Emerging Issues

Conservation Easements: A Complicated Field

Jessica Owley Lippmann

Jessica Owley Lippmann is an assistant professor of law at Pace University School of Law with a special interest in land use and property. The following is a summary of her article entitled "The Emergence of Exacted Conservation Easements" that was published in 84 NEB. L REV. 1043 (2006). In this article, Professor Owley Lippmann presents the historical and legal context in which conservation easements arose and points to the problems associated with using them as a tool for land use exaction by local governments. Her work explores the different motivations behind this tool and is ultimately a call to address the issues accompanying its use. Professor Jessica Owley Lippmann is teaching a seminar on conservation easements and land trusts this spring. See related faculty profile at www.law.pace.edu/faculty.

Professor Owley Lippmann prefaced her article by explaining that to the legal mind, "property" does not conjure thoughts of objects, but of rights. That multiplicity of rights associated with property has transformed how we think about and protect our natural resources.

In Owley Lippmann's article, she discusses the concept of conservation easements, which are voluntary agreements between a landowner and a conservation organization that restrict certain uses of the land in perpetuity. These easements are often used by local governments as a tool to promote conservation and environmental protection. However, Owley Lippmann argues that the use of conservation easements as a tool for land use exaction raises significant legal and ethical concerns.

The article examines the historical and legal context in which conservation easements arose, highlighting the motivations behind their use. It also explores the different motivations behind the use of conservation easements and calls for a more transparent and accountable process for their implementation. Owley Lippmann emphasizes the need for a more comprehensive approach to conservation that considers the rights and interests of all stakeholders.

The Business Case for Climate Protection and the Role of Law

Pace University welcomed Woodrow Wilson Fellow Hunter Lovins, JD, for a week in the fall. Lovins inspired students and faculty by sharing her experience as a driving force in the integration of business and environmental perspectives. In addition to consulting in the private and public sectors, Lovins is the founder and President of Natural Capitalism Inc. and Natural Capital Solutions, and co-founded the Rocky Mountain Institute in 1982 where she has led as CEO for Strategy for twenty years. Trained as a sociologist and lawyer, Hunter co-founded the California Conservation Project (Tree People). Lovins has consulted for scores of industries and governments worldwide in addition to large and small companies, including the International Finance Corporation, Royal Dutch Shell, Interface, Clif Bar, and Walmart. Governmental clients include the Pentagon, US Environmental Protection Agency, Department of Energy and other agencies, numerous cities, and the governments of Jamaica, Australia, and the US. She has also served as an advisor to the Energy Minister of the Government of Afghanistan. For her tireless work in protecting the environment, Time Magazine named her "Hero for the Planet" in 2000.

At Pace Law School, Lovins presented the question: is there a business model for climate protection? The answer is a resounding "yes." Lovins spoke of the transition that has occurred since her initial work with Natural Capitalism. Where evidence of the profitability of sustainable business practices used to be anecdotal, the idea is now supported by hard evidence. Increasingly, businesses are recognizing the 'triple bottom line,' one that accounts for benefits to business, as well as people and the planet.

Lovins emphasized that the most successful busi-
ditionally been explained as a “bundle of sticks” which can be separated, divided, and shared. One stick that has been identified for its potential to protect the environment is the right to develop one’s property, a concept captured in the conservation easement. Owley Lippman further explains that this metaphor is not the best description of the rights associated with conservation easements.

A conservation easement is an agreement between a property owner and a conservation entity, where the property owner sells or donates the right to develop the property to the conservation entity. Conservation easements, a form of servitude, provide a means of preserving resources with little perceived government involvement. The concept of conservation easements arose out of the intersection of the environmental and localism movements of the second half of the last century. Broadly, environmentalists sought to protect resources, both natural and cultural, and localists sought to minimize invasive government actions.

There was also a desire by environmentalists to protect more land than government was protecting and a desire by localists to avoid working with the federal government. Together this led to private deals between environmental organizations and landowners. Sometimes the environmental organizations compensated the landowners for giving up their right to develop. Other times, the landowners donated the right to develop in exchange for tax breaks. Generally, the landowners received tax breaks because of the donation or reduced property taxes due to reduced land values. Despite tax breaks for landowners, local governments still saw these deals as preferable to public ownership of land because the land remained on the tax rolls, albeit at a reduced level. Plus, government did not have to regulate, enforce, or manage the property.

Usually easements are positive or permissive, telling a neighbor that he can do something on the burdened land. However, for conservation easements, negative easements are desirable because they constrain the land owner from doing something. Additionally, in gross easements are advantageous because someone other than a neighbor can benefit, which allows conservation benefits to run beyond the life of any particular conservation organization. Usually easements are appurtenant, meaning that only an adjoining landowner can enter into the deal, but in this case the easement should be transferable, enforced via injunction (instead of money damages for a violation), and perpetual. The burden of the conservation easement runs with the land because the land and its resources are what should be protected.

None of the common law servitudes had all of these traits, so states enacted laws to create something that would – conservation easements. Traditionally, much of environmental law has been based around the idea of permits, which typically involve reducing or mitigating impacts resulting from an individual’s action. Governments began exacting conservation easements as part of permitting processes because it was a cheaper and tailorable alternative to achieving conservation ends than traditional zoning and eminent domain. Though exacted conservation easements appear to be a facially valid use of exactions, a type of permitting condition that requires proportionality and a nexus between the exaction and the impact of the proposed development; it appears to Owley Lippmann that exactions run counter to the original purpose of conservation easements.

Owley Lippmann illustrates that conservation easement statutes and their legislative histories either fail to mention exactions or discuss them unfavorably. For example, California’s statute requires conservation easements to be voluntary and explicitly prohibits their use as exactions. This illustrates the divergence in origins between the traditional conservation easements and exacted conservation easements: traditional conservation easements are an outcropping development of a combination of the freedom of contract and property rights, while exacted conservation easements are derived from the government’s police power and the reasonable regulations to which property is held subject. Additionally, exacted conservation easements are a form of conservation through government coercion, the very thing traditional conservation easements were created to avoid. Also, while conservation easement statutes explicitly create private, land-conserving property transactions, government agencies are abstractly interpreting conservation easements as creating a new property right. Ultimately, Owley Lippmann believes the most important issue is that governments are exacting conservation easements without considering how these issues may impact their long-term viability.

The Emergence of Exacted Conservation Easements details the history of conservation easements but also sounds an alarm as to the legal bind municipalities may be entering. It points to the issues that should be addressed by future study. Most importantly, Owley Lippmann provides insight into this new legal tool, from its origins, through its current use, and the issues that will shape its continuing progression.
Kerlin Lecture: Renewables and Smart Grid

On October 8, 2009, Pace Law School held its Tenth Annual Gilbert and Sarah Kerlin Lecture on Environmental Law. Pace was honored to welcome Suedeen G. Kelly, a Commissioner of the Federal Energy Regulatory Commissioner (FERC). Commissioner Kelly presented a lecture entitled Renewables and Smart Grid: Is This Where We Are Headed? which addressed the current trends in electricity generation and the projected course of our energy future.

Kelly began her tenure as a FERC Commissioner in November 2003. Following the expiration of her second term in June 2009, President Obama reappointed Kelly.1 Kelly holds a JD from Cornell Law and was a professor of law at the University of New Mexico School of Law. Her distinguished career includes serving as chair of the New Mexico Public Service Commission, and as a lawyer with the New Mexico Attorney General’s Office. She has also worked in private practice in both New Mexico and Washington, DC, and for the DC office of the Natural Resource Defense Council.

Commissioner Kelly began the lecture discussing national trends in renewable energy implementation in recent years. In the last decade the production of renewable energy has significantly increased. For example, Kelly noted dramatic increases in both solar and wind energy in the last decade, with the latter increasing 12 fold. Photovoltaic technology (PV), where solar energy is directly converted into electricity, grew steadily through 2005. In 2005, the federal investment tax credit caused a major jump that doubled PV’s annual growth rate, and capacity by 2008 was more than triple of the amount installed in 2006.

Commissioner Kelly pointed out that surprisingly many of those leading the pack in installed solar technology are not necessarily the “sunnier” states. For example, New Jersey, New York, Connecticut, Oregon and Massachusetts are all within the top 10 in installed solar technology. Kelly attributes this leadership in part to generous rebate programs in these states. However, in spite of the growth of renewables, non-hydro renewables only comprise three percent of electricity generation in the US, with wind contributing 1.25 percent to this total.

So what exactly is a Smart Grid (SG)? Kelly explained that a traditional grid involves the transportation of electrons in one direction, from the generator to the consumption. An SG would overlay that traditional system with an “intelligent network” that allows two-way communication of electrons, information, and data. Sensors within the SG collect data about the use and price of electrons in real time and communicate that data throughout the network. A traditional grid does not provide system operators with knowledge of how much electron space is available on a line at any given time. Consequently, the system is operated very conservatively and less efficiently than is actually possible. SG has the potential of providing consumers with smart meters that would inform them about how much electricity they are using and the cost of that electricity at any given time. Accordingly, the system could in theory adjust the various sources of consumption to operate at times of optimum energy efficiency.

Commissioner Kelly went on to highlight several SG demonstration projects throughout the country that are providing us with a better forecast of our potential energy future. A project in North Carolina particularly illustrates how SG can provide better customer control and usage information. Controllers are installed on hot water heaters, air conditioners and pool pumps, and customers set targets online for their monthly electricity bill. Smart meters and a wireless communication system provide real time consumption data to allow the utility to cycle the appliances on and off to achieve the customers’ targeted savings goals. Initial results from this pilot program have shown a 20 percent decline in average electricity consumption.

As Kelly stated, “renewables and smart grid are on a great trajectory.” However, their continued growth is dependent on several factors, including the market fundamentals of supply and demand, and price. In the US we have an ample supply of renewables, but the utilization of this energy is limited by current lack of capable transmission. As Kelly illustrated, you need transmission lines to get wind energy from North Dakota to customers in Chicago. The recession has also caused an overall decrease in electricity consumption, which is good on one hand but also decreases demand for renewables. Demand is also impacted by our ability to integrate it into our system, and intermittent nature of renewable energy (e.g., wind decrease, no sunlight) places limits on this integration.

Kelly discussed how the regulatory community can be helpful or not in encouraging the growth of renewables. For example, regulators responding to constituent’s disapproval of coal plants may have regulatory preferences that require building renewable energy plants. Additionally, legislators have the potential to move the marketplace through mandates, such as a federal renewable portfolio standard.

Some legal barriers to the deployment of SG include the lack of equipment standards. If two cities are using different SG technologies, they may not be able to communicate. In addition to the need to create national standards, there is a need for laws governing the ownership of the information generated. Smart grid and renewables have experienced a steady climb and a very recent swift assent, but are currently not on as steep of an incline. Kelly believes that lawyers will play an important role in steering and invigorating the promotion of SG and renewables in our energy future.

1 Kelly declined to seek a third term and left FERC in December 2009 after six years of service as a Commissioner.
nences are those that anticipate what might happen in the future. Part of this success is identifying drivers of change – signs that normalcy is not going to endure. The businesses that identify drivers of change are able to adapt quickly to, and even profit from, changing conditions. She argued that unsustainable business practices are the main driver of change, and in order to combat climate change and maintain healthy profits, businesses must change their mental model of economic profitability.

In the not so distant past, corporations did not take environmental considerations into account when determining their financial health. This has begun to change as businesses reconsider what constitutes shareholder value. It is not mandatory for companies to report their overall sustainability, but there are now 18 separate studies that use consistent metrics to rate companies’ sustainability. Last year over 80 percent of companies responded to the Carbon Disclosure Project’s survey of environmental sustainability. Based on these various surveys, the Economists Intelligence Unit found that environmental leaders had the fastest growing stock value. This value encompasses corporate innovation, risk reduction, the ability to attract and retain the best talent, increased labor productivity and market share. Corporations and countries alike are realizing that sustainable business choices are just better business. Lovins emphasized that sustainable practices not only benefit the planet, but evidence shows energy saving measures provide the greatest return on investment possible for businesses.

For example, simply turning off computers when they are not in use saves businesses money and greatly reduces greenhouse gas emissions. Incorporating this one policy can save a large office $700,000 in operating costs in the first year. Not only do sustainable practices save money and resources, but they also increase companies’ competitiveness. This is true from an international perspective as well. By tracing the shift of power from England during the industrial revolution to the United States upon the discovery of oil, Lovins highlighted the connection between the emergence of new technologies and international power. “We will innovate in this country or we will lose international competitiveness.”

Walmart was the most remarkable example Lovins used to demonstrate the business case for climate protection. Its sales suffered because people no longer trusted the name. The loss of profits became a driver of change that caused Walmart to examine how its business model was impacting the planet. It conducted experiments in several stores; half of the store followed their regular design and were filled with standard products, the other half featured green products and incorporated green design. Without fail, the “greener” half of the store generated more sales and the employees were also more productive. The use of renewable energy, become carbon neutral, produce zero-waste, and sell only sustainable products have tremendous implications. In consideration of the sheer size and breadth of Walmart’s operations from its supply chain to retail sales, Lovins remarked that Walmart “is driving more change towards sustainability than any other institution.” Walmart has hired the Carbon Disclosure Project to go to China and survey its suppliers to determine their carbon footprint. It has promised to stop using suppliers that will not embrace its goals of sustainability. Truly, “Walmart just changed the world.”

Lovins’ closing remarks reminded students that democracy is a contact sport. There is an important role for budding lawyers in shaping company policy. She stressed that future lawyers will be able to advise their clients that they will be more profitable if they act more sustainably. There is also a role for governance to play. Future generations must ensure that the technology we have is paired with sound policy that will facilitate the transition to a sustainable society. “This is our challenge. We need a new form of leadership to be stewards of the environment.”

Learn more about Lovins and Natural Capitalism, Inc. at www.natcapinc.com.
Building upon more than a decade of academic collaborations, faculty and student exchanges, and university partnerships, Pace Law School extended its presence in China this past fall. In November 2009, Pace Law faculty conducted a workshop on environmental impact assessment at Shanghai Jiao Tong University (SJTU). The meeting attracted Chinese government officials, scholars, and students, as well as notable American environmental legal scholars. SJTU is Pace Law School’s partner law school in the Sino-American Center for Environmental Legal Education and Research (SACELER).

From Shanghai, the Pace delegation traveled to Wuhan, China for the Seventh Annual Colloquium of the International Union for the Conservation of Nature (IUCN) Academy of Environmental Law. The IUCN is one of the world’s largest and most active networks dedicated to environmental causes. Its Academy of Environmental Law shares a special connection with Pace Law School through Professor Nicholas A. Robinson, who is a founding member and former chairman of the Academy. Pace faculty and students joined over 200 environmental scholars and students to present papers on environmental governance and sustainability.

Upon a suggestion from Pace Law School, the IUCN Academy of Environmental Law held a special session for students to network and exchange research on environmental law. Student participants included PhD researchers, university fellows, law students, and Fulbright Scholars. As an attendee of this session, Pace Law student Kavitha Mukund (’10) noted, “[it was] very enlightening to see how our peers around the world are approaching what is clearly a global problem in need of global solutions.” The session ended with the launch of a student listserv to foster future collaboration.

Participants in the Colloquium took part in two eye-opening field trips to a water treatment facility in Wuhan and the Three Gorges Dam near Yichang. China’s densely populated eastern region makes significant demands on water resources, which creates the need for firm regulation. Both the water treatment plant and the Three Gorges Dam impact the environment, but they each provide essential services. This field trip offered greater insight into the scale and depth of some of China’s environmental issues.

In January 2010, the US Environmental Protection Agency selected Pace Law School to join other leading organizations to work on its China Environmental Law Initiative. The Initiative aims to build relationships between the US and China regarding environmental law standards and practices. This recognition symbolizes the value placed on developing ties with China to support sustainable development and address global environmental problems.

Pace Law School plans to continue collaborative research and to increase faculty and student exchanges with its Chinese partners. Pace University Professor Nicholas A. Robinson has initiated a project with SJTU to publish a comprehensive environmental and climate change law dictionary. Professor Robinson is also involved in developing a lecture series on Confucius and ecological norms, which will bring Chinese scholars to Pace. In addition to bringing in visiting academicians, Pace Law is preparing to send students and graduates to study and teach at SJTU. The importance of working with China on global environmental problems is emphasized by the scale and reach of China’s environmental impact.

As the international community continues to struggle with defining a mutually agreeable solution to a myriad of environmental issues, the sharing of knowledge through academic exchanges and collaboration is crucial.
Environmental Adjunct Professor Showcase

Pace Law School’s adjunct professors in the environmental law curriculum bring real world challenges and current practices into the classroom to benefit Pace Law students. Beginning with this GreenLaw issue, Pace will be profiling members of our stellar adjunct environmental faculty.

Joel Sachs, Environmental Superlawyer, Tracks the Progression of Environmental Law

Joel Sachs is Pace Law School’s longest serving adjunct professor, teaching Pace students since 1981. When not teaching students, Professor Sachs is a senior partner in the White Plains law firm Keane & Beane, P.C., heading its Environmental and Land Use Practice Group. Professor Sachs is also the current Chair of the Real Property Law Section and a past Chair of the Environmental Law Section of the New York State Bar Association, which honors him as being the only attorney to ever chair two sections.

Recognizing Professor Sachs’ ability and many achievements, Sachs was recently named the Best Environmental Attorney in Westchester County by Westchester Magazine as well as one of the best environmental attorneys in the New York Metropolitan area by both The New York Times Magazine and New York Magazine in 2007.

Joel Sachs

2008 and 2009. Professor Sachs also was named in Superlawyers Magazine as one of the 25 best attorneys in Westchester County in 2009 and was a recipient of the Above the Bar Award in Westchester County in 2007.

Twenty-nine years ago when he first started his career at Pace University School of Law, Professor Nicholas A. Robinson was the only full-time professor and Professor Sachs the only adjunct teaching environmental law. Professor Sachs has taught many environmental courses over the years including State and Municipal Environmental Law and Legal Management of the Urban Environment, the course Professor Sachs currently teaches.

In a recent interview with GreenLaw, he traced the history of environmental law here at Pace and in the environmental legal community. When Professor Sachs was in law school at the University of Pennsylvania, environmental law did not exist as a career field and environmental law courses were not taught. Yet, he noted that the demand for environmental attorneys was higher then today, as almost every area of law has environmental implications. Environmental law infiltrates areas such as labor law, trust and estate law, real estate law, and even bankruptcy law, demanding an environmentally focused legal advisor’s expertise.

In the late 1960’s, Professor Sachs observed that most environmental attorneys’ work was focused on the National Environmental Policy Act (NEPA) and the environmental impact review process. Environmental law expanded in the 1970’s after Congress passed the Clean Air Act, Clean Water Act, Superfund law, and RCRA. To give effect to these statutes, states had to pass state laws to achieve compliance under the Acts.

In the mid-1970’s, when Professor Sachs was a municipal officer at the Town of Greenburgh, NY, he led an educational program for municipal attorneys focused on environmental law. At that time, there were only state and federal environmental laws, but this program sparked local municipalities’ interest in enacting local environmental laws. Professor Sachs’ experience and recognition of his power to influence and teach led to his induction as the first director of The Municipal Law Resource Center, a center established in 1979 in cooperation with Pace University School of Law and Westchester County. Today, local environmental laws cover a broad range of areas such as protecting the local wetlands and the aquifers, and these municipal laws play a large role to keep our environments pristine.

Professor Sachs also noted that over the last ten years, there has been a trend for environmental organizations, such as Riverkeeper or Scenic Hudson, to get involved with the environmental review process, which has a direct impact on the environment. While he recognized that the demand for environmental law has waned, he often advises students to “market yourself to be multi-faceted.” Since environmental law infiltrates a variety of areas of law, students can get environmental experience by working in a municipal law office, an environmental agency, for an environmental organization, or just about any law office.

Tracking the environmental progression through to the present, Professor Sachs acknowledges that the new hot topics in environmental law are climate change and energy conservation. Pace Law School continues to be a leader in environmental law by offering a variety of classes covering these topics, some not offered at any other law school in the nation. Professor Sachs continues to educate and inspire law students, and can be reached via his link on www.law.pace.edu/faculty.

“The practice of environmental law has changed drastically over the past ten years. If you want to succeed you must be flexible and multi-dimensional.”

Joel Sachs, Esq. Adjunct Professor Pace Law School Member, Keane & Beane, P.C.
The Evolution of Land Use Studies at Pace Law School

This description of land use law teaching at Pace Law School is an excerpt from an article that will appear in the Journal of Legal Education. The article, “Practically Grounded: Convergence of Land Use Law Pedagogy and Best Practices,” explores how land use law courses can be used to reshape law school teaching. Co-authored by Professor John Nolon with Professor Patricia Salkin of Albany Law School, the article is based in part on an extensive survey of professors that the co-authors conducted on land use law teaching in American law schools. They argue that land use law teaching provides a unique opportunity to demonstrate how members of the academy can reinvent curricular and teaching strategies to prepare students for the practice of law.

The Land Use Law curriculum at Pace University School of Law comprises a basic land use course, an advanced land use seminar, a capstone course that integrates land use, environmental, and real estate law, guided research projects, an intensive externship, pro bono experiences, and work as land use honors interns.

The Basic Course

The foundation of this concentration is a doctrinal three-credit course in Land Use Law that uses a national land use casebook, supplemented by the relevant enabling legislation of New York State and the land use plans and regulations of the Town of Wawayanda, a New York community that is under extreme development pressure. The town has revised its comprehensive plan and zoning twice in the past several years in response to growth pressures and the political tensions that they cause.

During the first part of the course, students learn basic land use doctrine, supplemented by practical applications. They examine cases and practices from many states, and then find and examine relevant New York State enabling statutes and the corresponding provisions of the Wawayanda code. Through this process, class members learn the legal structure of state and local governments, how they adopt and enforce local laws, and how to analyze both state and local legislation. Practicing attorneys and local officials from Wawayanda supplement class discussions. Hypothetical clients, ranging from applicants for project approval, to the town, and concerned citizens, create the basis for simulated law firm meetings on a variety of representation issues.

By exploring the differences among the functions and procedures of legislative, administrative, and quasi-judicial bodies at the municipal level, students learn that land use lawyers practice before policy-setting and adjudicative tribunals. As part of the basic land use course, students are required to select a nearby community and attend a public hearing before a local zoning board of appeals, planning commission, or legislative body. Students are instructed to track carefully the presentations and practices of attorneys and other professionals and their interactions with volunteer board members and the affected property owners and neighbors.

They write an analytical paper on the experience and are called on in class to discuss what they learned. By careful selection of material that arises from these papers for class discussion, it is possible to cover many of the matters encountered by practitioners and to reflect on how well they represent their clients.

This foundation prepares students for the remaining portions of the course, where they study a number of more complex matters, including judicial review and remedies, regulatory takings, urban redevelopment, local environmental law, sustainable development, and the mediation of land use disputes. The application of traditional land use regulations gives rise to a host of constitutional questions including equal protection, due process, regulatory takings, and First Amendment protections. The casebook and class discussion identify contexts in which these constitutional issues arise and analyze how they came into existence before they were challenged. While students learn relevant doctrine, they look intensely at how the community could have prevented the claim from arising, or nipped it early, by using nontraditional processes, settlement approaches, and mediation moments that present themselves within the policy setting and adjudicatory process.

When a US Supreme Court case is argued during the term of the class, a group of students is selected to attend the oral arguments and report back on their observations. This was done initially with Dolan v. City of Tigard where the students interviewed Mrs. Dolan and learned that her husband brought the suit primarily because he was arbitrarily required by local regulators to transfer title to a bike path and flood plain to the City, instead of being requested to donate them. The students reported that Mr. Dolan, who died of a heart attack during the course of the litigation, thought of himself as a good citizen and was offended by the way he was treated, rather than concerned with the regulatory requirement itself. This story suggests obvious reforms in the local land use process that students immediately grasp. The most recent argument attended involved Walton Co. v. Stop the Beach Renourishment, Inc. where the students were surprised to hear very little questioning by the justices related to the underlying littoral property rights under Florida common law that were affected—arguably taken—by the challenged state Beach and Shore Preservation Act and by the decision of the Florida Supreme Court for its interpretation of common law property rights. This led to discussions regarding how counsel could have shaped the oral argument to sharpen the focus of the justices on what was fundamentally at issue in the case.

The Tigard case leads naturally to a more extensive discussion of how the local project review and approval process can be reengineered to include productive mediations among the applicant and affected stakeholders, and how mediators—or the parties’ counsel themselves—can lead parties to better solutions than those hammered out through traditional adversarial adjudications before local land use boards. The course casebook has a unique set of cases and statutes that involve such processes at various stages of the project review process, from pre-application to post-approval or denial. How lawyers can become mediators or, more often, successful participants in mediation forums on behalf of their clients is explored.

The advent of local environmental law as an offspring of local land use and police power authority is studied with interest by Pace land use law students, many of whom are attracted to the school because of the depth of the environmental law curriculum. They are surprised to learn that much can be done to preserve wetlands, watersheds, species and their habitats, water quality, and other natural resources through local land use law and police power regulations. The casebook has a section containing 20 cases from various states that trace the evolution of local environmental protection, from narrowly-focused drinking water standards to broad-based critical environmental area protection regimes. This tendency of the law to evolve to meet the changing needs of society is explored in this context as well as with affordable housing, urban revitalization, smart growth, sustainable development, and climate change. This analysis begins with the sudden advent and rapid spread of zoning itself in the early decades of the 20th century.
The Evolution of Land Use Studies

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tury. Students reflect on how change in society happens and how the law can be an instrument for needed change. Some exposure to theories of diffusion of innovations and complexity helps them understand the interdisciplinary dimensions of the law and its practical application.

Student curiosity and concern about climate change leads naturally to classroom discussions about its management and mitigation. They want to learn whether and how human settlement patterns, the location and construction of buildings, travel patterns and modalities, and the protection of the sequestering environment can be shaped and affected through state and local land use law reform. Gradually they also learn to appreciate that the principles and practices of sustainable development provide an antidote to climate change, while achieving additional environmental and economic objectives that appeal to a wide range of political and social interests.

Advanced Studies
The experience of students in the basic course encourages many of them to enroll in an Advanced Land Use Seminar, work as land use honors students, participate in a land use law externship, accept guided research assignment, carry out pro bono activities, and take a capstone course called the Lawyer’s Role in Green Building and Development.

In the two-credit Advanced Land Use Seminar, students find and analyze state and local laws that foster transit oriented development, sustainable neighborhoods, green buildings, the use of renewable energy facilities, and the preservation or enhancement of the natural resources that sequester carbon dioxide. They also research efforts of state and local governments to develop effective strategies to adapt coastal development to sea level rise and to build more resilient communities that can withstand the ravages of storm surges, flooding, hurricanes, and other catastrophes.

Students who wish to develop their own papers and model ordinances are invited to participate in either a land use externship with the school’s Land Use Law Center by working on one of its projects, or to conduct a guided research project related to these projects. The more exemplary statutes and local laws found and created by the students are placed on the Gaining Ground database maintained by the Land Use Law Center, which can be accessed at http://www.landuse.law.pace.edu. Students participating in advanced land use studies often satisfy the pro bono requirements of their Professional Responsibility course by volunteering at the Land Use Law Center. Students work on a variety of research projects designed to advance the Center’s mission to encourage sustainable development. With funding secured by the Center, land use honor students are selected and paid to conduct research and help with innovative projects at all levels of government and with the private sector.

The Lawyer’s Role in Green Building and Development is a three credit classroom course that examines the actual and extensive transactional and regulatory documents that led to the creation of a large transit oriented, downtown development that helped spark the revitalization of an older city with a moribund central business district and obsolete industrial waterfront. The project was planned and approved a decade ago when sea level rise, energy efficiency, and green development concerns and practices were in their infancy. The project, which is a transit oriented success story built at the water’s edge, is reexamined by the students to determine how it could have been better designed and regulated to withstand sea level rise, to be more energy efficient, and to incorporate a host of green building practices, including wind turbines, green roofs, solar panels, combined heat and power, low impact site design, and geothermal heating and cooling.

From these studies the students graduate with a more complete understanding of the American federal system and the current and prospective roles of each level of government vis-à-vis the private sector. They explore how the power, resources, and influences of each level of government can be integrated into a more functional approach to critical resource and development issues. The emerging practices of today’s attorneys as counsel, strategist, negotiator, mediator, and litigator are explored in a variety of practical and memorable contexts. The lessons of the land use curriculum help guide student career choices and, hopefully, their contributions to society as advocates for their clients and for a legal system capable of meeting the exigencies of the future.

Pace Students Spring into Environmental Law Moots
The Law School is continually providing students with opportunities to gain practical experience. This spring, Pace Law students competed in Stetson Law’s 14th International Environmental Moot Court Competition and the new National Cultural Heritage Law Moot Court Competition, sponsored by DePaul University College of Law.

International Environmental Law
The hypothetical focused on the legal implications and environmental consequences of ocean noise from sonar use on protected marine mammals. It presented a complicated scenario of conflicting resource use values, a clash between a large, developed nation (the Republic of Mersenne), and its small developing neighbor state (the Kingdom of Aduncus). Mersenne, a rich nation with a booming economy until experiencing an electricity crisis in 2007 and the global financial downturn of 2008, has been encouraging the nationalized electric utility company, MECO, to conduct underwater seismic surveys in search of natural gas and oil reserves off of Mersenne’s coast. The Kingdom of Aduncus, north of Mersenne, heavily relies on ecotourism, particularly whale watching in its extensive Marine Protected Areas. Aduncus contacted Mersenne, requesting an environmental impact assessment (EIA) of the possible impacts of sonar-derived noise pollution on the protected beaked whale population and the surrounding marine environment. Mersenne refused to conduct these studies, claiming surveying activities did not trigger EIA requirements of applicable treaties, and allowing seismic surveys to continue. Shortly thereafter, a mass stranding occurred in Mersenne, twenty kilometers south of the Aduncus border; twelve beaked whales died. Aduncus filed a complaint with the International Court of Justice (ICJ) and the case is now before the ICJ for final resolution. Both nations are members of the United Nations, parties to the Statute of the International Court of Justice (ICJ), and the Vienna Convention on the Law of Treaties and signatories to the Convention on Environmental Impact Assessment in a Transboundary Context.
Curriculum Cuts New Path with Eco-Markets and Trading Course

This year, Pace Law School began offering a new seminar on Eco-Markets and Trading, the only course among the top environmental law schools to focus solely on market-based, non-regulatory solutions to environmental pollution and energy challenges. Taught by James Van Nostrand, Director of the Pace Energy and Climate Center and Adjunct Professor, Eco-Markets provided students with a new, unique perspective on environmental law.

After an initial crash course in basic economics and environmental trading, each class offered an introduction to a different ecological market. Students analyzed and compared various greenhouse gas trading programs, including the European Union Emissions Trading Scheme and the Northeastern United States’ Regional Greenhouse Gas Initiative. The class also kept abreast of climate change bills in Congress and EPA actions, as federal climate change policy rapidly unfolded throughout the semester. Market programs for other air pollutants were also explored, including the Clean Air Act’s Acid Rain Program. Additionally, students learned about the trading of water-related rights and conservation banking.

As they studied this subject matter, students hatched out many of the pros and cons of the market approach to environmental problems. In praise of this approach, Sam Capasso (‘10) stated, “the market approach harnesses entrepreneurial creativity to achieve environmental goals at little administrative cost to government.” Although there were examples of successful eco-market regimes, such as the sulfur dioxide trading program, many students questioned the ability of other programs to truly enhance environmental attributes. One controversial topic covered in the course was wetlands banking, or the US Army Corps of Engineers’ policy to allow development on a wetland if another wetland is created, improved, or preserved. Elaine Hsiao (‘09, LLM ‘10) who presented on this topic with Sean Dixon (JD/Yale MEM ‘09, LLM ‘10), argues, “A system that truly acknowledges the invaluable nature of wetlands would not allow highly evolved ecosystems to be fragmented and essentially choked off, or destroyed in exchange for what are often ponds from the original site.”

Professor James Van Nostrand summed up how this course will benefit students: “The Eco-Markets and Trading course is designed to give students a broad understanding of the relationships among property rights, market design, and trading associated with the buying and selling of environmental-based products, with an emphasis on air emissions allowances in particular. Students will be well prepared for working in a ‘carbon-constrained society,’ and advising clients on the many legal issues.”

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While the problem invites inquiry into the effects of sonar use on beaked whales, the legal issue is primarily whether Messene is obligated, by international law or customs, to conduct an environmental impact assessment before conducting its sonar surveys. Scientific data is arguably uncertain about the impacts of sonar on beaked whales, and in a recent US Supreme Court case (Winter v. Natural Resources Defense Council, 129 S.Ct. 365 (2008)), the majority overruled a lower court’s preliminary injunction requiring environmental impact assessments, reasoning that the environmental impacts of military training exercises should not trump US national security interests. The Stetson hypothetical posed similar policy questions, forcing a decision between precautionary, protective resource use and unchecked exploitation of sovereign resources to ensure “national security.”

Students Erin Derrington (JD/Yale MEM ‘11), Aaron McCormick (‘10), and Ira Seligman (‘10) chose to represent the applicants, Aduncus, on brief, arguing that international law obligates Mersenne to conduct an EIA and to modify their actions to mitigate impacts to the migratory beaked whales.

Cultural Heritage

Taryn Rucinski (‘10), Kavita Desai (‘10), and Jessica Silver (‘11), coached by Allyson Rucinski (‘09), represented Pace this spring in DePaul’s competition. Arguments were held in the United States District Courthouse for the Northern District of Illinois (Chicago) and the team successfully advanced to the semi-quarter finals. The Competition challenged students with a case raising questions involving the protection of archaeological sites, artifacts, art, and historical structures. The complex problem, authored by Pace Adjunct Professor Gary Nurkin and members of the Lawyers’ Committee for Cultural Heritage Preservation, focused on two issues interpreting the Archaeological Resources Protection Act (ARPA), an area of law with very little judicial precedent. One issue addressed the mens rea requirement related to ARPA and whether a person could be convicted under the Act for taking an archaeological resource off public land without a permit when that person did not know the object they took was in fact an archaeological resource. Another addressed the jurisdictional scope of the Act and whether ARPA applied to artifacts found outside the United States.
The Pace Environmental Litigation Clinic (PELC) reached a positive milestone in its challenge of a New York City (NYC) composting facility in Spring Creek Park (Spring Creek) in Brooklyn. In December 2009, the New York State Department of Environmental Conservation (NYSDEC) issued an administrative decision recommending the DEC Commissioner deny the facility’s permit application. This is a significant step toward improving the environment and creating desirable parkland in one of Brooklyn’s poorest neighborhoods.

Spring Creek is comprised of approximately 60 acres of mapped parkland that lies on the north-eastern tip of Brooklyn primarily in the New Lots section of Brooklyn. The park abuts Jamaica Bay and contains expansive salt marsh habitat, which supports a variety of wildlife, including blue heron and red-winged blackbirds. New Lots is home to nearly 90,000 New Yorkers, and 90 percent are minorities; with one-third living below the poverty level. In addition to economic disadvantages, the residents suffer from higher incidences of various health problems, including obesity, diabetes (two times higher than average New Yorker), asthma and cancer.1 Spring Creek is essentially the only open space within walking distance in this community, and it has become a dumping ground for municipal waste, specifically a composting facility and an auxiliary wastewater treatment facility. According to the NYC Department of Parks and Recreation (Parks) website, Spring Creek is currently inaccessible to the public.2

The Spring Creek composting facility was built in late 2001 subsequent to a Memorandum of Understanding (MOU) between the New York City Department of Sanitation (DSNY) and Parks. The MOU directed the construction of composting facilities in several city parks. Within just a few months of operation, the Spring Creek facility received 5,000 tons of leaves.

To the environmentally conscious person, compost sounds like a big positive—a win for the environment. However, it is still waste, and this large scale compost facility not only swallowed much of the open space in Spring Creek (about one-third of the total acreage), but also brought significant dust, noise, litter, and odors to the community. Thick black dust from the facility often made its way through nearby residents’ open windows. At times the smell emanating from the rotting vegetation was so strong that even an employee at the nearby auxiliary wastewater treatment facility remarked about the pungent odor.

The DEC informed DSNY that the facility required a permit to process this amount of compost material. See 6 NYCRR Part 360 (requiring a permit for quantities exceeding 1,200 tons). PELC, representing Raritan Baykeeper, petitioned for—and was granted—full party status in the permit appeal and subsequent adjudicatory hearing. Due to concerns about the negative health impacts, a local citizens group, Concerned Homeowner’s Association (CHA), also mobilized, and was granted full party status. PELC raised several issues in their permit challenge, including issues concerning odor, litter, noise, vector impacts, and alienation of parkland. The common law doctrine of parkland alienation provides that no entity can alienate public parkland without state legislative approval. See Williams v. Gallatin, 229 NY 248 (1920).

In June 2006, an interim decision by a DEC Deputy Commissioner held several issues were adjudicable, including control of odor, litter, dust, and vector impacts; variances from three setback requirements; and compliance with noise standards. However, the Commissioner found the issue of alienation of parkland was not adjudicable in an administrative proceeding. This determination prompted PELC to file a separate action civil action for declaratory judgment pursuant to CPLR Section 3001, seeking to enjoin the Municipal Respondents (DSNY, Parks and NYC) from conducting waste management operations in Spring Creek Park unless and until New York State legislative approval for the alienation of public trust parkland is obtained, and this proceeding is still ongoing.

The DEC adjudicatory hearing on the remaining issues began in May of 2007 before ALJ Susan J. DuBois, and was adjourned in October 2008. The hearing including the testimony of Cuyler Young, a 35 year resident of the community, who testified that when he saw heavy machinery operating at the Spring Creek compost facility his home was filled with a thick black dust. Young had he never experienced this type of dust before the facility began operating and once he was even forced to throw out a pair of window curtains that were permanently stained from the dust.

Most recently, pursuant to ALJ DuBois’ order, PELC filed a post hearing brief and a reply brief in the summer of 2009, with the help of clinic intern Lisa Soave (’10). ALJ DuBois issued a decision in December 2009 which included findings that the City failed to demonstrate that the proposed project, and the conditions set forth in the draft permit, would comply with noise standards and adequately control dust and odors. Also noteworthy is DuBois’ finding that the facility would substantially hinder numerous policies of NYC’s New Waterfront Revitalization Plan, another issue raised over the course of the administrative proceeding. In accordance with these findings, DuBois recommended that the application be denied. DEC Commissioner Stark is not bound by the recommendation, and will ultimately issue the final decision.

The recent decision marks another victory for the PELC, and the culmination of over six years of hard work and dedication of the clinic staff and more than a dozen interns. PELC now awaits Commissioner Stark’s final decision on the permit, and work continues on their separate civil action concerning alienation of parkland.
Changing Times and Practice focus of Kheel Conference on Resolving Environmental Disputes

The Kheel Center’s second environmental dispute resolution conference, held in November 2009 at the University Club in Manhattan, attracted over one hundred practitioners in the environmental and land use law fields. Theodore Kheel joined the conference, which explored the application of concepts underlying the mission of the center he endowed at the Law School only two years ago.

The conference focused on key areas of environmental practice that lend themselves to creative lawyering in resolving disputes and bringing stakeholders together in innovative ways to build consensus. One of the contributing factors to the success of these discussions was the diverse backgrounds of the panelists, representing a range of interests. The topics discussed ranged from President Obama’s 2009 memorandum directing federal agencies to use collaborative governance techniques to local land use issues.

Speakers addressed emerging issues at the federal level as well as large multi-party disputes. Challenges ranging from climate change, restoring the Chesapeake Bay, and watershed protection were discussed by attorneys with first-hand knowledge. A high level panel discussed innovative solutions to adapting to sea-level rise in New York. With a wide range of experiences, the panelists delved into the scientific components of sea-level rise and climate change and how those issues correspond with recent environmental, land use, and property law issues in recent Supreme Court and federal cases.

K&L Gates attorney William Hyatt, Jr. gave a dynamic presentation on the effects the Burlington Northern decision will have on the collaborative settlements that have become standard practice in multi-party remediation efforts of Superfund sites. The legal implications of the decision could create complications in bringing parties to the table and potentially spur more protracted litigation over these issues.

Another panel discussed the skills and strategies that may be used to remove obstacles to siting renewables and district electricity systems. Attorneys recounted their personal experiences as counsel in individual cases, and used these examples to discuss the challenges faced and advantages to clients of participating in new forums to negotiate arrangements. The importance of environmental justice concerns was also addressed and ways disputes have been diffused in the past.

The day’s discussions ended with a lively discussion of the possibilities of mitigating climate change at the local level through land use mechanisms. Attorneys in the private sector reflected on negotiating agreements involving compliance with various types of energy codes, Leadership in Energy and Environmental Design (LEED) standards, and the use of high-technology energy conservation systems. After an informative discussion on the topic, the audience members were ripe with questions about ways they could assist clients and communities in creating new forums to uncover hidden benefits in negotiations.

The conference was a success in educating attorneys on creating forums for, and utilizing unique skills in, their practice to achieve consensus in emerging areas where there is scientific uncertainty, multiple stakeholders with varying interests, and, as evidenced through the experiences of the panelists, viable solutions to these disputes.

Learn more at www.law.pace.edu/kheel.

Pace Community Reflects on the Love of Water

In the fall, Pace University hosted a film screening of FLOW: For the Love of Water on the Pleasantville, NY campus, sponsored by Pace University’s Academy for Applied Environmental Studies and student group, The Wave of Green. FLOW is an award winning documentary that presents the complex story of the growing problems with the world’s fresh water supplies. One in five people do not have access to safe drinking water, despite the earth being comprised of two-thirds water. Only 2.5 percent of all water, however, is drinkable with .08 percent of all water available for human consumption. Not only do our bodies depend on water, but they can also be devastated by the effects of polluted water. Waterborne diseases kill more people annually than AIDS or wars.

The film’s call-to-action style, filled with eye-opening facts about who is controlling the world’s fresh water supply, questions the privatization of what is left of the world’s fresh, drinkable water. The growing privatization of water in many countries by a handful of major corporations has caused conflicts, which at times have turned violent. The film examines privatization on an international level, in places like Bolivia and South Africa, as well as addressing concerns closer to home. For example, currently the US Environmental Protection Agency does not regulate several known water contaminants.

After a showing of the film, a panel discussion was led by John Cronin, Senior Fellow in Environmental Affairs at the Pace Academy for Applied Environmental Studies. Panel members included Alexandra Dunn, Assistant Dean of Pace Law School’s Environmental Law Programs, William Flank, a professor in the Department of Chemistry and Physical Sciences at the Dyson College of Arts and Sciences, and Joseph Pastore, Jr., Professor Emeritus of Management and Management Science at the Lubin School of Business.

John Cronin, with a background rich in experience of fighting for the protection of clean water supplies, kept the discussion flowing with thought-provoking questions and audience participation from a range of perspectives – economics, the law, science and the grassroots movement. The end frame of the film prompts viewers to sign a petition to add a 31st article to the Universal Declaration of Human Rights, establishing access to clean drinking water as a fundamental human right. One topic of discussion during the panel was whether such a symbolic action would accomplish any real effects, considering the corporate control of much of the fresh water supply.

The panel agreed that the majority of the world is unaware or unprepared for the possibility of a future with insufficient clean water. This enlightening and entertaining night left those in attendance thinking that everyone would be wise to educate themselves on who is controlling our water supplies and sources of pollution.

Learn more at www.flowthefilm.com.
Profiles

The Law School welcomed Jessica Owley Lippmann to its environmental law faculty in 2009. Professor Owley Lippmann taught Property, Environmental Law Skills & Practice, and Conservation Easements and Land Trusts. Prior to coming to Pace, Owley Lippmann was an attorney at Morrison & Foerster in San Francisco, CA.

Owley Lippmann earned her JD in 2004 from the University of California, Berkeley’s Boalt Hall School of Law. She has an extensive educational background in environmental science, and a PhD and two master’s degrees from the University of California, Berkeley. While studying for her masters, she became intrigued by policy and legal questions and decided to pursue environmental law.

Owley Lippmann was first introduced to Pace through its well-known National Environmental Law Moot Court Competition, where she won two individual best oralist awards. She was drawn back to Pace as a professor because of “Pace’s reputation for environmental law and the exciting things going on in environmental law.”

Professor Owley Lippmann’s teaching interests are environmental law, property, legislation, Indian law, and administrative law. She has published on conservation easements, the California Environmental Quality Act, and tribal sovereignty. Her current research focuses on land conservation.

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A Thoughtful Look at New York’s Water Future

In September 2009, Pace Law School collaborated with the Pace University Academy for Applied Environmental Studies (Academy) to gather water policy experts from across the state and region at the New York State Judicial Institute for a conference entitled New York State Water Resources: Assessing the Need for a Comprehensive Water Policy. The conference brought together high-level members of the government, policy, legal, scientific, and academic fields to discuss New York State’s water policy and the problems that New York State’s waterways face.

The conference responded to a growing water crisis in New York State. Although New York is a relatively water rich state, populations are growing and infrastructure is decaying, all while industrial and sewage pollution is spilling into waterways. The leading cause of water impairment in New York State has been the failure of the Clean Water Act (CWA). The CWA’s goals that were set to be met over two decades ago have still not been achieved. Also, the relaxed enforcement of the CWA has allowed over 100 violations a year to go without punishment. The inadequacies of the CWA, along with the threat of sea level rise and aging water infrastructure make New York’s water a highly vulnerable natural resource that must be protected now.

Water in New York State is an important natural resource as it is a habitat for fish and wildlife, a source of drinking water, a place for recreation, and allows for the operation of power plants and industries.

The conference’s focus was on how to ensure the citizens of New York State would have sufficient quality and quantity of water in the future.

Break-out groups discussed important topics such as ecosystem management, regional water needs, water management, water infrastructure, land use planning, crisis management, public education and awareness, water quality, public health, water rights, and the future of New York’s water. Each break-out group made recommendations for New York State to take its water policy to the next level on each topic.

The conference attendees called upon New York State to resort to its more progressive ways and to become a national leader in water conservation, management, innovation, and cleanliness by developing a comprehensive water policy. Action needs to be taken now while New York still has options to consider to rehabilitate its water policy, waterways, and water systems.

A report prepared by the Law School and the Academy summarizing the day’s deliberations, and presenting policy recommendations, will be available on the conference’s website soon at www.pace.edu/waterpolicy.

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Policy and Practice

A Thoughtful Look at New York’s Water Future

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Saving a River

Since 1996, Maya van Rossum (’92) has been the Delaware Riverkeeper, a watchful protector and the voice for the Delaware River watershed through the states of New York, Pennsylvania, New Jersey, and Delaware. Ms. van Rossum leads the Delaware Riverkeeper Network, a team made up of staff and volunteers, which provides environmental advocacy, monitoring programs, stream restoration projects, public education, and litigates for protection. Ms. van Rossum has worked with national and state agencies to ensure that the natural balance and beauty of the Delaware River watershed is maintained and protected. Ms. van Rossum, a Robinson Alumni Award winner, spoke at Pace Law this fall.

Van Rossum noted that in a 1931 decision involving the Delaware River (the River), US Supreme Court Justice Oliver Wendell Holmes wrote, “A river is more than an amenity — it is a treasure.” At first glance, Justice Holmes seemed to advocate for the protection and appreciation of the river. However, the entire quote encourages quite the opposite. The full quotation from Justice Holmes is, “A river is more than an amenity — it is a treasure that offers a necessity of life that must be rationed among those who have the power over it.” What Justice Holmes meant when he wrote those words was more about domination, manipulation, and force over the River, not about caring for it. Ms. van Rossum, in response to what Justice Holmes wrote, asserted that “when we think that our rivers are here simply to serve us, that we have the right and we have the power to harness its life force… to just use it for our needs… to benefit our communities… we end up doing tremendous damage to the river system.” The river provides 15 million people with drinking water.

A multi-million dollar ecotourism business depends on a clean river. Because of the Delaware River’s significance, people need to realize the impact of what would happen if it is not respected and cared for. Ms. van Rossum stated that “we shouldn’t want to think that we have total dominance and power over our rivers and behave in a way that uses them simply to serve our own needs. When we do that, we hurt the river and we hurt ourselves.”

What needs to be taken into consideration is how the Delaware River is going to respond to what we have done to it. The river is going to respond in a negative way and has already done so. For example, flooding along the Delaware River watershed is a major issue. From 2004 through 2006, three one-hundred-year floods occurred, causing tremendous damage to the communities. Other effects from developing in the floodplain include the loss and damage of habitats and ecosystems, the increase of pollution from run-off due to loss of water-absorbing vegetation, decrease in ecotourism and loss of jobs as a result of damage to the natural scenery and environment, and the psychological ramifications in flood survivors.

Despite knowing the flood risks of living along the River watershed, people still elect to build their homes in the area. Pennsylvania, New Jersey, and New York have areas in the top 10 list of communities with the most repetitive loss of property due to flooding. Ms. van Rossum declared that “having all this knowledge about all these harms and how things are going to get worse and how we’re going to keep people in the path of harm that it would force some decisions… and that we would be thinking about developing elsewhere, taking these structures out of the path of harm and moving them to safety, but that’s not the case.” The best thing to do to change people’s minds about moving from the floodplain is to enact better land use law and regulations to prevent further development in the river watershed. Ms. van Rossum concluded that “you need the river, but the river doesn’t need you so you want to take care of the river so the river can take care of you.”

and property rights to private lands, specifically using property tools for conservation in the context of climate change.

In her free time, Professor Owley Lippmann enjoys knitting, yoga and spending time with her baby girl. Due to her husband’s new job placement in Buffalo, NY, she will be teaching at the University at Buffalo Law School next year. We have enjoyed having Professor Owley Lippmann with us, and wish her success in future endeavors!

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Tales of a Climate Change Crasher: Perspectives from Joanne Kalas

On December 12, 2009, I got on a plane headed for Copenhagen, Denmark to attend an event of 30,000 people gathered from all around the world. The event was the 15th Conference of the Parties (COP-15) of the United Nations Framework Convention on Climate Change (UNFCCC). Though I was officially on the guest list as a delegate attendee from the Republic of the Marshall Islands through Pace’s United Nations Environmental Diplomacy Practicum, once I got there, I felt like I was crashing the party.

Upon arrival, I soon realized that many of these delegates had been to numerous COP meetings and had developed professional and personal relationships with each other over many years. There were stories and personal connections that were explained to me over the course of the week, furthering my understanding of the intricacies of diplomacy in the climate change arena. I saw that the trust and respect of the delegates for each other was as much a part of the process as the politically charged content. Personal relationships were crucial.

In attending COP-15, what stands out in my memory are the people that I met, though many of them briefly. Many individuals did not come as delegates, or even as NGO observers, but came as individuals showing their support for the conference and for solving the problem of climate change. The first day I stood for about five hours in line to get a badge. There I met people from all around the world, such as a couple who had biked at least the majority of the way from London to Copenhagen in a group, where the oldest person was 72 years old. I also met scientists from South America, who were presenting on behalf of their government, and a Mayor from Nigeria who was coming to find out how he could mitigate the effects of climate change in his region.

Another brief personal connection occurred when I arrived at the Bella Center one morning around 6:30 am to beat the lines. An Australian university student passing out brochures at the center noticed my delegate badge and introduced herself. She walked with me from the exit of the train platform to the door of the Bella Center, me on one side of a rope and she on the other. The entire way, she asked me how the sessions were going, inquired if the delegates were making any progress, and encouraged me to keep doing “the wonderful work that you are here to do.” The exchange only lasted about five minutes, but I remember the hope that she had, and it made me want to work harder and not think about how little I’d slept that week. It was also the same hope that I had when I looked at the other delegates at the meeting. It was brief moments like these that stay with me, in the exchanges with people from different parts of the world on the issue of climate change.

Other encounters were not as pleasant. The last few nights of the conference were long ones running until four am or later. For many delegates, it made more sense to try and sleep in the lounges of the Bella Center instead of braving the cold and snow to retreat to a hotel. And so, many delegates got no sleep that last night. As the last few hours of the conference dragged on, I heard one delegate say sarcastically to another, “This is why sleep deprivation is considered a method of torture. Wouldn’t you say anything just to make this end?” Other delegates were trying to “one up” each other on how little sleep they received. For example, when commenting on the draft documents before the plenary, one delegate mentioned that he hadn’t slept for 36 hours. The next delegate that spoke felt compelled to tell the group that he hadn’t slept for 40 hours before making his comments.

Despite all the sleep deprivation, I treasure every moment of my experiences in Copenhagen. Looking back, I know what I should have said to that reporter who awoke me so abruptly. I should have told her, yes, it was worth it (all of it). International diplomacy is a learning process, not just of the issues, but about each other and in how to find common ground. We may not have arrived at a legally binding agreement at this meeting, but we learned a little bit more about each other, as well as some valuable lessons about the issues that we can continue to bring to the table until we can find that common ground. These lessons and the goal we are striving to achieve are definitely worth it.
S

ince Pace Law School’s inception, students, professors, and alumni have been intertwined with the US Department of Justice’s Environment and Natural Resources Division (DOJ ENRD). The DOJ ENRD is responsible for environmental and natural resources litigation on behalf of the United States, representing the US Environmental Protection Agency (EPA) in court. The division’s mission is to enforce US environmental laws to ensure clean water, land, and air for all.

Professor Ann Powers, a faculty member in the Center for Environmental Legal Studies, had a nine year career at the DOJ. Professor Powers worked as a senior trial attorney in the environmental office, supervising and coordinating the work of Justice and the EPA attorneys, as well as technical support staff. The complex legal procedures were brought under the Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). She also handled legislative issues of concern to the department, including parks, public lands, wetlands, coastal protection and historic preservation.

She tried both civil and criminal cases under most of those laws, working on the cutting edge of major issues and questions of law, helping to develop the scope of liability of the elements of an offense. She personally tried the first Superfund cost recovery case in a federal district court in Oklahoma, involving a highly contaminated waste site. Her time at the DOJ was invaluable, and Professor Powers admitted, “Working at the DOJ was an extraordinary opportunity and a heady time for a young lawyer.” The experience served her well on a regular basis both on substantive environmental issues and procedural issues in her teaching and writing. Her knowledge gained from the DOJ gave her a broad range of valuable contacts, including our very own Dean Jeffrey Miller, who was then heading EPA’s national enforcement program, and eventually played a large role in her taking a position here at Pace.

The DOJ ENRD attorneys represent the EPA in litigated environmental disputes. Generally, Pace’s Environmental Litigation Clinic as a whole, including both professors and law students, are perceived positively by the lawyers at the DOJ. The clinic has had two recent cases against the EPA. The first was a challenge to the Bush Administration’s attempt to exempt certain pesticides from National Pollution Discharge Elimination System (NPDES), National Cotton Council v. EPA, 553 F.3d 927 (6th Cir. 2009), and the second issue currently being litigated is a challenge to the Water Transfer Rule.

The CWA regulates the discharge of “pollutants” into the nation’s waters by, among other things, requiring entities that emit “pollutants” to obtain a NPDES permit. In late 2006, the EPA issued a Final Rule concluding that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are exempt from the Clean Water Act’s permitting requirements. 71 Fed. Reg. 68, 483 (Nov. 27, 06). The court held the EPA would not be granted deference in their interpretation of the CWA to exempt a class of pollutant discharges from point sources from the NPDES permitting system. National Cotton Council v. EPA, supra.

The current litigation battle between the clinic and the EPA is the challenge to the Water Transfer Rule. Presently, the DOJ and the clinic are disputing jurisdiction under CWA §509(b)(1). The issue is whether the case falls under the jurisdiction of the Administrative Procedures Act, in which case the clinic would have to file in the District Court, or if the clinic can file directly to the Court of Appeals. Since the statute of limitations is 120 days, the clinic filed both in the Southern District of New York (SDNY) and the Second Circuit Court of Appeals (which was consolidated and sent to the Eleventh Circuit). The judge in the SDNY stayed the decision pending the jurisdictional issue to be decided by the Circuit Court.

Robyn Hanson (’06), currently works for the DOJ ENRD as a trial attorney litigating civil judicial enforcement actions under most federal laws enacted to protect public health and the environment from the adverse effects of pollution. Ms. Hanson agreed to speak with GreenLaw, making it clear that she was expressing her own views and not speaking on behalf of the DOJ. As Ms. Hanson explained, “the Pace Law School Environmental Certificate program prepared me for working at DOJ by offering a core curriculum of classes focused on the major environmental statutes and exposing me to the advantages of clinical education and practical externships.” She further emphasized that the Environmental Skills and Practice class provided a forum for discussing legal precedent, completing legal writing exercises, and practicing negotiation skills, all of which are tasks that are central to her practice at DOJ. Her participation in the DC Environmental Externship the summer after her first year also introduced her to government legal positions in Washington, DC, and offered a firsthand look at the work performed by agency and department lawyers. Additionally, Ms. Hanson’s work on the Pace Environmental Law Review strengthened her legal writing abilities, and the Pace Environmental Litigation Clinic taught her “essential time and case management skills that I still use today.”

With Pace students working at DOJ both in the summer and during the academic year, and with the expansion of the environmental law programs at Pace to include more climate, energy and litigation courses, Pace looks forward to a continued fruitful relationship with the DOJ.

Robyn Hanson

Professor Ann Powers
Profiles

IBM Environmental Lawyer Greens Vietnam Tourism Company

Environmental law students are certainly aware of opportunities to improve the environment through careers at the Environmental Protection Agency and the National Resources Defense Council. Some students may be surprised to learn, however, that such opportunities also exist at large, private corporations, such as IBM. Desiree Giler Mann (’01) started her career as an environmental consultant. In deciding to attend law school, Mann was only interested in pursuing environmental law. Soon, she found that to be an environmental lawyer, she had to learn much more than environmental law. “I never realized that environmental law touches so many other aspects of [the law],” said Mann.

Mann is Of Counsel at IBM in the Corporate Environmental Affairs department and works out of the Somers, NY office. In this role she is responsible for providing support for any environmental concern at IBM. This may include advising on Superfund issues, assessing company-wide liability for environmental problems, helping the company meet its corporate environmental obligations, or helping IBM maneuver federal, state, and local environmental regulations when trying to upgrade a manufacturing site. Mann provides these services to IBM offices and projects around the world. Mann recently had the opportunity to aid a Vietnamese company in reducing pollution of Halong Bay through a philanthropic program at IBM called the Corporate Service Corps. Mann is among an elite group of IBM employees selected to participate in the IBM Corporate Service Corps (CSC).

As part of the CSC, Mann traveled to Halong Bay in Vietnam to assist small businesses in reducing their pollution of this UNESCO World Heritage site. “[The IBM Corporate Service Corps] is kind of like the Peace Corps,” says Mann. The CSC, started only recently, matches teams of IBM employees with projects around the world. The projects are community-driven economic development endeavors in Africa, Asia, Eastern Europe, and Latin America. IBM says that its CSC projects range from “assisting networks of entrepreneurs and small businesses trying to grow, to [improving] the utilization of information technology by communities left behind the ’digital divide.’”

As an IBM Corporate Service Corps team-member, Mann took a month-long sabbatical from her regular job as an IBM lawyer to participate in service projects in Vietnam. One of her main projects was to assist a Halong Bay tourism company in its efforts to clean up the bay. The company wanted to provide a cleaner and more enjoyable environment for tourists and also for those who live on the bay. Mann describes the bay village as a collection of boathouses. Residents do not reside in houses near the bay, but rather live directly on the bay in boats. Families live in a single floating house, the villagers work on the water earning money from fishing and piloting tourist boats, and the community members get together on a larger boat that serves as a meeting place. Villagers may spend their whole lives without setting foot on land.

The condition of the bay environment directly affects the people who live on it in two ways. First, pollution in the bay decreases the inhabitants’ quality of life and poses health risks. Given the unique living arrangements, villagers are exceptionally sensitive to water quality changes in the bay. Second, bay pollution may deter tourists from visiting the site, resulting in lost income to villagers who work in the tourism industry. The tourism company Mann assisted, Indochina Junks, provides luxury cruises around the bay for tourists, and had already begun efforts to improve the bay environment.

Working with her CSC team-members, Mann recognized that the company had a desire to clean the bay but needed funding assistance to complete its charitable projects. “There was no separate identity between the company and the charitable arm,” said Mann. She set out to help Indochina Junks establish a separate charity to attract donors. “In the United States, controls [to start a charity] are tied to tax law. But Vietnam doesn’t have that.” So Mann surveyed the community to find out what the norms are in establishing charities in Vietnam. She researched local expectations and international standards for charities. Ultimately Mann’s research and assistance allowed Indochina Junks to create a more legitimate charity and assisted the company in completing some of its environmental projects, such as starting a rubbish collection service operated by villagers, and providing villagers with rowboats instead of diesel-fueled motor boats for tourist excursions.

The CSC provides a unique opportunity for corporate leaders to learn about different cultures, improve their skills, and aid communities and small businesses in other countries. For this reason the CSC has a competitive application process. IBM received over 5,000 applications from employees all over the world who wished to be a part of the CSC. Only 500 have been chosen so far. Mann was the first lawyer that participated in the CSC. Among her other qualifications, Mann believes that one of the reasons she was chosen was because of her long-term commitment to community service, including her involvement in the Pro Bono Project for New Orleans. Mann encourages law students and lawyers to “think globally and act locally” by volunteering. “All the little steps do become cumulative,” says Mann. “Never stop taking the little steps because you never know where they will lead you.”

![Pagoda in Yen Tu Mountains](image1)

![Desiree Giler Mann and view of Nui Bai Tho](image2)
T he Pace Energy and Climate Center (PECC) hosted this fall Illuminating Solar Finance: Shedding Light on the Essential Elements of Financing Solar Projects, a one day conference abundant with substance and knowledge on the complexities of all elements of solar finance. To conference attendees, Dana Hall, Energy Policy Coordinator at PECC and organizer, noted, “the speakers assembled here today paint a very clear picture. While the cost of photovoltaic (PV) energy remains high, today mechanisms are in place to bring solar projects to fruition on a rapid scale, benefiting all of us with reduced GHG emissions and reliable clean energy.”

Keynoter Scott Sklar, described by Hall as a “solar hero,” principal of The Stella Group, Ltd., a strategic marketing and policy firm for clean distributed energy users and companies, enlightened the audience on reports that illustrate how renewable energy and energy efficiency initiatives have the potential to provide the emission reductions necessary to address global warming, and could eliminate fossil fuel use by 2090. He discussed the need for grid parity and long-term amortization of solar costs, and challenged the audience to remember the words of former astronaut and US Senator John Glenn, that good planets are hard to find.

Thomas Thompson of Energy Now, Inc., moderated a panel on recent changes in federal tax policy, beginning with Gregory Jenner, of Stoel Rives LLP. Mr. Jenner shared his experiences as Assistant Secretary of the Treasury for Tax Policy, and explained the Treasury guidelines on the Grant In Lieu of Tax Credit program. Stanley Fishbein, Esq. of CapQuest group gave an analysis of PV investment payback cash flows, demonstrating that capital costs can be recovered in as quickly as three years. Tate Rider of the New York City Economic Development Corporation explained New York City’s unique property tax abatement program and other solar initiatives in the city.

PECC Executive Director Jamie Van Nostrand moderated a panel on Power Purchase Agreements (PPAs), beginning with Henry Labalme of Tioga Energy, who explained how his company develops third party invested projects, with a behind the scenes look at the complexities of the PPA transaction. Attorneys Stephen Humes of McCarter & English, and Morten Lund of Stoel Rives, hashed out a mock PPA negotiation, with Humes representing a building owner host who contracts to off-take the energy output of a solar project, and Lund representing a PPA provider/developer who owns the generation equipment and maintains the project. They covered sticky issues involved in the negotiation of PPA transactions, including financeability, creditworthiness, assignability, buy out options, termination clauses, warranties, regulatory risk, defaults and remedies. The panel concluded with Guy Sliker of the New York Power Authority, who is developing an RFP process for 100 new megawatts of solar PV in New York State, to be installed on government and other municipal NYPA customer property primarily through the use of PPAs.

David Hill of Vermont Energy Investment Corporation moderated a session on carbon credit markets and renewable energy credits or certificate (REC) markets; with presentations from Izzet Bensusan of Karbone, Melissa Swift of Deloitte & Touche, Grace Kurdian of McCarter & English, and Mark Warner of SunFarm Network. This panel considered the expectations of solar developers with regards to federal climate actions, and voluntary and mandatory carbon markets. Warner presented on New Jersey’s SREC market and a new Board of Public Utilities program that would securitize SRECs through long-term contracts facilitated by the state’s major Investor Owned Utilities.

Daniel J. Garodnick, a New York City Council Member in the 4th District and author of the Green Energy Code to reduce greenhouse gas emissions in buildings across New York City, spoke about an initiative he spearheaded in the Council to develop Solar Empowerment Zones, a unique plan that would identify prime areas to develop PV projects.

Amy Heinemann of the North Carolina Solar Center, facilitated a session on the emerging state policies of Feed In Tariffs and Community Solar. James Rose of the Network for New Energy Choices explained how Community Solar stems from innovative metering policy, such as community net metering, virtual net metering and neighborhood net metering. Mark Warner of SunFarm Network described an innovative model under consideration in New Jersey that would allow private developers to group customers together to collaboratively net meter off a single PV project. Wilson Rickerson presented how Feed In Tariffs are widely used and discussed their potential to be applied in tandem to state Renewable Portfolio Standards here in the United States. Anthony Pereira of altPOWER explained his company’s involvement in advocating for a Feed In Tariff in with New York State Assembly and Senate bills.

David Hill returned to focus on policies with implications for the solar industry at the national level. Adam Zellner of Greener By Design discussed his involvement in the Obama transition and the administration’s plans to develop rapid growth in renewable energy and the green economy. Fred Zalzman of SunEdison discussed climate legislation pending in Congress, and the implications for the industry. James Torpey of SunPower looked at utility scale applications of solar energy, and explained how PV has reached the crossover point when compared with new construction of a gas peaker, coal or nuclear plant.

The day wrapped with Dan Byrd of DJB Consulting discussing the future of the industry with Mike Molnar of Greentech Capital Advisors, Bruce Kahn of Deutsche Bank Asset Management and Peter Lynch, an Independent Wall Street Analyst. The panel considered the future of the industry with respect to consolidation, and mergers and acquisitions. The lack of venture capital and the risk aversion preventing bankers to invest provided a sobering look at the industry.
Pace Energy and Climate Center: Firing on All Fronts

The Pace Energy and Climate Center (PECC) is aggressively expanding its intensive work on regional, national, and international energy issues, while simultaneously building its broad base of expertise through new hires, joint ventures, and coordinated research activities. Under the leadership of James (Jamie) Van Nostrand, Executive Director of the Center, PECC has continued to solidify its position at the forefront of the most pressing energy-related issues of our time.

In cooperation with the Natural Resources Defense Council, PECC recently retained Jackson Morris as Senior Policy Advisor. Morris is based in Albany and is focused on advancing clean energy policies in the state capital, through direct engagement with state agencies, the Executive Chamber, the New York Independent System Operator (NYISO), and the New York State Legislature. Previously, Morris worked as the Air & Energy Program Director at Environmental Advocates of New York. State Governor Paterson recently established NY’s Climate Action Plan, designed to facilitate the pragmatic and effective reduction of New York’s greenhouse gas emissions 80 percent below 1990 levels by 2050 (also known as the 80x50 Plan). Morris has been asked to participate on the Residential, Commercial, and Industrial Working Group that will cover opportunities to reduce emissions from the building sector through a combination of energy efficiency measures and clean distributed generation sources. Morris will also serve on the New York State Energy Research & Development Authority’s Green Jobs-Green New York Advisory Council.

PECC Executive Director Jamie Van Nostrand is participating the Power Supply & Delivery Working Group, which is identifying measures to reduce the carbon intensity associated with the state’s electrical generation and transmission systems. In addition, Van Nostrand is on a cross-cutting working group focusing on the issues attendant to widespread deployment of electric vehicles, obviously in part due to his leasing one of BMW’s Mini-E Electric cars. The research and policy products of these technical working groups will be consolidated and organized by the Integration Advisory Panel, with Professor John Nolon as a primary contributor.

PECC also recently retained William Pentland, co-founder of commercial finance firm Maximum Generation, LLC, as Senior Energy Systems Analyst. Pentland’s focus is on the full spectrum of market, regulatory, and policy issues pertaining to distributed generation applications will allow Pace to more strategically promote the adoption of a “systems” perspective across its wide range of distributed generation projects. This will serve to enhance cross-sector collaboration and communication, and encourage comprehensive market and policy strategies, thus greatly strengthening the appeal of Pace’s expertise.

PECC continues its work on varied projects critical to the state’s energy future – including a new Guide for Siting Small-Scale Biomass Projects in New York State, a final report on the Long Island City Power Outage case, and an extensive New York Renewable Fuels Roadmap (exploring whether renewable fuels could play a viable role in NYS’s economic and environmental future). The future remains bright for PECC, with new contracts involving the development of demand resource markets for non-owner occupied commercial property in NYC and the feasibility of expanding utility-owned distributed generation capacity throughout the state.

For more information about staff, activities and developments at the Pace Energy and Climate Center, visit www.law.pace.edu/energy

Faculty Accomplishments

Professor David Cassuto is on sabbatical this spring as a Fulbright Scholar in Rio de Janeiro, where he is, among other things, working on development of the Brazil-American Institute on Law and Environment (see www.baii.org), teaching at FGV Direito Rio Law School, and teaching Pace Law’s comparative environmental law course. Professor Cassuto was appointed to the Zoning Board of Appeals for the town of Austerlitz, New York, On Earth Day, Professor Cassuto’s newest publication – The CAFO Hothouse: Climate Change, Industrial Agriculture and the Law – was released by The Animals and Society Institute. Professor Cassuto presented a paper entitled Water Law in the US & Brazil - Two Approaches to Emerging Water Poverty at the 2009 Colloquium of the International Union for the Conservation of Nature, Academy of Environmental Law on Environmental Governance and Sustainability in Wuhan, China (hereinafter, Wuhan, China). The paper was prepared jointly with Professor Romulo S.R. Sampalo (SJD ’09).

Professor Karl Coplan’s article Public Trust Limits on Greenhouse Gas Emissions Trading: A Sustainable Middle Ground? is scheduled for publication in the Columbia Journal of Environmental Law. The article considers arguments for and against emissions trading as a global warming solution, and the application of public trust principles to greenhouse gas cap and trade. Professor Coplan spoke on Case Intake and Evaluation and Motion Practice at the 17th Fall Meeting of the American Bar Association’s Section of Environment, Energy and Resources as part of a day training on Environmental Litigation from Case Intake through Trial or Settlement.

Professor John Nolon has been appointed to the Editorial Board of the Metro New York Transit-Oriented Development Newsletter, published by Rutgers School of Planning and Public Policy. Professor Nolon delivered a keynote address on land use law reform to the Orange County Chamber of Commerce annual meeting in September 2009; his remarks were covered on the front page of the Business Section of the Times Herald newspaper. He also published in Planning and Environmental Law an article entitled Climate Change and Sustainable Development: The Quest for Green Communities – which is part one of a two part series exploring the theory and practice of managing climate change by local governments through the innovative use of their delegated land use authority.

Professor Jessica Owley Lippmann received a grant from the Rocky Mountain Mineral Law Foundation to go towards funding her conservation easement research. She also received a $500,000 grant from Resources for the Future for creating innovative curriculum related to conservation easements and climate change.

Dean Emeritus Richard Ottinger spoke on Implementation of Energy Efficiency; Implementation of Sustainable Bioenergy Standards in Wuhan, China. He received the Green Legacy Award for his dedication to local, national, and international environmental issues at the 2009 Annual Gala of the
Federated Conservationists of Westchester County.

Another familiar face has been absent from the Environmental Suite this spring. Since January Professor Ann Powers has been the Professor-in-Residence for Pace’s London Law Program, which is presented every spring at University College London. In addition to offering two American law classes for the Pace students, Professor Powers supervises the students as they participate in a formal moot court against barristers-in-training at the venerable Gray’s Inn, and as they intern with British barristers, solicitors and international human rights and environmental organizations. This year was a special one, marking the program’s 25th anniversary.

Professor Nicholas Robinson spoke on Sustainable Governance Amidst Earth’s Changing Climate: Legal Elements of Resilience in Wuhan, China. He also delivered a workshop on his new law school textbook, Climate Change Law: Mitigation and Adaptation to faculty and students at Pace partner Shanghai Jiao Tong University. Professor Robinson’s textbook, co-authored with Professors David Hildreth, David Hodas, and Gus Speth, is one of the first in the nation and is being used in Pace Law’s Climate Change Seminar this spring. Through this casework, the first of its kind to create a synthesis of energy, local, international, and economic law, Robinson hopes to challenge students to think about adaptation and mitigation and changing the current economic dynamic. A carbon-neutral problem is a part of every chapter to encourage students to think about climate change in their own lives and their own law schools. The book is the first Westlaw text bound with a soy-based cover and printed on recycled paper. Professor Robinson wrote a chapter for A River’s Pleasure: Essays in Honor of John Cronin, edited by Michelle D. Land (’02) and Susan Fox Rogers of Bard College, and published by Pace University Press.


Adjunct Professor Jessica Bacher (’03), Director of Research and Innovation and Senior Managing Attorney at the Land Use Law Center co-authored an article with Professor John Nolon in the New York Law Journal entitled Settlement Raises Questions About Housing Obligations. Real Estate and Environmental LLM candidate Temisan Agbeyegbe (’10) contributed. Professor Bacher and Tiffany Zezula (’03), Senior Managing Attorney for the Land Use Law Center and Kheel Center, published Managing Climate Change Through Land Use: Creating the Human Infrastructure for Collaborative Decision-Making at the Local Level in the Fall issue of ACResolution Magazine. Professor Bacher co-authored with Jennie Nolon (JD/Yale MEM ’08), Land Use Law Center Staff Attorney, Energy Codes, Green Building Initiatives, and Beyond published in the Real Estate Law Journal.


Selected Student Accomplishments

SJD candidate Shakeel Kazmi has been appointed to an adjunct professorship at the Polytechnic Institute of NYU where he is teaching the university’s first and only course on Global Warming. He served as a delegate to COP-15 for Pakistan.

Lara Talan (’10) recently submitted a green building report to the Village of Hastings-on-Hudson, NY. After working directly with the Village to assess its goals, Lara’s report provided guidance on the options, considerations, and strategies for adopting and enforcing green building regulations. Lara was selected to work with the village as part of the Law School’s Advanced Land Use & Real Estate Seminar.

Elizabeth McCormick (’10) and Qi Wu (LLM ’10) prepared a chapter on Environmental Law for the book Doing Business in China, published in late 2009 by Thompson Reuters. The chapter was produced through the CELS’ collaboration with Roger Martella, former General Counsel of the USEPA and founder of the EPA – China Law Project, now at Sidney and Austin.

Kavitha Mukund (’10) participated in the Wuhan, China forum (see above). She discussed ongoing research involving the balancing of religious interests in water and flood control in India.

The Pace Law School Environmental Law Society appeared in the Journal News and on the 350.org website for its efforts on the fall 2009 International Day of Climate Action. The Law Society challenged Westchester County residents to change a single behavior to reduce their carbon footprint as a commitment to take action against climate change. Students also collected signatures for a petition urging national leaders to support collaborative efforts to combat climate change.

Selected Alumni News and Achievements

Sean Dixon (JD/Yale MEM ’09, LLM ’10) was selected as the first Research Fellow in the Center for Environmental Legal Studies. As part of his Fellowship, Dixon is spending this academic year at the Center as part of its staff, while pursuing his LLM at Pace. He also is teaching as a Lecturer at Yale University on Ocean Policy through Calhoun College. Sean presented a seminar on Climate and Water Law this Spring at Pace Law. He also led a discussion on the treatment of marine mammals in conjunction with a screening of The Cove at the Environmental Film Festival at Yale.

Anne Marie Hirschberger (’09, LLM ’10) has been appointed as an adjunct professor teaching environmental law at Hunter College.

Fred Soltau (SJD ’08) published his dissertation as Fairness in International Climate Change and Policy (Cambridge University Press, 2009).

Steven Matthew Reed (’09) has been appointed as the Public Lands Director for the High Country Citizens’ Alliance in Crested Butte, Colorado.

Murilo N. de Bustamante (LLM ’09) has been appointed to the position of Coordinator of the Support Center for the Environmental Protection of the Ministério Público for the State of Rio de Janeiro at the request of the Brazilian state’s Attorney General. As Coordinator, Bustamante is responsible for planning and establishing the strategies for all the State Prosecutors of Rio in the area of environmental protection.

Kate Harrison Muchnick (’08) recently published The Green Bride Guide and launched a companion website. The book and website urge the adoption of eco-friendly wedding ideas, products and services (see www.greenbrideguide.com).
Pace Law School recently hosted author Michael Shnayerson for a discussion of his book *Coal River*, a chronicle of the battles waged in West Virginian communities against the coal industry’s growing practice of mountaintop mining. Mountaintop removal involves shearing off the tops of mountains to gain access to coal deposits – a cheaper but more environmentally destructive method than traditional underground extraction mining. Mountaintop mining has a devastating effect on the landscape, watershed, and ecosystem - often leaving miles of rubble where majestic peaks once stood.

Dean Alexandra Dunn used *Coal River* as a companion text for her Environmental Justice seminar, and invited Mr. Shnayerson to speak to the class. As Dean Dunn described, *Coal River* reads like a “legal thriller”- woven throughout the compelling drama and personal stories, Shnayerson highlights the various legal tools that community advocates and lawyers have utilized in this David and Goliath-esque battle against powerful King Coal.

The book’s most prominent protagonist is attorney Joe Lovett. Lovett’s tactic for combating mountaintop removal was to pursue programmatic rulings via lawsuits against the agencies permitting the coal company’s activities rather than the company itself. Shnayerson discussed Lovett’s epiphany; after a thorough statute-based analysis of the Clean Water Act (CWA), he realized that he could challenge the US Army Corps CWA § 404 permit issued to Massey Energy for the overburden from the removal that they were dumping into a mountain stream. The book begins with Lovett racing the clock to get a temporary federal injunction to stop Massey’s activities before the ecosystem, mountains, and streams were irreparably damaged.

Although Lovett’s legal challenge against Massey is the central focus of *Coal River*, Shnayerson also tells the story of local grassroots activists groups that have come up with creative ways to fight the coal industry’s practices, including the “Dustbusters” of Sylvester, West Virginia. Trucks transporting coal through Sylvester would regularly cover the homes, windows and cars in the community with coal dust. The “Dustbusters” gathered months of video documentation of their daily efforts to clean the coal dust off their cars and windows with paper towels. Attorney Brian Glaser used the Dustbuster’s evidence in a successful lawsuit against Massey Energy grounded in nuisance, in which he represented 150 of Sylvester’s residents.

Unfortunately, in spite of some victories against mountaintop removal, the practice still continues and is growing. Shnayerson described the five square miles of devastation he witnessed on a flyover of mountaintop removal areas of West Virginia as a sobering reminder of all the work that needs to be done by future environmental lawyers. In a related event, Pace Law School Professor and Co-Director of the Pace Environmental Litigation Clinic Robert Kennedy Jr. (LLM ’87) debated Don Blankenship, the controversial CEO of Massey Energy, over the adverse impacts of mining – from water pollution to lost jobs. The issue of mountaintop removal mining affects some of the most poverty-ridden communities in the US, and is shaping up to be a significant environmental law challenge for the next generation. You can view and listen to the Kennedy vs. Blankenship mining debate by searching these terms on Google Videos.