On October 1, 2008, Pace Law School held its Ninth Annual Gilbert and Sarah Kerlin Lecture on Environmental Law. Gracing the lecture podium this year was Peter Lehner, the Executive Director of the National Resources Defense Council. Mr. Lehner presented a lecture entitled “Environment, Law, and Nonprofits: How NGOs Shape Our Laws, Health, and Communities,” which addressed the important role non-governmental organizations (NGOs) have in shaping environmental law. He discussed how these organizations could and should assist in the nation’s foremost fight against climate change.

Mr. Lehner served as Chief of the Environmental Protection Bureau under former New York State Attorney General Eliot Spitzer, where he supervised all environmental litigation instituted by the state. In addition, he played a vital role in developing innovative environmental multi-state strategies. He continued to teach environmental law courses at Columbia University, where he attended law school. Mr. Lehner’s impressive background enabled him to provide an informed glimpse into the role NGOs have played and will play in shaping environmental law.

Mr. Lehner pointed out that it is rare for NGOs to play as key a role in other areas of law as they have in environmental law. Using a contemporary example, he explained that perhaps the nation’s current financial state would be more stable if watchdog NGOs were monitoring the government’s oversight on financial markets for advancement of the public good, rather than just private interests. His emphasis on this alternate reality of a financial field full of watchdog
Pace’s Center for Environmental Legal Studies (CELS) sent a delegation to participate in the International Union for the Conservation of Nature (IUCN) World Conservation Congress, which convened from October 5 to 14, 2008 in Barcelona, Spain. The Congress meets every four years and provides a forum for IUCN members to exchange ideas and experiences, discuss current events, and propose resolutions to guide IUCN’s agenda of promoting environmental conservation and sustainable development. The Pace delegation, consisting of Professor Nicholas Robinson, Professor Ann Powers, Dean Emeritus Dick Ottinger, Professor David Cassuto, Professor Victor Tafur, JD candidates Sean Dixon and Elaine Hsiao and LLM candidate Eka Otarashvili, made invaluable contributions to the Congress by facilitating discussion and drafting, negotiating, and passing resolutions.

The IUCN, founded in 1948, is the world’s largest environmental conservation institution and boasts a unique constituency. Over one thousand states, government agencies, and national and international non-governmental organizations (NGOs) are members of IUCN, with CELS among them. Professor Robinson organized this year’s delegation and devoted countless hours to preparing and negotiating various resolutions.

During the Forum portion of the Congress, members were invited to participate in panel discussions on cutting-edge issues. Dean Ottinger, a member of the Executive Board of the IUCN Climate and Energy Leveraging Initiative, as well as the IUCN Commission on Environmental Law, co-chaired Pace’s delegation. He organized and presided over a panel of distinguished speakers focused on the potentials and risks of biofuels production. Professor Powers, who chairs the Land-Based Sources of Pollution Subcommittee of the IUCN Law Academy’s Oceans, Coasts and Coral Reefs Specialists Group, and who recently published an article on land-based sources of pollution with Professor David VanderZwaag of Dalhousie University, jointly gave a presentation on this topic. Professor David Cassuto used his expertise in animal law to advocate for its inclusion in future IUCN agendas and supported a resolution seeking to gain greater recognition of the IUCN Academy of Environmental Law.

The Pace delegation was active during the Member’s Assembly (the plenary). Senior Riverkeeper Counsel and Pace SJD Victor Tafur handled negotiations for the IUCN Council and Sierra Club biofuels resolutions which were passed. Dean Ottinger reconciled differences among several proposed climate change resolutions and successfully included and passed a provision requiring the Director General to consider climate change in all aspects of the IUCN program.

Otarashvili, Hsiao and Dixon, students in Pace’s Conference Diplomacy course, worked tirelessly throughout the Congress drafting and negotiating several resolutions, all of which were passed. Prof. Robinson and Otarashvili drafted a resolution after two Georgian national parks were ecologically devastated by bombings and oil spills which occurred during the recent Russian invasion. “Its aim was to contribute to further development of environmental and humanitarian law for protection of national parks during armed conflicts,” said Otarashvili. “Georgia was an example of larger global issues.” She and Professor Robinson persisted through several days of negotiations in “contact groups” with other interested parties, co-sponsors, and government officials. The negotiations generated two major outcomes. First, the resolution was passed with language supporting post-conflict recovery of national parks. Second, Georgia became an official member of IUCN. Upon receiving word of these discussions, the Georgian government sent their environmental minister to Barcelona to participate. “When a country decides to become an IUCN member, it makes a statement that environmental protection is a priority. This is a success story,” said Otarashvili.

Hsiao had been working several months prior to the Congress on a resolution supporting a transboundary peace park between Nicaragua and Honduras (see profile on Elaine Hsiao, p. 9). After gaining prominent co-sponsors such as the Sierra Club and the Nature Conservancy, the resolution passed.

Dixon collaborated with nations such as Japan and New Zealand on revising a motion on the conservation of whales, supporting language on the non-lethal utilization of whales and the recognition of sustainable development implications. He also intervened in the contact group for the Arctic legal regime to expand the motion to include greater consideration of indigenous people’s rights.

In addition to their individual contributions, Hsiao and Dixon (an MEM candidate at Yale) worked together with Jordan Macknick, a student at the Yale School of Forestry and Environmental Studies, on a last-minute resolution on the global financial crisis. “Ensuring stable funding for worldwide conservation efforts had been mentioned in the plenary, so we took a shot at it,” said Dixon. Their language, calling for assurance that the public funding of conservation efforts would not wane in light of the crisis, was officially consolidated in a similar motion on conservation financing and passed.

According to Professor Robinson, the importance of the Pace delegation’s work cannot be overstated. “Students and faculty made a substantive contribution to world environmental decision-making,” he said. “Our resolutions on energy, climate change, the environmental rights of indigenous people, and protection of national parks at times of conflict all were tremendously important in shaping the conservation agenda for the next four years.”

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Climate Change and the World’s Most Vulnerable States Focus of UN Diplomacy Course

On September 5 and 6, 2008, diplomats from sixteen nations along with students and faculty from Pace Law School and the Yale School of Forestry and Environmental Studies gathered to address climate change and its impacts on the world’s most vulnerable states (MVS).

This meeting served not only as a forum for nations to discuss climate change, but it also allowed students participating in the schools’ Environmental Diplomacy practicums to get an insider’s view of the diplomatic process. The practicums, taught concurrently at Pace and Yale, introduce students to the world of environmental diplomatic negotiation by placing them in United Nations missions of MVS to do research, attend meetings, and complete various projects. “It is important to see diplomacy in action,” said Professor Roy Lee, who was teaching the practicums at both Pace and Yale, “and to learn about what states think, how their interests will be affected, and what they need in order to have their view fully reflected in the outcome.”

The meeting was held at the Edith Macy Conference Center in Briarcliff Manor, New York. After an orientation session with Professors Lee, Robinson and Ann Powers, students had the opportunity to share dinner with the diplomats. “They seemed extremely open and willing to have a healthy discussion,” noted a Pace Law student. Dinner conversation was focused and hopeful. Diplomats exchanged ideas on methods for strengthening international negotiating positions. Topics of discussion included an enhanced carbon credit trading system, an international trust fund, and capacity building. During the Saturday meeting, students were able to sit at the negotiation tables alongside the ambassadors. Sean Dixon, a Pace student participating in the Pace-Yale joint degree program, said he “was in awe of the caliber of the negotiations and discussions.”

“The discussions were insightful and explored uncharted territory in our understanding of climate change,” stated Professor Robinson. “This kind of opportunity gave both students and diplomats a unique chance to think about the future and climate change negotiation.”

“We are privileged to work with these missions,” noted Professor Powers, “and we hope to continue our collaboration far into the future.” Pace student Matt Reed shared these sentiments. “I felt honored to be privy to world leaders addressing one of the most serious global issues, climate change. Pace has introduced me to international affairs by placing me right in the middle of the decision-making process.”

Ceremony Celebrates Alumni Robert F. Kennedy, Jr. and Brendan O’Neill

The prestigious Nicholas A. Robinson Alumni Achievement Award was established in 2005 in honor of Robinson, founder of Pace Law School’s Environmental Law Program and Environmental Litigation Clinic. On October 27, 2008, Pace Law School held a ceremony in recognition of significant contributions to environmental law by two distinguished Pace Law alumni, Brendan O’Neill, 2006 award recipient, and Robert F. Kennedy, Jr., 2007 award recipient.

Brendan O’Neill received his JD with a certificate in Environmental Law from Pace in 1985. Since then he has served as Executive Director of the Vineyard Conservation Society, Inc. (VCS), a 43-year-old non-profit membership organization dedicated to preserving the environment, character, and quality of life on the island of Martha’s Vineyard through advocacy, education, and protection of the island’s land and waters. Mr. O’Neill’s interest is in pursuing environmental work where he can actually gauge the impact his contribution is making, as well as working in a location with an intact natural habitat and a good quality of life. Today, this is called place-based environmental advocacy. Mr. O’Neill advised, “Pacing oneself is the prescription for success (no pun intended).” It is important to recognize and remember that “green” is not just for the good times.”

Robert F. Kennedy, Jr., Chairman of the Board of Waterkeeper Alliance, received his LLM from Pace in 1987. Professor Kennedy serves as Co-Director and Supervising Attorney of the Pace Environmental Litigation Clinic, and as a Professor of Environmental Law at Pace. He is currently the Chief Prosecuting Attorney for the Hudson Riverkeeper and Senior Attorney for the Natural Resources Defense Council, directing the Estuary Enforcement Project.

To maintain his optimism, Professor Kennedy thinks of Nick Robinson, whose patience and good humor have been an inspiration to many. He is grateful to have Nick as a friend and a mentor. According to Professor Kennedy, carbon is the principle drag on our economy right now. If Americans stopped using oil for one year, our nation would be able to pay off all its debt. Professor Kennedy recommends switching to wind power, which would require upgrading our antiquated electricity grid, costing approximately $150 million (a minor expenditure compared to the amount spent in Iraq). Once completed all of America’s electricity could be wind generated, because as Professor Kennedy put it, “the Midwest of this country is the Saudi Arabia of wind!”

In closing, Professor Robinson remarked, “if all the students here go out and do what Bobby and Brendan have done, we won’t have to worry about climate change. We’ll bridge the divide!”

For more information on the Robinson Award winners, please refer to the Spring/Summer 2008 edition of GreenLaw.
On November 20, 2008, Pace Law School’s Environmental Law Society and BarBri Review sponsored a screening of **Burning the Future: Coal in America**, a documentary film that examines the longstanding and rapidly growing conflict between the coal industry and residents of Appalachian states, particularly West Virginia.

The coal industry mines enough coal to provide electricity for half of our nation, with increasing amounts of coal being obtained through mountaintop removal mining (MRM). MRM is a type of surface mining that causes drastic topographic changes to the summit or summit ridge of a mountain in order to expose underlying coal seams. The overburden removed is often then scraped into adjacent drainage valleys, causing severe environmental degradation, including contamination of water supplies, extinction of plant and animal species, devastating floods, and disfigured mountain ranges. The film explained that this degradation has led to the filing of numerous lawsuits and the formation of citizen action groups, and explored some of the Clean Water Act violations associated with mining coal.

Following the screening, the film’s writer and director, David Novack, and Abbie Dillen, an attorney for Earthjustice, joined attendees for a question and answer session. To students pursuing a career in environmental law, Mr. Novack advised: “First, any issue you get yourself involved in is going to require long-lasting passion and commitment. Evaluate cases that surround issues that really hit you in the gut. Make yourself aware of other environmental lawyers who do work in other areas so that you can specialize and pass things on to one another. Second, intimately align yourself with environmental groups. The best way to bring about change is to connect your cases to human stories and the small grassroots groups are the ones who know those stories. Find the affected people through those groups and hear their stories, then lean on the larger regional/national groups for logistical support. Third, environmental law crosses the boundaries between state and federal law. Get involved in as much litigation in a variety of state and federal cases so you become aware of the ever-changing landscape of regulation, law and loopholes. As rosy and hopeful as times are now, with a new president and a more environmentally friendly Congress, there are still many battles to be fought in court and industry is going to be as tough as ever in trying to protect their way of doing business. It’s their bottom line.

Forth, know that the small steps, the small victories, and the relationships that you build along the way are what it is all about. Live in the moment with optimism. In this worthy endeavor, you will meet people you never would have met had you become a corporate lawyer. Enjoy the diversity of America and be an advocate for the people. This will carry you through defeats and enrich your life.”

Mr. Novack also noted, “There are very few programs in the country like the Pace environmental law program...too few, in fact. This makes the Pace graduate part of an elite group of lawyers in the field.... Environmental law is ever-changing and so must be environmental law education. Think about what inspired you to take this path and what might inspire others in the future, and help Pace to move forward with that in mind.”
NGOs illustrated the obvious benefit of NGOs intervention in the development of any legal field. It is exactly this beneficial use of NGOs that Mr. Lehner highlighted as the most useful tool in creating environmental laws that will help mitigate and battle the effects of climate change.

Environmental NGOs have played a critical role in shaping environmental law, transforming the bilateral dialogue between an isolated regulator and regulated industry into “a multilateral dialogue including those affected in other ways besides their pocketbooks.” Environmental law began in 1965, according to Mr. Lehner, with the now famous case, Scenic Hudson Preservation Conference v. Federal Power Commission, which recognized alternate interests, such as aesthetic, conservationist, and other than purely economic interests, as sufficient to enter the courts. In addition to setting forth this essential precedent, the lawyers who litigated this case went on to found NRDC, paving the way for the formation of other NGOs, like Earthjustice, Sierra Club Legal Defense Fund, and Environmental Defense Fund. Thus, the need for environmental litigators was created.

This budding field presented the new problem of which laws to employ in environmental litigation. Common law? Public trust law? Constitutional claims? These questions made clear the need for new legislation, a need that Congress answered with new laws guided by many emerging public interest lawyers. This new world of environmental legislation and the preceding debates were heavily influenced by NGOs, pushing for fast action, health based rather than cost based standards, frequent monitoring of pollution levels, and public availability of environmental permits and records. Furthermore, Mr. Lehner added that these NGOs were pivotal in converting voiceless legislation from “mere aspirations to laws with teeth.”

Currently, despite 40 years of hard work, about 150 million Americans breathe unhealthy air, and half of our accessed waters are not fishable or swimmable. Climate change is bearing down on us, Mr. Lehner remarked, with some of the most severe and pressing environmental threats we have ever experienced. Unfortunately, NGOs do not have the best record of acting timely. For example, Mr. Lehner cited the fact that NGOs had been fighting for enactment of the Clean Water Act for years before any progress was made, and not until after the Cuyahoga River caught fire for the tenth time. The majority of Mr. Lehner’s lecture then focused on his advice for creating systemic changes that can and should be made to make the role of NGOs more effective.

First, Mr. Lehner called for actual enforcement of laws that have already been passed. According to him, real enforcement involves three components: the ability to bring cases and make the courts accessible, actually bringing cases instead of ignoring the laws due to a lack of judicial resources, and enforcing penalties to the highest degree. One example of enforcing penalties would be to ensure clean-up rather than pay a meager penalty while allowing pollution to continue. Second, implementation of environmental laws must move from what Mr. Lehner calls the pollution principal to the precautionary principal, shifting the burden of proof in environmental cases to always fall on the polluter making the public health presumption. Mr. Lehner stated that the infamous Chevron analysis fails to recognize the substantive intent of Congress, focusing strictly on procedure. He noted, “A decision favoring clean air, for example, under the Clean Air Act (CAA), should be reviewed more deferentially than a procedurally equivalent decision under the CAA, because of the CAA’s overall purpose and intent to achieve clean air. Congress wanted clean air and it knew the tradeoffs to achieve that.” Each case must be viewed as part of a holistic approach to ensure that the Congress’ intent to protect the integrity of our environment through enactment of environmental laws is upheld. Lastly, a wider range of economic tools must be used to bolster legal mandates by combining pollution specific mandates and market incentives. Mr. Lehner explained, “If we require...better and more truthful information about the true cost of wasted energy, energy efficiency standards will be more easily adapted and implemented.” Additionally, he suggested putting a price on any type of pollution, even within required limits, in order to incite a change in the dialogue over permit limitations.

Mr. Lehner concluded by espousing his belief that true change in environmental legislation will come when two or three laws say the same thing, so they may not be easily ignored or circumvented. With an overall laudable tone toward environmental NGOs and hope that they may continue in their vital role as watchdogs over the environment, Mr. Lehner encouraged, “The challenge of climate change is one that we can’t wait on...and we will need all the tools we have. We, NGOs, government, academia, and industry must all learn from the success and failures of our past and be evermore effective.”
The Externalities of Nuclear Power: First, Assume We Have a Can Opener...

Continued from page 1

fifty years ago. Like the shipwrecked economist in the old joke, the nuclear industry continues to postulate that we should “assume we have a can opener” for the nuclear waste problem.

While the impacts of global warming are described as “intergenerational,” the impacts of the nuclear waste cycle are better described as intercivilizational. Nuclear fuel wastes remain hazardous for hundreds of thousands to as much as a million years. Globally, none of the generators of nuclear fuel waste have successfully implemented any permanent disposal option for nuclear waste, leaving this externality of nuclear energy production as a problem for future generations, or, more likely, for future civilizations.

Nuclear generation also poses a risk externality — the economic and social harms that the public has assumed in the event of a radiation release, for which the generating industry has limited liability. These twin externalities, waste and risk, make any nuclear renaissance an unsatisfactory substitute for fossil fuel power generation.

The Externalities of the Nuclear Fuel Cycle

Currently, there are 55,000 metric tons of spent nuclear fuel in the United States. The majority of this fuel is stored in spent fuel pools at currently operating or decommissioned nuclear power plants. Several nuclear power plants across the country, including the Indian Point plant north of New York City, now experience leaks from these spent fuel pools. Unfortunately, neither deep geological burial nor reprocessing appear to be likely solutions to the waste disposal problems, and both pose serious risks.

The Reprocessing Non-Solution

In theory, 97% of spent nuclear fuel that consists of uranium isotopes could be reprocessed. Reprocessing poses its own set of political and moral risks and corresponding externalities. Reprocessing isolates plutonium. Plutonium is the ideal fuel for atomic bomb construction.

Current administration policy is to seek the implementation of reprocessing facilities combined with dedicated plutonium-burning reactors in order to reduce the amount of nuclear waste requiring long-term disposal while minimizing the proliferation and terrorism risks associated with separation of plutonium. Fifty years after the dawn of nuclear energy production, this latest initiative is barely commencing the research and development phase. Even if such a reprocessing facility moves from nuclear engineers’ brainstorming sessions to reality, the DOE has calculated that it would take 100 years of reprocessing to reduce the amount of transuranic waste requiring disposal by 50%, at a dollar cost more than twice that of direct disposal of unprocessed waste.

The Nuclear Risk Externality

The costs and consequences of the risk of catastrophic nuclear accident or terrorist attack have been shifted from the industry to the public. Under the Price-Anderson Act, individual power plant liability for a nuclear mishap is limited to $300 million, while the joint liability of the industry is limited to a total of $10 billion. This liability limit falls far short of the potential damages associated with a severe reactor accident. A 2004 study commissioned by the Riverkeeper organization estimated that damages caused by a severe reactor or spent fuel accident at the Indian Point nuclear power plant, 35 miles north of New York City, would exceed $2 trillion in property damage, in addition to 44,000 short-term fatalities and 518,000 latent long-term fatalities.

This risk externality has three components: the risk of release of radioactivity due to an accident, the risk of pollution at a nuclear power plant, the risk of a release of radioactivity due to terrorist attack, and the risk of nuclear weapons proliferation. Proliferation risks: enrichment technology and plutonium production. First, the technology and facilities needed to enrich uranium to make it suitable for energy production are identical to the technology and facilities that can be used further to enrich uranium to the point that it is suitable bomb-making material. Second, and perhaps more hazardous in the short term, is the amount of weapons-grade plutonium necessarily created by reprocessing nuclear waste. Ironically, the political upheavals and geopolitical tensions that are likely to result from global warming may actually make nuclear weapons proliferation from expanded nuclear energy generation and hostile use of nuclear weapons more likely.

Who Will Pay For These Externalities?

So, without any operating reprocessing cycle or geological repository, nuclear waste and its byproducts continue to pile up. The fact is that no political or economic system can assure the security or integrity of waste for a period of time even remotely approaching the time period during which waste poses extreme health, environmental, terrorism, and nuclear proliferation risks. Nuclear power might nonetheless have a role to play in mitigating global climate change by displacing carbon cycle energy. If such a role is to be any less disastrous to future generations (and civilizations) than the carbon fuel cycle, then continuation and expansion of nuclear energy production should be contingent on the proven availability of existing facilities for geological disposal or a proven and commercially viable fuel reprocessing system. If we plan for the future of the planet to depend on canned goods, then we should first have an operable can opener.
that was willing to marshal environmental law on behalf of the public was a critical lesson.”

The legal battle began in 1982 when the Jay property owners sold the entire parcel to a commercial developer who applied to the Rye City Council to rezone the property from residential to commercial. Neighbors, marshland supporters, and historical and architectural preservationists opposed, arguing that the property ought to be landmarked. This was the common interest upon which the Jay Coalition was formed. Rye’s local landmarking law was a bar to this interest, for it required owner consent in order to landmark a parcel of land.

The legal battle was a long and complicated legal battle, involving multiple disputes and multiple players, including Pace Law’s Dean Emeritus Richard Ottinger and Professor Nicholas Robinson.

Within Professor Robinson’s opening remarks of the day, he described this legal battle for the new students. He began by stating that one of Pace’s goals is “to understand how our perceptions of nature are a cultural construct.” The Jay property’s legal battle, led by the Jay Coalition, provides an illustration of this goal. As Robinson stated, “having a citizen group

However, the Coalition utilized two legal tools to promote its interest.

The first tool was the State Environmental Quality Review Act’s (SEQRA) requirement that before a state agency undergoes an action, it must consider the environmental impacts of its action and mitigate the adverse impacts. This led the Rye City Council to declare that it would only consider residential uses for the property, effectively prohibiting commercial development. The second tool was the National Register of Historic Places for which the Rye Landmarks Advisory Committee recommended the Jay Property’s nomination. The Department of the Interior eventually agreed and the Jay property was listed in the National Register as part of the Boston Post Road Historic District.

While creating the environmental impact statement under SEQRA, the City Council realized the historical, architectural, and environmental significance of the property. This led it to amend its landmarks law so that owner consent was no longer required for National Register properties. Seven months later, the entire property was landmarked under local law. Over the next eight years, the developers brought claims alleging that the City of Rye performed an unconstitutional taking of their property while the Jay Coalition urged the City to practice its eminent domain authority over the property. During these eight years, the Jay Coalition garnered greater public support and funding resources until it won the battle in 1992. The same year, the City bought the Jay property at market value and the Jay Coalition established the Jay Heritage Center in order to rehabilitate the property. This rehabilitation is still occurring today.

In fact, members of Pace’s Environmental Law Society visited the site during the past fall semester to learn about the legal history of the property and to aid in restoration efforts.

The new students also listened to Suzanne Clary, President of the Board of Trustees for the Jay Heritage Center, speak about the current preservation work on the property. Additionally, she led an informative tour at the end of the day. She described that the Center’s goal is to educate the public on the preservation process. Therefore, only seventy percent of the Jay Mansion will be renovated. The Center is also performing the renovation in an environmentally sustainable fashion, by complying with LEED certification requirements and by installing sixteen geothermal wells. Currently, the Mansion is the oldest facility in New York State using geothermal energy. The Center’s work displays the compatibility of historical preservation with modern technology.

The Jay Heritage Center provided the ideal backdrop for new students to learn about the environmental law opportunities offered at Pace Law School. The Jay property’s story added significance to these opportunities by illustrating the ways in which the legal system provides tools to protect the environmental and cultural heritage of a site. This backdrop also allowed new students to appreciate a prominent figure in the history of the legal profession, the first U.S. Supreme Court Justice, John Jay.
D.C. Summer "Full of Opportunities"

During the summer of 2008, nine Pace Law School students traveled to Washington, D.C. to participate in the school’s D.C. Environmental Externship program. The program is an integral part of Pace’s environmental curriculum that allows students to acquire practical, hands-on experience in environmental law in the nation’s capital. For many of the students participating in the program, it was also their first opportunity to get involved in the environmental field after their first year of law school.

The summer kicked off with a week of environmental training, otherwise known as “Environmental Boot Camp,” at Pace led by Assistant Dean Alexandra Dunn. Because many first year students had not yet been able to take environmental law courses prior to the summer, the boot camp was a preparatory course in environmental, administrative, and legal issues that might be relevant for work in D.C. Over the course of the week, the students learned about everything from administrative law structure to how to check and respond to Environmental Protection Agency (EPA) Proposed Rules. They even completed hypothetical comments to a Proposed EPA Rule, and engaged in a “research treasure hunt” to develop stronger environmental research skills. All of the students found boot camp to be extremely helpful. Some even said that they were specifically required to perform many of the tasks they had learned throughout the course of their internships.

After successfully completing their intensive training in New York, the students traveled down to D.C. to begin their externships. While there, each student worked at a personally chosen externship position and met weekly for a class taught by Pace Law professor and Hunton & Williams partner, Steve Solow. The students’ externship placements varied widely according to each student’s particular interests. Placements included such organizations as the Environmental Protection Agency, the Environmental Law Institute, the Physicians’ Committee for Responsible Medicine, the National Association of Clean Water Agencies, and the AES Corporation. Due to the range of focus of their externships, the students also performed diverse tasks throughout the course of their summers. Second year student Jill Richardson worked for the AES Corporation and, among other projects, wrote performance standards for measuring carbon emissions and credits, whereas second year student Lisa Soave got an extensive overview of the Resource Conservation and Recovery Act by writing memoranda on solid waste issues. Another second year student, Jennifer Church, interned at the EPA Office of Administrative Law Judges and created a statute guide as part of her work.

While the students were full of enthusiastic stories about their respective externships, they also commented that they learned a great deal from the externship’s weekly class meetings. The class meetings were designed to prepare the students for work in the environmental field by addressing real issues facing lawyers in environmental law and by introducing the students to former Pace Law students working in Washington. During one class session, Pace alumni came to talk to the externship students about environmental career paths, both in Washington, D.C. and in the environmental field as a whole. During another class session, the students had a roundtable discussion to share different observations about the externship experience. For the culmination of their work, the students prepared a course paper and gave a presentation to the class on what they had learned throughout the summer. Second year student Sam Capasso appreciated this experience, noting, “The class presentations were really helpful. It was nice to have a chance to be critiqued and get practice speaking in front of a group.”

Outside of the externship program, Washington D.C. itself turned out to be an equally educational setting for many of the students. Students Joe Graham and Sam Capasso were able to take one morning off from their externships to watch Al Gore speak about environmental issues. Capasso also met environmental lawyers at a meeting of the D.C. Bar Association. In addition, many of the externs were able to attend weekly or bi-weekly “brown bag lunches” discussing current environmental issues. The Environmental Law Institute (ELI) hosts brown bag lunches every summer, which are open to interns in the entire D.C. area. Similarly, the EPA hosted brown bag lunches for many of its interns.

Overall, the students had an informative and educational summer. They raved about their experiences and the chance to learn in Washington D.C. When asked what he or she considered to be the best part of the summer, each student had a unique answer. While many appreciated the brunch that Professor Solow hosted at his house, others enjoyed the opportunity to visit all of D.C.’s museums, in addition to the experiences already listed. Joe Graham summed up the summer best by describing it as “full of opportunities.”
Marghie Seymour, a third year law school student at Pace, is a self-proclaimed “doer.” In addition to pursuing the environmental law certificate, she has been involved with a multitude of the extracurricular environmental activities offered at Pace. During her first year, Marghie was the 1L representative to the Environmental Law Society (ELS) and volunteered at both the National Environmental Law Moot Court Competition and the International Union for Conservation of Nature conference, which were held at Pace. She also participated in the Washington, D.C. Environmental Externship program in her first summer. During Marghie’s second year, she served as the ELS president, became an associate candidate for the Pace Environmental Law Review (PELR), and worked at the New York Attorney General’s Office as part of an environmental externship. Following her second year, Marghie completed a summer internship at the Washington office of the Natural Resources Defense Council. In her third and final year at Pace, Marghie serves as the Acquisitions and Development editor for PELR and a legal intern at the Environmental Litigation Clinic, which originally attracted Marghie to Pace Law School.

After nearly a decade as the executive director of a small non-profit organization that supported municipal recycling programs, she became bored with her job and frustrated by the Bush administration’s degradation of environmental policies and her inability to fight those policies. She later heard a recording of a speech by Robert Kennedy, Jr., where she first learned about the Environmental Litigation Clinic. Although she had never given law school any consideration, and in fact had not even finished getting an undergraduate degree, Marghie decided to go back to school to become an environmental attorney. Just over eighteen months later she had finished her degree in Environmental Science and been accepted to Pace.

When asked what attracted her to Pace Law School, Marghie replied that, in addition to the Clinic, she “like[d] the fact that Pace has so many hands-on opportunities.” As enumerated above, Marghie took advantage of a vast number of these opportunities. She found her prodigious involvement in the school’s environmental extracurricular activities to be a great advantage in her legal career, opening more doors than she could have if she were not so involved.

After graduation, Marghie would like to be a litigator. She has learned that it often takes years before an environmental legal dispute comes to the courtroom, if it ever does, and is therefore looking into opportunities to litigate outside of the environmental law field in order to spend time learning practical skills in a courtroom. However, she says she knows she will eventually end up working in environmental law.

In the meantime she is looking into all kinds of other public interest work, believing that she has a duty to provide representation to those who need it. Although she would prefer to represent the natural world, whether she works to protect individuals or threatened natural resources, Marghie is committed to advocating for the underrepresented.

International Environmental Law Inspires Activist

Elaine Hsiao (’09), a Pace Law School student earning her JD and environmental law certificate, has done more international environmental conservation work than many seasoned academics. Her work began in 2001 when she volunteered at an orphanage in Costa Rica. Since then, she has worked for conservation groups in China, the Philippines, and Mexico and has served in the environmental management and policy unit of the International Union for the Conservation of Nature (IUCN) Secretariat in Costa Rica. After discovering Pace Law School, Hsiao decided to attend the school “because of its prestigious environmental law program and the strong international component.”

Pace provided Hsiao with the opportunity to work with the UN University for Peace in Costa Rica in the Summer of 2007 to research international, regional, and national legal frameworks, which could support the establishment of a peace park, or a transboundary protected area for peace and conservation in a war-torn region across Nicaragua and Honduras. “The best thing I learned is that I can be a ‘non-conventional’ lawyer and still use my legal education in a very useful way,” she said.

This research led Hsiao to two major accomplishments. First, with the help of Professor Nicholas Robinson, Hsiao, who is fluent in Spanish, wrote an essay recently published in a book entitled “La Conservación en las Fronteras: El ciclo de proyectos aplicado a la creación del parque binacional,” a compendium of studies supporting government-created peace parks. Second, also with the assistance of Professor Robinson, Hsiao drafted a resolution entitled “A Transboundary Peace Park between Honduras and Nicaragua” which was adopted at IUCN’s World Conservation Congress which met in October 2008. The resolution had several goals, including empowering local communities to take a stewardship role of their natural resources and promoting peace in a region afflicted by war. “I’m relieved and excited that it was adopted,” she said. “It adds international support for a very worthwhile project and helps strengthen our resolve to rally on.”

In Fall 2008, Hsiao worked on two research papers and interned with the Permanent Mission of Comoros to the United Nations through Pace’s Environmental Diplomacy Practicum. She is spending her final semester in London with Pace’s program there. Hsiao is grateful to Pace for providing her with these opportunities, and she plans to continue her work on peace parks. “Pace has equipped me with the best international environmental law education available and allowed me to put my learning into practice,” said Hsiao. “I would like to continue doing similar work - working with various stakeholders in transboundary conservation, while researching and writing.”
Pace Law School’s Doctorate of Juridical Science in Environmental Law program, one of only 22 programs out of 185 ABA-accredited law schools, prepares legal scholars to teach environmental law in the United States and abroad. This year Pace welcomes two promising students into the SJD program, Andri Marthen from Indonesia, and Alali Tamuno from Nigeria.

Andri Marthen completed his JD at the University of Indonesia. He then went on to complete a master’s degree in Environmental Law and Policy at the University of Kent in Canterbury, UK. While attending Pace’s program, Mr. Marthen continues to work in his country at various institutions as an academician, associate attorney, legal researcher and governmental advisor on climate change issues.

Mr. Marthen was drawn to the environmental law field because of his country’s unique biodiversity and rich natural resources. Unfortunately, until recently, the Indonesian people have failed to use sustainable methods, which has led to exploitation of their natural resources. Because the current Indonesian environmental protection regime continues to use inefficient approaches in utilizing the country’s natural resources and is unable to prevent the significant destruction of such resources, Mr. Marthen feels compelled to work to bring about legal reform in environmental protection and resources management law in his country.

His desire to help his country protect its natural resources is what ultimately led Mr. Marthen to the SJD program at Pace. Working in the climate change sector requires Mr. Marthen to deepen his knowledge and hone his skills in the field of climate change law, particularly focused on market-based instruments, a dominant method used in the contemporary global climate change regime. Since these issues are still very new to the Indonesian legal society, Mr. Marthen took full advantage of a Fulbright scholarship and chose what he describes as “the best doctoral program in the United States that focuses on environmental law, particularly [on the] climate change issue.”

Mr. Marthen has already witnessed first-hand progress in environmental protection. While serving as a climate change negotiator for Indonesia in Bali’s climate change conference, he observed that the decision making process in the international forum was being dominated by high-ranking government officers in the finance, energy, forestry, and social sectors, all with environmental protection duties. This effective collaboration is a phenomenon that Mr. Marthen hopes to implement in the climate change sector in order to foster sustainable development in Indonesia.

One of the greatest environmental challenges Mr. Marthen hopes to address involves creating market-based instruments at both the national and international level that not only provide economic benefits but also highly consider environmental protection, as well as the need for poverty alleviation instruments for the impoverished, who are likely to be negatively impacted by the effects of global warming. After receiving his SJD from Pace, Mr. Marthen plans to seek any available opportunity to work in the United States environmental legal field, either in an international environmental organization or at a University, before returning to apply his finely tuned skills in climate change law in Indonesia.

Ms. Tamuno received her LLB (Bachelor of Laws) from the University of Ife in Ife-Ife, Nigeria and her BL at the Nigerian Law School in Lagos, Nigeria. She continued her education in the United States, receiving her LLM in Environmental Law at Pace. Ms. Tamuno has been admitted to the bar as a Solicitor in England and Wales, the Supreme Court, Federal District Court (SDNY & EDNY), as well as in New York State. To date, she has led a distinguished career, with twenty years of legal experience abroad and in the United States. She has been working with the State of New York since May of 1997. She first served as an Administrative Law Judge in the Office of Temporary and Disability Assistance and currently works as a senior attorney in the New York State Department of Environmental Conservation.

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Ms. Tamuno has seen great steps taken to ensure that environmental investigation agencies (EIAs) are developed and implemented nationally, on a global scale.

It is her passion for environmental justice that led Ms. Tamuno to the SJD program at Pace. She is confident that receiving an SJD in Environmental Law from Pace, with “its distinguished faculty and academic resources,” will provide her with the best in advanced legal training from “a globally recognized top-rated environmental law program.” Ms. Tamuno remarks, “I had no doubt in my mind that the SJD program in Environmental Law was going to be challenging and rewarding.” Her goal, after attaining her SJD, is to use the knowledge and training she acquires at Pace in an academic capacity. Through her work, Ms. Tamuno strives to ensure that procedural environmental rights become a cornerstone of environmental governance in developing countries, particularly on the African continent.
Supreme Court Oralist Discusses Key NEPA Case

Richard Kendall, a senior partner in the Los Angeles office of Irell & Manella LLP in California, visited Pace Law School for a question and answer session with environmental law students on November 11, 2008. He was invited by Adjunct Professor Hon. Robert Spolzino, whose class, focused on the National Environmental Policy Act (NEPA) and State Environmental Quality Review Act (SEQRA), was studying Winter v. Natural Resources Defense Council (NRDC), a case which Mr. Kendall argued for the NRDC.

The case was filed in 2007 by environmental organizations concerned that the Navy’s use of mid-frequency active (MFA) sonar in training exercises would cause serious harm to various species of marine mammals, specifically those in the southern California waters. The environmental plaintiffs sought a preliminary injunction based on alleged violations of several environmental laws. The United States District Court for the Central District of California granted their motion for a preliminary injunction. The Navy appealed and the Court of Appeals for the Ninth Circuit upheld the preliminary injunction imposing restrictions on the Navy’s sonar training. The Navy then petitioned for a writ of certiorari and the Court of Appeals for the Ninth Circuit granted it.

Winter v. NRDC

The divided Supreme Court in NRDC v. Winter decided the case in favor of the Navy on the narrowest possible ground, finding only that in imposing two of the six mitigation measures included in the injunction the district court abused its discretion when balancing the harms, by underweighting the potential harm to the national security and overweighting the likely harm to the environment. The Supreme Court left four of the injunctive measures in place, rejecting without comment the Navy’s arguments that district court should have deferred to the Council on Environmental Quality’s (CEQ’s) alternative arrangements for complying with NEPA and that the military-readiness exemptions issued under the Marine Mammal Protection Act and the Coastal Zone Management Act for the Navy’s training activities trumped the use of injunctive relief to restrain procedural violations of the NEPA statute.

Mr. Kendall explained, “The Court’s decision to leave two-thirds of the injunction in place means that the NRDC achieved most of its objectives in this litigation. First, the Supreme Court’s decision affected only the last in the series of fourteen exercises covered by the injunction. Second, during the litigation, the Navy agreed to prepare an Environmental Impact Statement (EIS) for the next round of exercises. The proposed EIS incorporates most of the mitigation measures that conservation groups have long argued should be utilized to reduce the harmful effects of mid-frequency sonar. Third, although the Court determined

Environmental Alumni Share Advice and Insight

On November 20, 2008, a packed classroom of Pace Law students heard from an exceptional panel of practicing environmental alumni. On hand were: Christopher Rizzo (’01), an environmental litigation associate at Carter Ledyard & Milburn LLP in Manhattan; Janice A. Dean (’05), Assistant Attorney General in the Environmental Protection Bureau of the New York State Attorney General’s Office, where she is one of the primary attorneys on the State’s challenge to the relicensing of the Indian Point nuclear power plants; Carolyn Cunningham (’88), current co-Treasurer and Board Member (and former Executive Director) of Federated Conservationists of Westchester County and a former attorney with the Natural Resources Defense Council (NRDC); Lauren Fischer (’02), Assistant Regional Counsel at the U.S. Environmental Protection Agency, Region 2 and a former environmental trial attorney for the Department of Justice; and Gail Hintz (’92), Senior Attorney with the New York State Department of Environmental Conservation, Region 2 and the supervising Adjunct Professor of Pace Law School’s New York Environmental Law Externship. Also present was the new Executive Director of the Pace Energy and Climate Center, attorney Jamie Van Nostrand, who joined Pace Law after many years in private practice at Perkins Coie.

The alumni advised environmental students to make an effort to get to know the law school’s environmental faculty. The relationships built with faculty help in the future – when it comes to networking, recommendations, and hearing about opportunities. They unanimously agreed that it is possible to transition from government to private practice and vice versa and from environmental litigation to general litigation. They also emphasized that the primary skill that law students and new lawyers should concentrate on is being a good lawyer, including knowing procedure and the fundamentals of good lawyering, like researching, writing and building a good argument. Staying on top of new trends, such as e-discovery, can be helpful as well. For environmental positions in the government, the speakers encouraged students to intern in the office in which they would like to practice, and to gain practical experience through one of Pace’s clinics or externships. Students seeking work in public interest or at a nonprofit organization should consider volunteering as a way to make themselves known to the organization in case a full-time paying job arises in the future. In all cases, the panelists emphasized that, particularly in a tough market, students and new lawyers need to be tenacious, focus on building skills, work hard and be flexible.
Fall Lecture Series Highlights Leaders in Energy, Climate, and Environmental Policy

This fall, Pace Law School welcomed alumni, university faculty, and national experts to campus to carry on cutting edge discussions with the students.

John Williams (LLM ’96), Director of Energy Analysis for New York State Energy Research and Development Authority (NYSERDA), is a member of the Electricity Coordinating Working Group. The Group is currently working to create a New York State Energy Plan. Mr. Williams worked at the Pace Energy Center until 2001. The mission statements of NYSERDA and Mr. Williams’s department are to “use innovation and technology to solve some of New York’s most difficult energy and environmental problems in ways that improve state economy,” and to “provide objective information and analysis in a responsive manner to meet the needs of New York State’s energy policy stakeholders.” According to Mr. Williams, the key to reaching those goals is to be mindful that as long as work is being done to maintain a strong economy, there will always be a need for energy growth. Interestingly, this lecture took place one week after the AIG bailout. Currently, only thirteen percent of New York’s primary energy requirements are met from in-State resources. New York State resources consist of biofuels (thirty-five percent), hydroelectricity (fifty-five percent), and natural gas (eleven percent).

Dr. James Cervino is an Assistant Professor at Pace University Dyson College of Arts and Sciences, and a visiting scientist at the Woods Hole Oceanographic Institute. He visited Pace Law School to discuss critical scientific issues relevant to students of environmental law, science, and policy. Dr. Cervino’s lecture covered issues including global warming induced climate change; the ways in which increased thermal stress affects the planet; the carbon cycle and its relationship to the biological pump in the oceans and rainforests; how slight global temperature increases impact the food chain; and the significance of global warming induced CO₂ rise and pH changes in the upper ocean.

R. Kinnan Golemon, president of KG Strategies, LLC in Austin, Texas, and a nationally recognized leader in the energy and natural resources areas of law, visited Pace Law School the day before the election to discuss energy policy issues facing the new administration, energy lobbying, and oil and gas policy. Mr. Golemon is an “advocate on the supply side of the energy issue.” His clients include Shell Oil Company, Devon Energy Corporation, and Uranium Energy Corporation. As a lobbyist for the oil and gas industries, Mr. Golemon advocates for such practices as carbon capture and sequestration (CCS) and increasing the number of nuclear power plants over the next twenty-five years. He also believes that oil, natural gas and coal are indispensable to meeting our energy demands.

Anne Reynolds, Director of New York State’s Department of Environmental Conservation’s (DEC) Commissioner’s Policy Office, spoke at Pace to discuss correlations between energy and environmental policy in the State. The DEC has six priorities: combating climate change, creating green and healthy communities, creating a toxic free future, protecting unique natural resources, promoting environmental justice, and connecting New Yorkers to nature. The Commissioner’s Policy Office addresses the more difficult, interdisciplinary environmental problems not previously addressed within the DEC’s framework. Reynolds’ main focus is on climate change, which “does not neatly fall into one category” and which she described as the “biggest environmental challenge of our time.”

Since energy production is the largest contributor to climate change, Reynolds stressed that sound energy policies are necessary in order to address the Office’s first priority of combating climate change. She also described how the focus of these policies is shifting from the energy consumption perspective to the climate change effect perspective. As an example of this shift, Reynolds cited the Regional Greenhouse Gas Initiative (RGGI) regulation, finalized by the DEC the previous month.

Next Reynolds focused on the State Environmental Quality Review Act (SEQRA), which requires all state agencies to consider the environmental impacts of their decisions. This consideration requires creation of environmental impact statements. Reynolds described SEQRA as “the bedrock of environmental policy.” However, greenhouse gas emissions have traditionally not been considered in environmental impact statements. To address the disconnect between the current regulatory environment and the state priority of combating climate change, DEC recently released a guidance document for incorporating greenhouse gas emissions into environmental impact statements. This document is currently under public comment.

Given the current political climate, Reynolds sought advice from students and faculty on when and how climate change should be addressed within environmental impact statements. The discussion included suggestions for the types of sources that ought to be considered, as well as the methods employed for tracking greenhouse gas emissions. Reynolds stressed that a great deal of attention must be paid to ensure that decisions on greenhouse gas accounting are not made arbitrarily, as these decisions will have far-reaching effects on the State.
On October 24, 2008 the Pace Environmental Law Review presented its Colloquium, entitled “40 Years and Counting: Relicensing the First Generation of Nuclear Power Plants.” The Colloquium featured speakers who addressed current issues and problems arising from the fact that many of America’s oldest nuclear power plants' original operating licenses are expiring after their 40 year terms. With their relicensing applications pending, many of these older power plants are encountering significant legal and environmental opposition.

Anthony Z. Roisman, Esq., Managing Partner, National Legal Scholars Law Firm, was the keynote speaker at the Colloquium. In addition, many informed and involved panelists spoke, including: Tamar J. Cerafici, Esq., of Counsel, Ballard, Spahr, Andrews & Ingersoll; Brendan K. Collins, Partner, Ballard Spahr Andrews & Ingersoll, LLP; Diane Curran, Esq., Partner, Harmon, Curran, Spielberg, & Eisenberg, LLP; Maureen T. Koetz, Esq., Principal Partner, Koetz and Duncan LLC; Phillip Musegaas, Esq. (’05), Policy Director and Staff Attorney, Riverkeeper, Inc.; Jamie Van Nostrand, Executive Director, Pace Energy and Climate Center; and Richard Webster, Esq., Legal Director, Eastern Environmental Law Center. The panelists shared with those in attendance their various views on issues ranging from the proper regulatory framework for relicensing to judicial challenges to the relicensing process itself.

Tamar Cerafici, who currently focuses her practice on the planning, siting, and building of the new generation of nuclear power plants, explored the underpinning of the Nuclear Regulatory Commission’s strategy for the relicensing of the already existing 104 plants that are currently operating, supporting its strategy as environmentally sustainable and technically feasible. Addressing the issues arising from the more limited and controlled nature of natural infrastructure assets, Maureen T. Koetz emphasized that energy choices must be aligned with the availability of natural assets. Richard Webster, legal director of New Jersey’s only public interest environmental law firm, outlined problems with the relicensing of older plants, such as Oyster Creek in New Jersey, and suggested methods to improve the process. Diane Curran, a nationally recognized expert on nuclear safety and security regulations, pointed to several judicial challenges to efforts of the Nuclear Regulatory Commission to evade compliance with The National Environmental Policy Act’s (NEPA’s) licensing renewal regulations as hope that the courts will force NRC to conduct rigorous NEPA analysis of the current environmental risks posed by license renewal.

Speaking on the issues that arise when the NRC licensing processes intersect with environmental regulatory schemes of different states, which provide points of legal and political attack for project opponents, Brendan K. Collins discussed new strategies for arming a project against such challenges through the planning and permitting process. Phillip Musegaas, responsible for developing Riverkeeper’s legislative and policy position on nuclear power plant safety and security, called for a comprehensive revision of the NRC’s environmental review process that allows for more opportunities for the public to voice input on the wide range of environmental impacts posed by these plants. Finally, Jamie Van Nostrand of the Pace Energy and Climate Center, spoke on two issues in connection with the nuclear relicensing debate: the focus in energy planning on meeting future energy needs while reducing greenhouse gas emissions and the ways in which the varying profit margins in ownership of nuclear plants affect nuclear relicensing.

In his keynote, Anthony Z. Roisman addressed the imperative need for the NRC to improve the amount of public participation in its licensing decisions. The overall theme of the Colloquium supported a novel look at the way nuclear power plants are regulated and an opportunity for some of the more involved players in the field as well as the public to brainstorm such issues. PELR provided an exceptional forum for those interested in the future of nuclear power in the United States to gather and discuss the current issues of this important field.
In recent years, Pace Law School has made concentrated efforts to improve sustainable practices in areas such as energy efficiency, water conservation, recycling and waste reduction. As part of an ongoing commitment to fostering both school-wide and individual eco-awareness and improvement, Pace Law School has recently taken several steps toward achieving its goal to attain campus-wide environmental sustainability.

In Fall 2008 Pace Law School became the second law school in the nation to accept the American Bar Association (ABA) and the Environmental Protection Agency’s “Law Office Climate Challenge.” The Climate Challenge was created by the ABA, in cooperation with the EPA, as a way of encouraging law offices (including law schools, nonprofit entities, and law firms) to take specific steps to conserve energy and resources, as well as reduce emissions of greenhouse gases and other pollutants to slow global climate change. Pace Law School is meeting the challenge by participating in the ABA’s “Best Practices for Office Paper Management” program. To mitigate carbon dioxide equivalent greenhouse gas emissions from paper production, Pace Law School uses 30 percent recycled content paper for copying and printing and has placed blue recycling receptacles around campus and in offices. The current goal is to recycle 90 percent of mixed office paper. A campus-wide email, including instructions, was also sent out to the community asking for students, faculty, and staff to use double-sided printing when possible and encouraging the use of a statement in email correspondence reminding recipients to print only when necessary.

Participation in the Climate Challenge is only one of many recent initiatives by Pace Law School to promote sustainability. In October, both the law school and Pace University joined the Clinton Climate Initiative (CCI), a program created by former President Bill Clinton. The CCI will help to implement large scale energy saving building retrofits, in part through relationships with private sector energy service companies, manufacturers, and financial institutions. CCI projects help lower project costs while lowering energy bills and achieving greenhouse gas reductions, without using capital budgets or increasing operating expenses. CCI leverages the buying potential of organizations to achieve favorable pricing on energy-efficient and clean energy products and technologies.

Additionally, Pace Law School is involved with Pace University’s recently formed sustainability committee. According to Michelle Land (JD ’02), Program Coordinator of the Pace Academy for the Environment and co-chair of Pace University’s Sustainability Committee, "Pace Law School has historically been at the forefront of greening its campus through the Environmental Law Society, an active student body and a proactive building and grounds department. Pace’s university-wide Sustainability Committee builds on the Law School’s efforts with representation of all sectors of our campuses – students, faculty, staff, and administration. This Committee’s mission will assist with carbon emissions reductions in order to meet Mayor Bloomberg’s 2030 Challenge (30% reduction in 10 years), but will also reach beyond that focus to foster an ethic of sustainability throughout the University’s operations, curriculum, co-curricular activities and the individual behaviors of everyone in our campus community. Subcommittees have been meeting regularly since August to benchmark our current practices and policies. The Committee is now beginning to prioritize action steps for implementing campus greening initiatives across the University.”

To learn more about Pace’s sustainability efforts and the committee’s work, visit http://www.pace.edu/page.cfm?doc_id=32527.
Environmental Litigation Clinic Victorious with Vacature of EPA Pesticide Exemption

In the late 1990s, municipalities across the country dramatically increased pesticide applications over and into surface waters, purportedly in response to concerns about West Nile Virus, which can be transmitted to humans by mosquitoes. Many public interest groups, concerned that these increases in the use of mosquito "adulticides" posed a greater danger to human health and the environment than the mosquitoes did, began filing lawsuits alleging that spraying these adulticides into surface waters without a NPDES permit constituted violations of the federal Clean Water Act (CWA). The Clinic filed two of these suits on behalf of its clients, one against the City of New York in 2000, and another against Suffolk County in 2004. Concerned about the potential liability of their customers (and the potential for a resulting decrease in sales), the pesticide industry began lobbying, and ultimately petitioned EPA to commence a rulemaking to exempt such pesticide applications from CWA permitting requirements.

True to recent form, EPA responded to industry's concerns by promulgating a new rule exempting from CWA regulation two specific types of pesticide applications. The first exemption was for pesticides applied directly to surface waters for the purpose of killing mosquito larvae and other pests found in waters. The second exemption was for aerial spraying of pesticides over and near surface waters to kill pests living near waterbodies, such as adult mosquitoes. The EPA pesticides rule was first proposed in 2005 and was finalized in late 2006 (the "final rule").

In order for the CWA's permit requirement to apply, the material discharged into waters must fall within the statutory definition of a "pollutant." The pollutant definition includes "chemical wastes" and "biological materials." EPA's primary rationale for the final rule was that since these pesticides were being used for their intended purpose (e.g., to kill mosquitoes) at the moment they were discharged, they should not be considered "chemical wastes." EPA further reasoned that it would be illogical to treat chemical and biological pesticides differently for CWA purposes, so it deemed the exemption to apply to biological materials as well (despite the fact that Congress used the term "materials" instead of "wastes" with respect to materials that are biological in nature.

In the final rule, EPA conceded that to the extent pesticides end up in water after they have completed their intended purpose, such "residual" pesticides are pollutants. However, it reasoned that because these residual pesticides are not pollutants at the time of discharge, but rather only become pollutants at the point in the future when they have completed serving their intended purpose, they should be considered non-point source discharges and are therefore not subject to NPDES permitting.

The Environmental Litigation Clinic, representing Waterkeeper Alliance, Peconic Baykeeper and Long Island Soundkeeper, filed a petition challenging the final rule in the U.S. Court of Appeals for the Second Circuit. Other environmental groups filed similar petitions in the First and Ninth Circuits. A variety of pesticide industry petitioners filed in several other circuits across the country, arguing that the final rule did not go far enough to protect them, and that the rule created a new obligation for pesticide applicators to obtain NPDES permits for pesticide applications that fall outside the two exemptions established by the rule. In all, petitions challenging the final rule were filed in eleven different circuits, and all of the petitions were consolidated by the Panel on Multidistrict Litigation in the 6th Circuit in Cincinnatti. Briefs were filed in 2007, and the Court heard oral argument in April 2008.

On January 7, 2009, the court issued its opinion granting the environmental groups' petitions to vacate the final rule and denying the industry petitions. The court pointed out that the EPA had conceded in the final rule that all pesticide applications are made from point sources, and that pesticide residues meet the definition of a pollutant. The court then rejected EPA's position that the exemption makes sense because such residues are not yet pollutants at the moment they are discharged:

The EPA offers no direct support for its assertion that a pesticide must be "excess" or "residue" at the time of discharge if it is to be considered as discharged from a "point source." This omission of authority is understandable, as none exists. The Clean Water Act does not create such a requirement. Instead, it defines "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). The EPA's attempt at temporally tying the "addition" (or "discharge") of the pollutant to the "point source" does not follow the plain language of the Clean Water Act. Injecting a temporal requirement to the "discharge of a pollutant" is not only unsupported by the Act, but it is also contrary to the purpose of the permitting program, which is "to prevent harmful discharges into the Nation's waters." Defenders of Wildlife, Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 127 S.Ct. 2518, 2525 (U.S. 2007). If the EPA's interpretation were allowed to stand, discharges that are innocuous at the time they are made but extremely harmful at a later point would not be subject to the permitting program. Further, the EPA's interpretation ignores the directive given to it by Congress in the Clean Water Act, which is to protect water quality. As the EPA itself recognizes, "Congress generally intended that pollutants be controlled at the source whenever possible." NPDES Water Transfers Rule, 73 Fed. Reg. 33,702 at n. 6 (Jun. 13, 2008) (to be codified at 40 C.F.R. pt. 122). Here, it is certainly possible for pesticide residue to be controlled at its source because the discharge of the pesticide introduces such residue into the water.

Nat'l Cotton Council of Am. v. U.S. EPA, 553 F.3d 927, 939 (6th Cir. 2009)(internal citations modified for reference purposes). The court ultimately concluded that the statutory text of the CWA foreclosed the final rule. Id. at 940. The court pointed out that the final rule did "not account for the differences between chemical and biological pesticides under the language of the Clean Water Act," and that "because the Act provides that residual and excess chemical pesticides are added to the water by a 'point source' there is no room for the EPA's argument that residual and excess pesticides do not require an NPDES permit." Id. As a result, the court concluded that the rule had to be vacated and that "dischargers of pesticide pollutants are subject to the NPDES permitting program in the Clean Water Act." Id. Congratulations to the Environmental Litigation Clinic and its clients on this important victory!
Pace Energy and Climate Center: New Contracts, Contacts

The Pace Law School Energy & Climate Center is busier than ever with several new contracts under the leadership of Jamie Van Nostrand (see Spring/Summer 2008 edition of GreenLaw). The first new contract is the New York State Biofuels Roadmap. The Roadmap’s purpose is to guide state policy makers in their decisions regarding biofuels promotion. This promotion was spurred by the 2007 Energy Independence and Security Act, which established a Renewable Fuel Standard of 15 billion gallons of conventional biofuels and 21 billion gallons of advanced biofuels by 2022. The Roadmap will help policy makers arrive at more principled decisions as they fulfill this mandate. As Van Nostrand noted, New York wants to avoid the mistakes that Iowa made with regard to using corn as a feedstock, which resulted in high corn and food prices and several bankrupt ethanol producers. The Center created an expert team to produce the Roadmap. Team members include researchers from Cornell University and a number of SUNY campuses, from energy and environmental consulting firms such as Energetics, Energy Environmental Research Associates (EERA) and Antares Group, as well as from the Northeast States for Coordinated Air Use Management (NESCAUM). The Center, led by Zywna Wójnar, will serve as the team leader and project manager. Research on agriculture and woody biomass feedstock production, biofuel production processes, biofuel industry economics, economic development, public outreach and participation, and related public policy development will be included in the Roadmap. State policies based on this Roadmap could bring major economic benefits to New York State.

Another new contract resulted from a New York State Public Service Commission (PSC) proceeding that occurred earlier this year. The contract calls for a $500,000 study of the economic and health impacts resulting from the ten day long electrical outage in Con Edison’s Long Island City (LIC) network that occurred in July 2006. The Center was selected to conduct the study in September 2008. In furtherance of this study, the Center has partnered with LaGuardia Community College, and bio-statistician and econometrician, Dr. Haftan Eckholdt. The Center and Eckholdt designed a survey to explore the disparate economic impacts resulting from the outage as well as to provide affected residents a forum through which they can describe the individual impacts of the extended outage. LaGuardia staff and students will be involved in gathering the data through personal and telephone surveys in the LIC area. Van Nostrand stated that this study will “probably be the leading study on the economic impact of an extended electrical outage.”

This fall, Center Deputy Director Tom Bourgeois received the National Combined Heat and Power (CHP) Champion Award from the United States CHP Association for his leadership in CHP policy advocacy. CHP involves using the heat generated from the production of electricity for another purpose – such as heating or cooling a building, or for industrial processes – rather than wasting it. Bourgeois is the co-managing director of the Northeast Regional CHP Applications Center. His CHP work includes developing an online guidebook on CHP siting, permitting and codes issues in New York State as well as performing economic analyses on the market potential of CHP. Upon receiving this award, Bourgeois stated that CHP is one of the most cost-effective means of reducing greenhouse gases and that a goal of the Center was to educate end-users on this cost-effectiveness. Van Nostrand further stated that CHP advocacy is currently the Center’s strongest area. The Center recently submitted comments in a PSC proceeding to encourage New York State to include CHP in its Renewable Portfolio Standard.

To support the tremendous amount of work being performed at the Center, two new staff members have been hired. The first is Stefan Minott, who is working as a research director. Before coming to the Center, Minott evaluated the investment opportunities and risks in the waste-to-fuels industry at the hedge fund environmental desk of RNK Capital. Currently he is working as the senior manager of some of the CHP, agro-eco-industrial systems and sustainable biomass research. The second new hire is Dana Hall (JD ’08), who serves as the energy policy coordinator. Hall is currently working on renewable energy projects affecting the solar and small hydroelectric power industries. Additionally, the Center has revamped its student intern program. Five Pace Law and LLM students are currently working as research assistants in support of the Center’s work, gaining the practical experience needed to become future leaders in energy and climate change policy.

Check out the Center’s new website at http://www.pace.edu/page.cfm?doc_id=23241 to learn more.

Hon. Robert Spolzino Brings Real World Experience to NEPA/SEQRA Course

The Honorable Robert A. Spolzino, Associate Justice of the Appellate Division, Second Judicial Department of the Supreme Court of New York, applied his knowledge and experience as a judge and lawyer this past fall in the Pace Law classroom. He taught a seminar on the National Environmental Policy Act (NEPA), and its New York counterpart, the State Environmental Quality Review Act (SEQRA). As a former LLM student in Pace’s environmental law program, Spolzino enjoyed his first law school course as a professor. “The first couple of classes were intimidating because the students were asking such good questions and really pushing me,” he said. “Their comments helped me pick up on issues, and we discovered the law of NEPA/SEQRA together.”

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Pace’s beloved and remarkable Professor Dorothy Marie Miner passed away on October 21, 2008. Each fall semester at Pace Law School, Professor Miner co-taught Historic Preservation Law with Professor Nicholas Robinson. At the end of every semester, the students had an opportunity to present the projects they worked on all semester to their classmates and professors. The Fall 2008 end-of-semester symposium was held in honor of Professor Miner who, according to Professor Robinson, was advising students from her hospital bed right up until the very end.

Past students of Professor Miner remember her fondly and express deep sympathy for her family. Upon learning of Professor Miner’s passing, third-year law student Amy Zamenick, expressed the following:

“She really was an inspiration. She was incredible. I was, and am still, working on preserving an historic factory and she knew more than my state historic preservation officer. She taught me what to look for and really strengthened my work. … She was a constructive and challenging professor, but more, she was relatable, kind, and truly interested in her students’ work. The entire Historic Preservation community suffered a tremendous loss. Eric Sharp, also a former student of Professor Miner, had this to say:

Dorothy Miner was a really special teacher. She probably knew more about historic preservation law than anybody, and it was obvious how much she enjoyed teaching it. In class, she came across as a person who was just having a conversation with you. It was like she would have been just as happy doing it even if she weren’t teaching a class, like she was just doing it for fun. To me, she was like an academic grandmother. When I would visit her office, she had gifts for me: ideas, information, documents, connections and people to talk to. She wanted to see her students do well. She made a big impact on me and I am sure that many, many other students of hers would say the same.

Pace is honored to have had such a distinguished individual as Professor Miner teach its students. She is known for developing legal protections for historic structures and places nationwide. For example, the layout of lower Manhattan is a registered historic landmark because of Professor Miner’s work. Professor Miner was also an instrumental player in the famous Penn Central case, where the Supreme Court upheld the Landmarks Commission’s denial of a permit which would have allowed for the construction of a 55-story tower above Grand Central Terminal, and affirmed the validity of the Landmark Law.

Professor Miner’s family has conveyed her legal archives on preservation law to the Pace Law Library, for our original archives collection. In the fall, Pace Law School will host a ceremony in honor of Professor Miner, where the school will officially accept this important gift.

A few months after her passing, Professor Miner received the New York State Individual Achievement Historic Preservation Award from the New York State Office of Parks, Recreation and Historic Preservation. Her citation read: “Preservation law pioneer, advocate, educator and mentor, Miner was a powerful force for civic good, a fearless voice for the rule of law and the built environment. Ms. Miner was instrumental in the development, implementation and defense of preservation laws at local and statewide levels, and her pioneering work was significant in establishing preservation law at the national level.” Fortunately, Professor Miner knew of this award before her death.

Also this year, the New York City Law Department renamed its annual award for outstanding counsel in honor of Professor Miner. The award was established in 1991, and Dorothy Miner was its first recipient. The award will now be known as the “Dorothy Marie Miner Award for Outstanding Service as Counsel to an Agency” in recognition of her service and contributions.

Spolzino’s interest in environmental law stems from his days as Village Attorney for Mount Kisco, New York. “I found that I was doing lots and lots of environmental law,” he said. “In municipal and land use law, SEQRA was the driving force, and I soon realized that any municipal lawyer has to really know SEQRA.” He applied his knowledge of the law to educate his students, focusing on three broad goals for the course: “I wanted them to have a substantive understanding of the law of environmental impact review, I wanted them to understand the methodology by which you resolve issues, and I wanted them to understand the context of the law, to expose them to a lot of factual cases so that they get a feel for the issues.”

One of the benefits of having a professor like Spolzino is the real-world skills that he brings to the classroom. The issues surrounding NEPA and SEQRA are not cut-and-dry, he stressed. “When the partner comes to you with an environmental case, I want my students to be able to focus on the issues right away, because nobody will know the answers instantly.” Furthermore, he emphasized that the law is always evolving. “There was a huge bundle of cases in the 1970s when the law was new,” Spolzino explained. “Now we are seeing fewer big principles, and more nuanced applications.”

Spolzino contributed much to his students’ knowledge, but also learned a great deal in the process. “I really enjoyed teaching this course,” he said. “It gave me the opportunity to delve into issues that I don’t see regularly. Also, as judges we sometimes lose the larger focus because of the details. When you’re teaching a course, you have to place the individual issues in the broader context.”
Kheel Center Trains Lawyers in the Resolution of Environmental Interest Disputes

The Theodore W. Kheel Center on the Resolution of Environmental Interest Disputes was launched in April 2008 with a generous grant from Mr. Theodore Kheel, the famed labor mediator and arbitrator. The Kheel Center is an exciting addition to Pace Law School’s highly ranked environmental law program. Students will work alongside attorneys on environmental interest conflicts of critical importance to communities, states, regions, and nations that require innovative resolution strategies and forums. The Kheel Center will conduct seminars, conferences, and CLE programs, and will produce reports and articles on this emerging area of practice. The Kheel Center’s mission is to use the skills and imagination of attorneys in resolving environmental interest conflicts. Attorneys are experienced at gathering and interpreting facts and predicting outcomes by applying legal doctrines to disputes. Many current conflicts over land use and preservation of its resources are of critical importance to numerous parties with a variety of interests. Often times such conflicts are not suitable for resolution in the traditional adjudicative forums because the rights of the parties may not be well established or may still be evolving. It is important to accommodate all affected interests in settlement, and that is where alternative environmental dispute resolution is useful. As Professor John Nolon noted, this is the “practice of law in new way!”

One of the Kheel Center’s first public events, an innovative one-day conference co-sponsored by the New York City Bar, the Kheel Center and Pace Law School, was held in October 2008. The conference consisted of morning panel discussions, a luncheon followed by concurrent breakout sessions, and afternoon panel discussions. The panels held throughout the day included: how rights-based litigation can teach lawyers about the successful settlement of environmental interest disputes; effective advocacy of environmental disputes before administrative tribunals; and resolving environmental disputes in non-institutional settings. During the breakout sessions, conference participants’ brainstormed issues affecting lawyers’ involvement in environmental interest dispute resolution in order to develop perspectives on the unique role lawyers play in fact gathering and resolution of such conflicts.

Robert Kheel of Willkie Farr and Gallagher, LLP and Dean John D. Feerick of Fordham University School of Law spoke at the conference luncheon. Robert Kheel is the son of Theodore Kheel, and Dean John D. Feerick is the founder and director of the Feerick Center for Social Justice and Dispute Resolution at Fordham. Dean Feerick also serves as the chair of the New York State Commission on Public Integrity. Conference goers had the opportunity to hear Mr. Theodore Kheel himself speak at the luncheon. Mr. Kheel spoke of how proud he is to be a lawyer, and to have a son and a daughter who are also lawyers. He commented, “I have always been concerned with the necessity of getting the facts straight. Lawyers know how to do that.” Mr. Kheel also expressed his excitement that Pace Law School has undertaken a center to resolve environmental interest disputes. Mr. Kheel sees the Center as a way for him to pay tribute to the legal profession of which he is so fond.

Pace Law School is tremendously grateful to Mr. Kheel for his generous gift, and as a thank-you to him, Pace will ensure that the Center grows strong and remains a pillar at the Law School. The Law School pledges to support the Kheel Center’s activities both now and in the future.
Faculty Accomplishments

Professor David Cassuto served as a judge for the Appellate Moot Court portion of the National Animal Law Competitions held at Harvard Law School in February.

Professor Karl Coplan was recognized for his accomplishments in teaching, scholarship, and service and promoted to full professor.

Assistant Dean and Adjunct Professor Alexandra Dunn was nominated to serve a second year as Education Officer of the American Bar Association’s Section of Environment, Energy, and Resources (SEER) and to a three-year term on the Environmental Law Committee of the New York City Bar Association. Dunn presented a lecture entitled “Climate, Water, and Municipalities” to the Hudson River Watershed Alliance in New Paltz, NY and delivered the Introductory Lecture on the Clean Water Act Overview in Washington, DC at the ALI-ABA 39th Annual Advanced Course of Study in Environmental Law cosponsored by the Environmental Law Institute and the Smithsonian Institution. Dunn delivered a paper on the connection between urban greening projects and poverty alleviation in Mexico City at the 6th Annual Colloquium of the International Union for Conservation of Nature (IUCN) Academy of Environmental Law.

Environmental Litigation Clinic Supervising Attorney and Adjunct Professor Daniel Estrin spoke on “Developments in Environmental Law: A New York ‘Year in Review’” with Assistant Dean Alexandra Dunn, and Adjunct Professors Seth Davis and Brian Troy. Professor Estrin also presented a History of Environmental Law in the Hudson River Valley to Leadership Westchester.

Professor John Nolon was selected by Westchester Magazine as one of Westchester’s 12 Most Influential Citizens in recognition of his citizen training work conducted over the past 15 years in the Land Use Law Center’s training programs. Nolon was also selected to receive the National Planning Leadership Award for a Planning Advocate from the American Planning Association. The award recognizes innovative planning efforts and is among the planning profession’s greatest honors. Nolon presented his paper on “The Land Use Wedge: Climate Change Mitigation” at a national conference on Transportation and Land Use Planning held at the Rudin Center at New York University and co-sponsored by the Land Use Law Center. Nolon also wrote with Adjunct Professor Jessica Bacher, “The Role of Lawyers in Resolving Environmental Interest Disputes,” which was published in the Real Estate Law Journal Winter Edition, and “Resolving Local Land Use Conflicts Through Mediation,” published in the New York Law Journal Real Estate Section.

Dean Emeritus Richard L. Ottinger presented a paper on the problems of biofuels cultivation in developing nations at the 6th Annual Colloquium of the IUCN Academy of Environmental Law in Mexico City.

Professor Ann Powers was nominated by the American Bar Association President to serve on the Standing Committee on Environmental Law. Powers also presented a paper on the effects of based sources of ocean pollution on low-income coastal communities at the 6th Annual Colloquium of the IUCN Academy of Environmental Law in Mexico City.

Professor Nicholas Robinson was recognized for his lifetime accomplishments in the field of international environmental law throughout Weaving a Web of Environmental Law, a 2008 publication launched by the IUCN and written by Barbara Labusche. Robinson presented a paper with Monica Contreras (LLM ‘08) on strengthening environmental impact assessment to protect dis-enfranchised communities at the 6th Annual Colloquium of the IUCN Academy of Environmental Law in Mexico City. Robinson also delivered the keynote address at the 9th Global Conference on Environmental Taxation (GGET) held in Singapore in November 2008, entitled “Melting Down Financial Investment Markets: Hedges Against Wider Market Collapse.”

Executive Director of the Pace Energy and Climate Center and Adjunct Professor Jamie Van Nostrand was appointed by the New York State Energy Research and Development Authority to a three-year term on an Advisory Group that will provide guidance on the use of proceeds in connection with implementation of the Northeast Regional Greenhouse Gas Initiative. Nostrand gave a speech on Climate Change at ILW at a NYSRA Environmental Section Meeting. Nostrand presented a lecture at New York Law School entitled “(Pipe)line Dreams: Solving the Puzzle of Energy Independence.” Nostrand was also interviewed on “Capital Green Scene,” a radio show that airs every Saturday at 1 p.m. on WCVR (88.3-FM, The Saint), the Siena College radio station.

Student Accomplishments

Andri Marthen (SJD candidate) presented a paper on palm oil plantations and their environmental impacts in Indonesia at the 6th Annual Colloquium of the IUCN Academy of Environmental Law in Mexico City.

Steven Sarno (’09) received first place in the 2008 Professor William R. Ginsberg Memorial Essay Contest sponsored by the New York State Bar Association’s Environmental Law Section. His paper was entitled, “In Search of a Cause: Addressing the Confusion in Proving Causation of a Public Nuisance.” Lauren C. Stabile (’09) received third place in the contest for her paper, “Saving the Earth... For Whom? Asthma & The Political Influence Sufocating America’s Most Vulnerable Populations.” Kelly Whiten (’11) was awarded the Association’s Environmental Minority Fellowship for summer 2009 environmental work in the public sector.

Stephanie Melowsky (’09) and Stephen Turano (’09) contributed to the Land Use Case Law Update article by Professor John Nolon and Adjunct Professor Jessica Bacher, published by the New York Law Journal in the Real Estate Law Section. Stephanie and Stephen researched, summarized, and organized over 30 cases that provided the basis for the article published.

Alison Reynolds (’10) and Matt Reed (’09) completed a comprehensive update to a chapter on state climate initiatives in the American Bar Association’s top selling book Global Climate Change and U.S. Law.

Elaine Hsiao (’10) co-edited La Conservación en las Fronteras: El ciclo de proyectos aplicado a la creación del parque binacional “Padre Fabretto.” The book is a collection of studies by an international, tripartite and multidisciplinary group in support of a transfrontier peace park initiative.

Alumni News/Achievements

Kristen Cevoli (JD ’07/LLM ’08) is now an Associate in the Fisheries Department, Philadelphia office of Pew Charitable Trusts.

Noelle V. Crisalli (JD ’06) co-authored a “Land Use Law Case Law Update,” with Hocherman Torellera & Wekstein, LLP colleague Henry M. Hocherman. Crisalli also appeared in the Summer 2008 issue of the New York State Bar Association's Municipal Lawyer.

Emily Collins (JD ’04), is now a Clinical Assistant Professor and Supervising Attorney in the Environmental Law Clinic at the University of Pittsburgh School of Law.

Denise Leong (JD ’08) and Marie Quintin Denise (JD ’08) are working with the Air Branch of the Environmental Protection Agency, Region 2.

Kerri Murphy (JD ’08) is working at the Coalition for Buzzards Bay in New Bedford, Massachusetts as Advocacy Specialist providing policy and legal support to the Coalition for Buzzards Bay’s advocacy program. Murphy is primarily doing municipal advocacy and Federal Clean Water Act case development, and researching new wastewater and stormwater technologies to support sustainable watershed development.

Samuel Brown (JD ’07), an attorney with the EPA General Counsel’s Office in DC, and Jeffrey Odefey (JD ’00), an attorney for the Waterkeeper Alliance, have played roles in the promulgation of an important EPA regulation that will establish standards for stormwater and wastewater discharges from construction and development sites. The proposed rule can be found at 40 C.F.R. Part 450.

Robyn Hanson (JD ’06) and Stephanie Talbert (JD ’06) have recently joined the Environmental Enforcement Section of the Department of Justice’s Environment and Natural Resources Division in Washington, DC.

Fred Soltau (SJD ’08) and Deepa Badrinarayana (LLM ’07, SJD ‘07) have received contracts for publication that will enable them to convert their dissertations into books. Soltau has just signed up to publish his dissertation with Cambridge University Press. Badrinarayana is weighing an offer from Carolina Academic Press.
In July 2008, Pace Law Assistant Professor Ann Powers and Alexandra Dunn, Assistant Dean of Environmental Law Programs and Adjunct Professor of Law, participated in the fourth annual “River Summer” along the Hudson River. River Summer, founded in 2004 by Stony Brook University and funded by the Andrew W. Mellon Foundation, brings together teachers and scientists from all disciplines to learn from each other in a four-day, ship-based conference along the river. The conference takes place each year on a ship called the Sea Wolf that was at one point a commercial trawler, but has since been turned into a research vessel by Stony Brook. On this ship, River Summer participants cruise from port to port along the river learning from participant presentations and taking part in research activities.

In 2008, the program was divided into two modules, each based on the theme “Law and Policy on the Hudson.” In keeping with this theme, participants strove to explore all aspects of the Hudson River. Dunn set off on the first module from the Harbor to the Troy Dam, while Powers joined on the second module on the ship’s return trip. Both Powers and Dunn reported that they learned a great deal from their experiences, and collaborated with interesting people from other disciplines. Participants on both ships came from diverse backgrounds, and each module contained DEC experts, fishery biologists, geologists, and English professors, among others.

During the course of their journeys, Dunn and Powers participated in many shipboard activities. Every day, at least one participant presented on a topic related to the Hudson River. Dunn discussed the legal battles along the Hudson, including the 1972 Storm King Mountain case, and Powers taught the participants about the non-point source pollution policies along the Hudson River.

One of the highlights of the trip however, was that each module chose one policy point to promote as a result of their experiences. Powers’ module decided to encourage students to participate on a local level to protect the Hudson River, and Dunn’s module analyzed the Hudson’s tributaries. Through analyzing the Hudson’s tributaries, her module concluded that the degradation in those waters needed to be addressed just as much as degradation in the main Hudson in order for the water quality in the Hudson to improve. To do so, they decided to advocate for local education and community involvement with local tributaries.

Future environmental initiatives were not the only results of River Summer. Dunn and Powers both contributed to current research on mid-sized sturgeon populations by using the trawl to catch fish. In addition, Dunn was able to collaborate with another River Summer participant in a class that she taught on environmental justice in the Fall 2008 semester. Although the theme for next year’s River Summer will be different, Pace Law looks forward to future collaborations with River Summer along the Hudson River.