change. This last year local foundations funded a small environmental justice team at Lone Star Legal Aid, and a first-ever Houston Waterkeeper. For what this city needs, we must consider this to be only a start.



Rebecca Fromer, JD 2011

Cleaning Up New York

For the past five years I have served as an Assistant Attorney General in the Environmental Protection Bureau of the New York Office of the Attorney General, representing agencies in the enforcement of their programs. One of the things I love most here is the variety of the work I get to do: I have litigated cases involving the protection of wetlands, disposal of waste, regulation of pesticides, and more. My Bureau is also fortunate to have a team of scientists who provide technical support, most recently in comments on a “Preliminary Bee Risk Assessment” issued by EPA in support of the registration review of two pesticides. Our comments identified risks to pollinators that the Risk Assessment failed to examine, and discussed how pollinator loss threatens agricultural production and natural plant communities worldwide. An EPA decision on the registrations is pending.

I have also worked on several investigations, most recently an inquiry into thousands of tons of contaminated construction waste from the New York City metropolitan area, much of it containing hazardous substances, dumped in a public park on Long Island. Located in a neighborhood identified as a “potential environmental justice area, the park had to be closed. In New York all municipal parks are held in trust for the people, and our investigation has led to a lawsuit seeking natural resource damages

under CERCLA and related nuisance and negligence claims for the public’s lost use of the park. The Bureau alleges that contractors who arranged for the disposal of this waste from their construction sites, and the waste brokers and haulers with whom they dealt, are liable.

I am proud to be a part of a progressive office that seeks to improve the lives of all New Yorkers. I am sincere when I say that my environmental law coursework at Tulane and experience as a student attorney with the Environmental Clinic were both motivating and formative in making this opportunity possible. Although I reside in Manhattan, I also enjoy the green expanses north of the City, and travel as much as I can. Last year my husband and I honeymooned to Antarctica, a magnificent experience. (see photo) We also noted firsthand the particular vulnerability of that region to climate change. I came back even more ready to engage.



Adam Pearce JD 2013

From Oceana to Coal Ash to Cannabis

The pursuit of Adam’s goal, an environmental law career, has been something of an Odyssey, persistent and ultimately successful. After graduation, he was accepted as a Fellow at Oceana, where he worked at the “intersection of environmental and international law”. He and his colleagues promoted responsible

fishing practices and curbed seafood fraud, two concepts he sees as “inherently intertwined”. He also advocated for US leadership on the protection of global fisheries, both for the benefit of ecosystems and for the benefit of the 1 billion people who consume seafood daily. Oceana’s work culminated in the creation of the 2015 Obama-era Presidential Task Force on Combating IUU Fishing and Seafood Fraud. At the Sierra Club, his next stop, Adam helped lay the groundwork for litigation against utilities in violation of coal ash storage regulations under RCRA. He notes: “coal ash storage ponds hold millions of gallons of toxic slurry and pose devastating threats to neighboring watersheds through routine seepage and outright breaches, caused by anything from seismic activity and sinkholes to plain negligent upkeep.” This experience behind him, Adam entered private practice in San Francisco focused on toxic tort and products liability litigation.

This September, Adam joined the Rogoway Law Group as a land use attorney. He will be ploughing the emerging field of cannabis law, doing environmental compliance and regulatory work for new growers moving into the market. As “major environmental issues [here] center on water”, much of his practice will go “beyond compliance to new ways for the industry to grow in a sustainable way”. He finds himself at home, he says, at the intersection of a growing industry and important public law.

Adam has also become an honorary Californian, drought and wildfires and all. When last heard from he was backpacking into the Yosemite forests, parts of them ablaze, for a taste of this high country so special to America and, through John Muir, to the birth of environmental law.



TULANE ENVIRONMENT AND ENERGY LAW SOCIETY

TEELS Bike Trip to Lake Pontchartrain, August '17



CRAWFISH BOIL '17

The Tulane Environment & Energy Law Society hosted an Earth Day crawfish boil at the beautiful Fly in Audubon Park park along the Mississippi River.

TEELS

'17-18 OPENED WITH A BANG THIS YEAR,

Due largely to a wide interest from entering 1L class. We focus on activities that supplement the curriculum and are fun as well, cap stoning with the Spring Summit. Although more items tuck in as we go forward, they include:

FALL '17

- Opening Bike Trip to Lake Pontchartrain, Aug (see photo on right)
- Follow-up Bike up the Mississippi, SEPTEMBER
- Audubon Park Clean-Up (partnering with Pub Int Law Fndn), OCTOBER
- Valero Refinery Visit, OCTOBER
- River Overnight, Fall Break, OCTOBER
- Kayak trip, NOVEMBER

SPRING '18

- Annual Enviro Desert Competition, JANUARY
- Professions and Careers Panel, FEBRUARY
- Spring Bike to the Lake, FEBRUARY
- Summit, MARCH
- Crawfish Boil, MARCH
- Earth Day Tree Planting, APRIL



MOSSVILLE '17

The Tulane Environment & Energy Law Society and the Public Interest Law Foundation hosted a screening of Alexander Glustrom's documentary "Mossville." Nearly all the residents of Mossville, Louisiana -- founded by an ex-slave in 1790 and one of the first settlements of free blacks in the South -- have moved away after accepting buyouts from South African petrochemical giant Sasol, which wants to expand its Lake Charles Chemical Complex into the area. One man, Stacey Ryan, is the lone resident who hasn't left town despite harassment and health issues caused by the chemical run-off. Mossville documents his story.



TURTLE COVE '17



Environmental & Energy Law Society Executive Board:
LEFT TO RIGHT: Zeke Maggard (*Treasurer*), Katie Davis (*President*), Hannah Price (*Vice President*)

E AND E SUMMIT '17 IN A NUTSHELL

- 23'd Annual, two days and evenings, 24 panels, two keynotes, reception, music, free and open to the public.
- Student organized and run (over 50 involved this year).
- More than 350 attendees, lawyers, environmental groups, scientists, corporations, college and law students, policy wonks, and (for Sustainable Seafood) New Orleans chefs.
- Biggest draws included Drone Technology and Conservation (including one buzzing the room), Shark Management, the Future of Nuclear, and Climate Justice.



Kim Jordan, Newa Belgium Brewing

A STANDING OVATION

Keynoter Kim Jordan, Co-founder and Board Chair of New Belgium Brewing, a high-tech and innovative enterprise (including employee ownership, open book management, philanthropic giving and community engagement). Taking it up a notch, she described her role in lobbying on climate change, and the evolving acceptance of corpo rate stewardship.



2018 Summit Board: left to right- Zeke Maggard, Chelsea Tristan Danley, Portia Mastin, Emily Werkmann, Margaret Wilbourne, Hannah Price, Henry Dahlen (not pictured: Denman Mims, Drew Renzi, Anais Moore-Jaccard).

TULANE ENVIRONMENTAL LAW JOURNAL CELEBRATES ITS 30th



Twenty-one motivated students staff the Tulane Environmental Law Journal this year, on the sill of its 30th anniversary. They include five Senior Board Members, five Managing Editors, and eleven junior members. The Winter 2017 issue will showcase three principle articles: “The Rights of Nature as Law” by Tulane Professor Oliver Houck; “Emission Trading in the European Union, Part II”, by Berkeley Professor Wil Burns (Part I published in Vol. 30, issue 2); and “Plugging and Abandonment rights in the Oil and Gas industry”, by Journal alum David Curry. The Spring 2018 issue will present articles on nature and natural resources law.

The Journal also continues its attorney mentorship program to facilitate student connections with local attorneys and Journal alumnae, intended to generate outstanding student pieces. In part due to this initiative, the Tulane Environmental Law Journal is currently ranked in the top ten of environment, natural resources, and land use journals in the country for student articles and case notes.

Academics and practitioners with scholarship-worthy work are encouraged to contact the Journal directly through Tom Gosselin, Senior Articles Editor, at tgosseli@tulane.edu.



Senior Board of the Tulane Environmental Law Journal, Vol. 31. left to right - D. Ryan Cordell (Senior Managing Editor), Jamie Futral (Editor in Chief), Diem Ha (Senior Notes and Comments Editor), Claris Smith (Senior Business Editor), Tom Gosselin (Senior Articles Editor).



E and E Seminar, countries represented since 2013



MASTERS OF ENVIRONMENT & ENERGY LAW PROGRAM

Tulane’s Masters of Law and Phd Programs in Environment & Energy Law has a long reach, embracing students from 31 countries on seven continents in the past five years. (See Map) The highlight of their experience here is a seminar dedicated exclusively to them, focused this year on access to justice and judicial review across the globe. This year’s students include graduate lawyers from Panama, Germany, Guatemala, Luxembourg, China and Japan.

GREEN SUMMERS: GETTING A TASTE OF ENVIRONMENTAL LAW

Once again our students return with a wealth of experience in the field with government agencies, corporate firms and NGO’s. Among them, this sample:

Anthony Cooper, 3L

I spent this summer as a legal intern with the center for international environmental law. Focusing on the intersection of human rights and the environment, I spent time reviewing citizen submission mechanisms in multilateral trade deals such as the U.S.-Peru TPA, NAFTA, and D.R.-CAFTA. A significant portion of my summer consisted of drafting CIEL’s comment to the USTR responding to the request for NAFTA negotiating objectives. The highlight of my summer involved getting to draft CIEL’s comment on the UNDP’s stakeholder engagement guidance document.

Catherine Crawford, 3L

I was the legal intern for the Alliance for Affordable Energy, a consumer advocacy group promoting energy efficiency throughout New Orleans. I researched many topics including the best models for energy reliability; various jurisdictions imposed rulemaking for plant retirement; and the top solar producing states. I also summarized many New Orleans City Council Utility dockets on proposed plants and energy efficiency. I was given the opportunity to help run the Louisiana Energy Democracy Coalition Meeting. The highlight was writing a memo on managerial prerogative and how it affects a Public Service Commission’s authority when regulating utilities.

Jamie Futral, 3L,

This past summer, I worked as a legal intern for the Gulf Restoration Network in New Orleans, La. I reviewed and drafted comments on draft water discharge permits submitted through the Louisiana Pollutant Discharge Elimination System. I also worked on a research project geared toward uncovering federal and state funding programs that will assist communities in rebuilding, improving, and restoring their water and wastewater treatment plants.

Denman Mims, 2L

I joined NOAA’s Sea Grant Legal Program in Mississippi and Alabama, a collaboration between universities and NOAA to perform research across the board, including marine drones. On the side, I wrote articles for NOAA’s legal reporter, The Sandfly, and a statewide publication The Waterlog. My main project was a sweep of ground-water contamination at seven Superfund sites in Mississippi, only three of which had been remediated. Message: cleanup is long, and hard. I was also lead intern on stormwater management in towns along the Gulf, for which I designed a checklist including compliance with EPA MS4 regulation, living coastline guidelines, and wetland setback requirements, leading to a score as adequate, ambiguous, or flat-out lacking. In the end, we gave these communities a structure to shoot for. In addition, NOAA gave me responsibilities I feel lucky to have had.

Talia Nimmer, 3L

I worked at Angel Law in Los Angeles, a small firm that specializes in environmental litigation. I worked primarily on a case opposing a waterfront development in Redondo Beach, but also on a handful of CEQA and Brown Act cases. For example, we presented oral argument in front of the Court of Appeals opposing a City of Malibu exchange of two parks, one at sea level (in order to build a mega-sports complex) and one in the mountains. We claimed that several (unlawful) secret meetings occurred in the process of the exchange.

ALUMNAE BRIEFS

We live through our alums, sometimes daily as their emails and other contacts come in, and what continues to impress us is the diversity of what they are doing and their success in doing it. We do not have the space to present all the updates received, nor to highlight them in more depth as we are able to do for a few in this issue ... but we hope that this sample conveys the idea: our alums go everywhere, and do nearly everything. And do it very well.

Jon Schuyler Brooks (L '84)

Jon Schuyler Brooks has recently left Phillips Nizer, LLP to join Michelman & Robinson, LLP in New York. In the past, he has gone deep into brownfield issues, and has enjoyed plaintiff-side litigation. Now, a new road.

Ruth Ann Castro (L' 00)

Ruth is now Environmental Counsel at Google, providing transaction and compliance support for teams on three continents. She is also deeply involved in securing the company's carbon-neutral goal through renewable energy for grids powering its data centers. She had previously worked in corporate practice, and before that as a clerk in EPA's Region IX. Now she's greening Google.

Albi Gjenerali, LLM (LLM '16)

I continue to work for the Albanian Combined Natural Gas company and we are still in the projection phase of the new pipelines. Albanian did not previously have any natural gas resources, but with the new Trans Adriatic Pipeline, which will pass through Albania from Azerbaijan, the country will gain access to 0.3 bcm per year of natural gas to use in the industrial sector.

Alayne Gobeille, J.D. (L'11)

Alayne Gobeille wrote directed and produced an aquatic adaption of George Orwell's Animal Farm. In Gobeille's interpretation, Orwell's farm animals have been replaced by trained seals, trained killer whales and other sea creatures that star in an anachronistic aquarium show. The term "two legs bad," is Orwellian shorthand for the sea creatures' distrust of bipedal humans.

Jordan Lesser, J.D. (L '09)

Jordan Lesser works as Legal Counselor for the New York State Assembly from his hometown of Ithaca, NY. He has also been deeply involved with legislative reform to better enforce wildlife crimes in Namibia, on which he has also written and lectured widely.

Michael Mogil, J.D. (L '88)

I am rethinking how to stay involved in green matters as a lawyer and businessman. My inclination and interest tends towards the macro issues--species and habitat protection internationally, overpopulation, and then sustainable food, building, packaging and energy resources internationally. In short, the perils of overpopulation are everywhere. ... My bigger concern is the demonization of science (and intellectual thought in general) to the point where the debate is no longer what we do about the rising seas and obvious rising temperatures, but whether we can even have a national or political

discussion on it. Consider that 49.9 percent of the population, and 55% of the electoral votes, disregard anyone who mentions it. That is the challenge for the rest of my generation's useful life, and my children's -- how to keep teaching and believing in the truth and advocating it in the face of a new culture centered on politicized information, image, lack of respect for Courts and short term thinking.

Adam Reeves, J.D. (L '95)

Adam Reeves, with the firm Maynes, Bradford, Shipp & Sheftel LLP, is representing the Southern Ute Indian Tribe. They are currently looking to develop an environmental review process that will supplant NEPA in certain circumstances. Adam is helping the tribe develop an efficient and effective review process that will result in better decisions about how the tribe will manage and develop its resources in the least environmentally damaging manner.

Kevin Thompson (L '98)

Kevin checked in to report a summary judgment win for plaintiffs on the infamous Elk River chemical spill in West Virginia, following several recent verdicts against Murray Coal in that same state. At last report he was in Houston on a hazardous waste leakage matter. He seems drawn to cases of considerable size.

