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SYMPOSIUM TRANSCRIPT

INTRODUCTION

Elizabeth Richer: Good morning, everyone and welcome to the Public Interest Law Review symposium on environmental justice. My name is Elizabeth Richer, and I am the editor-in-chief of the Public Interest Law Review which is commonly known as PILR. Each year we hold a symposium on an important topic in public interest law. PILR publishes three issues per year: our General Assembly issue, our General Topics issue, and the Symposium issue. Our authors include academics, practitioners, legal professionals, students, and individuals who have dedicated their careers to making our world a more equitable place. I want to thank you all for dedicating your time today to this extremely important topic. Environmental Justice is a movement that seeks to ensure that there is equity regarding the development, implementation, and enforcement of environmental laws and regulations and policies. Our hope is that today's events will add to the conversation surrounding this very important issue and that it will encourage members of our community to further engage in the conversation regarding environmental justice. Today's agenda is filled with speakers and panels of practitioners and academics who have dedicated their careers to environmental justice issues. First you will hear from Professor James May who is a Visiting Professor of Law at Pace University. Mr. May will discuss trends in environmental justice. Following Mr. May's remarks we will hear from our keynote speaker, Senator Hashmi, who is integral in introducing the Virginia Environmental Justice Act. In the afternoon, there will be three panels on climate change and justice, evolutionary issues in environmental and energy justice, and federal and state environmental justice initiatives. These panels will be moderated by professors Noah Sachs, Danielle Stokes, and Joel Eisen. I want to thank these professors, they have dedicated countless hours and provided invaluable guidance regarding this symposium. I'd also like to thank our panels and speakers for giving their time to participate in today's event; the faculty and staff of the University of Richmond School of Law for their support and assistance; Carl Hamm who has quite literally kept Richmond running these past three years; and PILR's amazing staff and editorial team for all of their hard work. I would like to especially thank Natalie King and Mallory Chesney who have been working on putting together this event since this summer. Before we get started, I want to remind you that our five CLE credits are still pending, and Mary Ruth Keys will be in touch in the coming weeks to verify your attendance and apply CLE credit. Please make sure that you are signed into Zoom with your username and password in order for us to identify you for CLE credit purposes. Now to get us started our symposium editor Natalie King will introduce our first speaker.

TRENDS IN ENVIRONMENTAL JUSTICE

James May

INTRODUCTION

Natalie King: Hi everyone. I would like to introduce our first speaker which is James May. James May is a Visiting Professor of Law at Pace University and the University of Utah School of Law and is a Distinguished Professor of Law, founder of the Global Environmental Rights Institute, and a co-founder of the Dignity Rights Project at Weiner University Delaware School of Law. Most recently, May is the immediate past President and co-founder of Dignity Rights International and is a board member of the Normandy Chair for Peace, the Earth Law Center, and the Green Watch Institute. He serves as a Special Representative on Harmony with Nature for the International Council of Environmental Law and has chaired the Environmental Bar Association on Environment, Energy and Resources' Task Force on Environmental Justice, which cultivated the enactment of resolutions on environmental justice and the establishment of a new ABA Presidential Task Force on Environmental Justice. He is an inductee of the American College of Environmental Lawyers, Phi Kappa Phi the Delaware Valley Environmental Inn of Court, and the National Judicial College. May has authored, co-authored, edited, or co-edited 21 books and has also published 52 book chapters. He has received numerous awards and recognitions including from the American Bar Association, Sierra Club, American Canoe Association, Pace University Hub School of Law and Widener University. He is recognized as one of the world's most influential environmental lawyers and without further ado, I'd like to welcome Professor May.

SPEAKER

Prof. James May: Thank you Natalie . . . so good morning everybody, let me first thank Richmond School of Law for inviting me to join this wonderful symposium and the law review for putting all this together and Natalie for that, uh, terrific introduction, um, I'm here with a job to do and that is to provide an overview of environmental justice for sort of you know trends in environmental justice it's, uh, to set up in some ways or foreground the conversations that will be part of the entire day. Um now let me check I've as well just shared my screen, are we good here as well?

Carl Hamm: It looks great.

Prof. James May: Okay, thank you. So, in about twenty minutes everybody, if you are sitting down with a cup of coffee by the time you finish the cup of coffee I'll be finished, but this is just to provide an overview, it's not everything that anyone would ever want to know about environmental justice. I really stand on the shoulders of giants of this field. I'm providing an overview and an outline of this field and its potential for improving the human condition going forward. And it has six parts and that is just framing what it is uh, providing some remarks on how there are trends and disproportionate effects of environmental policies and other policies, trends in the environmental justice movement in the United States now the EJ movement isn't only a U.S phenomenon but I'll be focusing principally on that and then some legal trends and some challenges and legal causes of action that you may wonder about whether they are available to address to environmental injustice, and policy trends focusing on trends over the last couple of years, and then some recent developments at the professional level with the American Bar Association. So first is framing. A lot of words. So, so look uh you know environmental justice has various definitions and uh you . . . you could ask 100 law professors and you get 100 different definitions, and the bottom line is it promotes the idea that everyone everywhere is entitled, uh, to equal dignity that, um, everyone should have the same opportunity. Well, the Environmental Protection Agency has what's viewed to be sort of the leading definition in environmental justice, the...that's most adopted but there are other definitions, in Senator Booker's environmental justice bill and by the ABA and various states. But it's "the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income, with the respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." So that's from the EPA. That's the EPA definition. Alright so more framing is just from courts you may wonder what . . . what are courts doing and there'll be more on this in a moment but these are also uh, uh, you know, from the Fourth Circuit for example, about how environmental justice isn't just a talking point. You know, we talk a lot about it but it's meant to have meaning. And this goes back to the meaning, uh, that was ascribed to environmental justice by the person whom many view as being one of the framers of environmental justice, Robert Bullard, who said that it's about a right to a healthy and livable environment for everybody. Okay so that's just some framing, you may wonder about "Okay well how did this start? What are the trends?" and so on, and again that is not everything and anything, there are entire courses on environmental justice, but at least going back some 40 years or so we've known, you know, we know that environment . . . or pardon me that federal and state polices overburden certain communities. Primarily communities of color, primarily black and brown people, primarily the poor so that's been known in the early in the

1980s there was more science behind that. Just to demonstrate that in particular, black and Latino are much more likely uh, to be in fence . . . what are called fence line zones than are our white Americans are. Fence line zones are zones of uh, uh, toxic and hazardous exposure. The same goes for tribal communities uh, uh, Native Americans are much more likely to be subject to uh, the . . . the disproportionate effects of environmental policies. I'm not telling you anything you don't already know. . . uh . . . And these are exacerbated by stresses in society, you know, by recessions, by inflation, by war, and also by disease like Covid-19. So Covid-19 exacerbated these disproportionate effects of environmental policies in communities of color and that's what this slide shows, test after test, study after study um shows that being a Black person in America, for example, makes one much more likely to be . . . uh . . . uh . . . subject to disproportionate adverse effects of environmental policies that are exacerbated by all the other stresses of society.

So about the Environmental Justice movement at-a-glance. So again, this isn't a substitute for everything that's been written and discussed about it, but just to give you some sense as to how it started and so on. Many people said the environmental justice movement really started the day before Dr. King was assassinated in Memphis. He was there on behalf of sanitation workers. And many say that's really the beginning of the environmental justice movement. In 1971, the very newly formed President's Council on Environmental Quality first acknowledged that there were disproportionate effects. Within the next several decades, there was study after study and protests after protests to draw attention to environmental injustice, including in Warren County, North Carolina, about a PCB landfill, and in Houston and East Los Angeles, in Wilmington, Delaware and Chester, Pennsylvania, in cancer alley in Louisiana, all over. And the General Accounting Office found that race is the single most prominent feature in the siting of hazardous waste facilities. Again, that's the federal General Accounting Office. So we've known. We've also known it at the state level. In California, the Waste Management Board conducted extensive studies in the early 1980s, reaching the same result, as did the United Church of Christ Commission for Racial Justice, an incredibly important commission to chronicle these effects in the late 1980s. And by the late 1980s, again, we see it throughout this experience with environmental injustice throughout the United States. And 1990 we start to get . . . address it as a policy matter. Many say beginning with Robert Bullard's, *Dumping in Dixie*, a book about this phenomenon. In the same year, EPA established a working group on Environmental Equity. And in the next year, in 1991, there was this other super important conference, sort of like the Stockholm conference, but for environmental justice: the first National People of Color Environmental Leadership Summit, and it came up with 17 principles to address environmental justice. The next year, the *National Law Journal* published an extensive report showing that, again, race is the single most predictive factor

on exposure to disproportionate effects of environmental policies. The next year after that, there was the establishment of the National Environmental Justice Advisory Council, many of you know it and love it as NEJAC. And President Clinton issued an executive order 12898 which remains the top piece of federal law, if you will (as close as we can get to it), addressing environmental justice. And then it just continues on, over the next decade or so, more programs, policies, and plans to address environmental justice, and the updates to the prior reports that I mentioned, and the introduction of federal legislation in 2017 by Senator Booker, and then things came to a stop for a bit. And when President Trump assumed office, the President didn't promote environmental justice through 12898. He stopped supporting NEJAC, in essence, calling these kinds of programs anti-American, part of anti-American propaganda. EPA continued with these programs, to do the best that it's could under the circumstances, to promote environmental justice.

And that brings us to more recent times with the election of President Joseph R Biden from Delaware. [At the] federal, state, local and professional level, there's been a resurgence of interest and acumen toward addressing environmental justice in the United States. So you may wonder, as law students and lawyers, what does the law have to say about all this? Well, as we learned, it's not much. There's very thin soup, legally, to promote environmental justice claims, and I've worked on some of them. It's not easy going. You may wonder why is that? Well, part of it is just how we interpret the Constitution of the . . . the federal constitution, that equal protection clause that you know and love that you learned about. Environmental Justice hasn't found much of a home in legal claims there because the Supreme Court has said that, for the equal protection clause to apply, and strict scrutiny to governmental action, we have to have evidence of impervious and intentional racial discrimination. That's *Washington v. Davis*. So just discriminatory effects, that doesn't rise to the level of strict scrutiny analysis under the equal protection clause. So you may wonder, well, what about the due process clause? The due process clause is where we find fundamental rights, [which] are the rights that are subject to strict scrutiny. And, interpreting the due process clause, federal courts have not found that there's a fundamental right to a healthy environment. So there's not a substantive right to a healthy environment, which has these environmental justice over and undertones. We do see some potential changes after the tragedy in Flint, Michigan. Courts within the Sixth Circuit, in particular, have been taking another look at ways to stretch the due process clause to address environmental justice concerns that resulted from that debacle. You may wonder, well, what about the Civil Rights Act? There were a few titles that have been invoked to address environmental justice. Again, it's tough sledding here. Its title VI prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin. Yet here, as with the equal protection clause, the

Supreme Court has found that to meet a claim under Title VI, we need to show intentional discrimination. That's the Sandoval decision. And otherwise, there isn't a private cause of action that title VI affords. There have been various challenges recently under Title VI to try to resuscitate that in court. Now there is a sign of title VI administrative program. I'll get to that in a moment. But this is in federal court. And again, it's tough-going, but there are more and more cases that are being filed to apply title VI in environmental justice settings. There are other aspects of the Civil Rights Act, like title VIII, which is the Fair Housing part of the Civil Rights Act, that have been used to address environmental justice concerns, including a recent HUD . . . that HUD has suspended approval of a permit in Chicago that had environmental justice implications. You may also wonder, well, what about the people who are in a position of power, to protect environmental justice and work against environmental injustice, you know, are there causes of action against officials? Well, this is where section 1983 comes in. Again, this has been tough going as well. But section 1983 provides a cause of action against people who, under the color of authority, discriminate. And again, back in the Sixth Circuit in the Flint scenario, the courts there have found some footing in Section 1983 in that setting. So again, it remains to be seen with all of these where it goes. These need further animation and oxygenation by lawyers and litigators. You may wonder, what about the sub-national level? What's going on in the States? Well, there are some developments here, some potentially promising developments to address environmental justice considerations. And they revolve around the constitutionalization of a right to a healthy environment. Now, internationally, by my count, 84 countries recognize a right to a healthy environment, and in our, in the United States, uh, by my count, six do and three of them do in self-executing provisions. Those are provisions that can be enforced in court. So, this is where environmental justice claims might find a home . . . Most recently, um, New York, uh, just last November voted to amend its constitution to recognize a right to a healthy environment, that each person shall have a right to um . . . Sorry, uh, to clean air and water and a healthful environment - my screen was covered - uh, and this, -this has, this echoes back and reverts back to what the earlier language from Robert Bullard. You know it's just this idea that everyone is entitled, uh, to opportunity and, uh, an equal share in America's and their own future. And so, this New York provision does that. And it's self-executing and it can provide a basis for redressing environmental injustice situations in the state of New York. But that's not all, Pennsylvania has a provision that in 2013 the Supreme Court there said was self-executing and thus far, um, there hasn't been much . . . many environmental claims, erh, sorry, many environmental justice-based claims. But there's a lot of advocacy, a lot of claims that have been brought since 2013 to enforce that provision and so again it has the potential to advance environmental justice outcomes in Philadelphia and

Pittsburgh and Harrisburg and throughout the state. And Montana also has a self-executing provision. So, for Native American tribes in particular it provides a basis, uh, for, uh, you know potentially constitutiona-constitutional claims to advance environmental justice. What about policy? Next. (Coughs) Pardon. Well, there are lots of developments here. I mentioned earlier, uh, Senator Booker's environmental justice act which has, uh, been you know reintroduced every year but uh it-it tries to legalize, if you will, create a private cause of action for environmental justice claims in America. You know, some countries have it. South Africa has an environmental justice act that provides, uh, private causes of action. It also hasn't provided many case . . . much case law but-but, uh, but there-there is that potential to provide these private causes of action to address . . . environmental injustice and this law would do that. You know it's not enacted, but it would overturn Sandoval, it would provide open access to information by overburdened communities, it would afford protection from government action in other ways, and it would legally recognize the 17 principles that I mentioned earlier adopted by the National People of Color Environmental Leadership Summit that Stockholm kind of conference, um, for environmental, uh, justice. So that's at the federal level, at the legislative level. There are other federal laws, and I won't go into these in detail, but other laws that have been introduced to advance environmental justice, including mapping reports and data collection, um, uh-uh other laws to establish private causes of action, uh, other laws to ensure public participation in environmental decision-making with environmental justice dimensions, and as part of the American Rescue Plan. But there are also lots of developments at the executive level with the election of again President Biden, uh who, his administration established the Environmental Justice Executive Advisory Committee. It reanimated the National Environmental Justice Advisory Council. that's NEJAC. It's issued . . . The President has issued environmental justice advancing executive orders in a variety of contexts including climate change, supply chains, and others. The President has also pledged to update and strengthen the Clinton environmental justice Executive Order 12898, and the EPA and other organizations-other agencies I should say, pardon me-at the federal level are working under the, uh, Federal Justice40 Program to ensure that 40% of the overall benefits of federal investment in renewables goes to overburdened communities. . . And then the president has made key appointments including Brenda Mallory to head CEQ and, um, lots of others. Uh, there is, you know, one kind-of dark cloud in all of this, which is that the United States, however, notwithstanding all this activity, continues to oppose, uh, international recognition of a right to a healthy environment. Which of course, is all about environmental justice. So, what about the state level, you may be wondering? Well, lots here as well. Uh, primarily from so-called politically blue states in California, New York, Illinois, New Jersey, and otherwise. Uh, in California there are, eh, a myriad--

or several--environmental justice laws that have been enacted in just the last few years. And New York has an environmental justice section and a climate leadership community protection act. . . that has sort of like the state counterpart of the Federal EJ 40 program that 40 percent of proceeds from renewable energy go to overburdened communities. For Illinois that's 25 percent, and other states have followed that kind of approach. New Jersey has an innovation, and that is, uh, kind of a NEPA for environmental justice. That is requiring an environmental justice impact assessment . . . for programs that are funded, carried out or, uh, done by the state government or authorized by the state government. And then there are a handful of executive orders from governors to, uh, advance environmental justice throughout the United States. And then last, the last trend is professionally, and this is primarily with the American Bar Association. The American Bar Association is the largest, uh, association of lawyers in the omniverse. Uh, it has nearly 500,000 members, including student members, and it has laws of its own. And, uh, just last year it adopted a resolution to advance environmental justice. It had done so in the early 90s, (*phone notification in the background*) so this is in many ways an update to that as well. Erh, but it says that the purpose of it is to advance environmental justice and programs, policies, and activities, including advocating for legislation and policy and work with all levels of government. Umm, and the idea is to again to reflect the right of --'and I'm reading from it--to reflect the right of every human being to dignity and a clean and healthy environment. It also, it being the ABA, sorry, established a means to implement this resolution. It set up a presidential task force. President Reginald Turner of the ABA just last year also issued a letter, uh, to the US government in support of recognition of a right to a healthy environment largely to promote environmental. . . justice. So, that--that environmental justice committee just met. Some people in this, who are participating in, this symposium are part of it . . . Uh, and it just had its kick-off and hopes to be a major player in promoting and advancing environmental justice policy in the United States. So, um, anyway, there you go, that's my 20 minutes, 22 minutes or so, about environmental justice in the United States and trends in that level. I thank you very much for your attention. So, I'm not sure. . .

Natalie King: Mr. May thank you so much. . .we really appreciate you being here. Now we're going to go into a break until 9:45. So, um just hang tight with us, and we'll see you soon. Thank you.

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ENVIRONMENTAL JUSTICE AND THE COMMONWEALTH
OF VIRGINIA: AN OVERVIEW OF RECENT POLICY ACTIONS
AND THEIR IMPACTS ON PROJECTS AND COMMUNITIES

Senator Ghazala Hashmi, Ph.D.

INTRODUCTION

Natalie King: Hi everyone! Welcome back, I just wanted to give the floor to our dean, Wendy Perdue, to introduce our speaker, Senator Hashmi.

Dean Wendy Perdue: Thank you Natalie. Um, it's a great honor and privilege to be here and, um, to participate in this, uh, terrific program, and, um, have the chance to introduce our keynote speaker, Senator Ghazala Hashmi. Um, Senator Hashmi serves in the Virginia General Assembly, representing the 10th Senatorial District, which includes parts of Richmond City, Chesterfield County, and all of Powhatan, uh, County. Senator Hashmi is the first Muslim to serve in the Virginia Senate. As an experienced educator and advocate who spent nearly 30 years working within Virginia's college and university system, she identifies education, equity, the environment, and healthcare access as top legislative priorities. She sits on the following Senate committees, all very important to the well-being here in the Commonwealth: Education and Health; Agriculture, Conservation, and Natural Resources; General Laws and Technology; and Local Government. She's also chair of the Public Education subcommittee. Senator Hashmi immigrated to the US from India more than 50 years ago, and as an immigrant living in a small college town in Georgia, she saw first-hand how community building and fostering dialogue can bridge the cultural and socioeconomic divisions that we face. Prior to her roles in state government, Senator Hashmi served as the founding director for the Center of Excellence in Teaching and Learning at Reynolds Community College in Richmond, VA. Senator Hashmi earned her bachelors in English at Georgia Southern University and her Ph.D. from Emory University. It's really an honor and a privilege to have her join us, um, to talk about the important topics that we're discussing today. So, Senator Hashmi, let me turn things over to you.

SPEAKER

Sen. Ghazala Hashmi: Thank you so much for that introduction, Dean Purdue, and good morning to everybody. I'm just delighted to join you and

delighted also, uh, that you are focusing this particular conference on the issues of environmental justice. So, I'm going to try to share my screen here. Thank you again for inviting me and thank you so much for this opportunity to share some of the work, uh, especially policy-related that we've been able to do in the Commonwealth focused around the issues of environmental justice. And so today I do want to examine the role of environmental justice in the Commonwealth and, uh, take a look at some of the, uh, intersectionality between what we are doing here and what we've seen at the federal government as well. Um, so I think it might be helpful to begin, uh, with a look at, uh, what has happened on the federal level and, uh, looking at the, uh, working definition that was established by the EPA, uh, is a useful, um, place for us to begin. It's helpful to understand what we mean by environmental justice, uh, particularly along the lines of policy considerations. And so the working definition that we have from the EPA is, uh, uh, environmental justice or EJ as we tend to call it, is the fair treatment and the meaningful involvement of all people regardless of race and color, national origin or income, uh, and that this involvement is focused on issues of development, uh, implementation and enforcement of environmental laws, regulations and policies. Uh, we also define what fair treatment means, uh, that no group should bear a disproportionate share of negative environmental consequences from the, uh, decisions that we are making and from, uh, the progress, uh, that we are attempting to implement, whether it's through industrial, um, uh, conditions or government and commercial operations. And meaningful involvement is really important here as part of the definition. So meaningful involvement means that we give people an opportunity to participate in the decisions and the activities that are going to affect, uh, their environment or their health, and, uh, that the public contribution is critical to agencies' decision-making processes and that community concerns will be taken into consideration. Uh, so as you can see in all of this definition, at the heart of this definition really is public engagement and the opportunity for public comment, uh, to be visible, to be prominent, and I think that's something that we certainly need to keep our attention on as we continue to think about EJ and its impact in all of our communities. And so for the past, uh, several decades now we've had interactions between our federal governments and our state policies on making these very necessary decisions as we move forward, uh, in terms of the impact on our air, on our soil and on our water. So for an example, uh, we have, uh, we have the EPA definition, and so even though we did not until just recently have, uh, EJ policies specifically defined in Virginia, we did have the requirement that, uh, the Commonwealth and all states, uh, actually have to participate in, uh, a regulatory process with the federal government with regard to, uh, permitting decisions. And so, for example, if we are thinking about air quality plans and state implementation of our, uh, our, uh, our plans, we know that the state

had a requirement-has a requirement-to ensure that there are certain elements of the Clean, uh, Air Act that has . . . have to be taken into consideration that have to be part of the development and implementation process, and that also includes public input. Uh, and that every element of this or every stage of this process, uh, is . . . is really involving public voices. Uh, We also have the requirement that state implementation plans have to be submitted to the EPA and that, uh, these, uh, necessary actions are, uh -It's incumbent upon the EPA to take action based on their guidelines. And so we've always had, uh, a pretty significant relationship between state and federal government in making, uh, these . . . these, uh, decisions as we think about the environmental impact, uh, when we site industries or when we site landfills or anything really that impacts our air, water and . . . and soil quality. Um, So just taking a brief look at what we have seen happen on the federal level, uh, one instance that we might point to as a first step, uh, federally, is the National Environmental Policy Act that was put into effect in in 1970. And this was ,um, under the administration of Richard Nixon. And . . . and so this, um, National Environmental Policy Act was signed into law in January 1 of 1970, and it, uh, again kind of set the stage for where we are with environmental justice. Uh, this act required that federal agencies assess environmental impacts on proposed actions prior to making any decisions, and these include permitting applications, uh, adopting federal Land Management guidelines, and also in thinking about how we construct highways and other publicly owned facilities. And so, using this particular act, agencies had to evaluate environmental and related social and economic effects of their proposed actions. And agencies were also required to provide opportunities for public review and for comment on these evaluations. Uh, this particular act also established the President's Council on Environmental Quality. Uh, and so this act in particular has been uh, uh, recently, uh, very much involved in current permitting decisions. We saw this most recently in the discussion and debate as to whether this act actually applies to the President, to Congress or to . . . to Federal Courts since, by definition, they're not federal agencies. And recently, in the *Keystone* decision, we did see, uh, a district . . . a US district court identifying the need that uh the president uh has to uh engage in analysis before making um uh permitting decisions. So, to some degree uh there is a requirement that president, congress, and . . . and federal courts do have to take, uh, the policy . . . Environmental Policy Act into consideration. And I think this is an area that is going to be ongoing and of considerable interest, uh, in legal terms as we move forward. But as you see, um, it . . . this particular . . . National Environmental Policy Act really does focus on environmental decision-making. And it is not as fully inclusive of environmental justice in the way that we have seen it evolve. And so, this is . . . this particular need, uh, was necessitated then, uh, um, to develop further the . . . the, um, idea of the ways in which environmental decisions are impacting our communities.

And so, in the nineteen nineties, early nineteen nineties we see a movement towards taking into consideration the impact of environmental justice. We see this most clearly in executive order, uh, 12898, uh, which was under the administration of Bill Clinton. And this particular ruling, uh, required that, uh, that we have an explicit focus on the issue of environmental justice and an explicit focus also on the effect on human health by federal actions and most specifically what are the effects on minority communities, on low-income populations. And so we're seeing, uh, at this point, uh, then, a more clear definition of what we mean by environmental justice and the need for environmental protections. And so this particular executive order required federal agencies to identify and address, uh, disproportionately, uh, high and adverse human health and environmental effects, uh, of . . . of any kind of actions on minority and low-income communities and, uh, also to develop a strategy for implementing environmental justice and to promote nondiscrimination in federal programs, uh, in those areas that affect human health, the environment, as well as making sure that minority and low-income communities have access to public information and, uh, have the ability to engage in public participation on these particular concerns. Additionally, this particular executive order established the inter-agency workgroup, uh, on environmental justice and this, uh, is chaired by the EPA administrator and it's also then, uh, comprised of, uh, agency heads, department heads, uh, that are, uh, directly related to these, uh, decision-making processes that impact, uh, many of our communities. So, these are some important steps that we saw happening at the federal level and that really, uh, helped to lay the groundwork for what we are, uh, trying to do now in Virginia as well. And it's through the work of so many of our advocacy groups, uh, nationally as well as in the Commonwealth that we see over the past several decades a real focus of our attention on the significance of environmental justice. So, both historically and, uh, in terms of present-day injustices, we see that people of color in particular in low-income communities have been exposed to far greater environmental health hazards than our wealthier communities and our non-rural white communities. So many make the argument, uh, that there is a direct link, uh, or a direct line from, uh, past social injustices, historical injustices such as slavery and the exploitation of natural resources, to the current issues of environmental justice that we are grappling with. Uh, we see intersectionality of so many of these concerns. People who have limited access to housing and food security, people who experience the greatest disparities in health care and education, those communities that don't have a strong enough voice in the decision-making process, are invariably the same communities, the same individuals who are going to see landfills, for instance, sited in their backyard. Or whose homes and schools are near manufacturing and production sites that emit air pollutants and that degrade land and . . . and water quality. And we also see this on a global scale, uh, wealthy post-industrial

societies reap the benefits of having the sites of production and contamination moved to those nations that are, uh, part of what we might call the global south. Uh we have a particularly tragic example of this, uh, and . . . and it's well over forty years old at this point now, but it's the example from, um, what happened at, uh, Bhopal, India. We call it the Bhopal disaster and this was back in the nineteen-eighties when, uh, the Union Carbide plant, um, that was sited, uh, in a . . . in a location near very very impoverished communities, uh, had a, uh, disaster and emitted, uh, tons of toxic gas into the air, uh, at a point when people, um, were sleeping, uh, in . . . in their homes but in very very close proximity to this particular, uh, facility. And so we know that that disaster in particular impacted, uh, hundreds of thousands of individuals, the . . . the death toll that we now, uh, um, understand from the Bhopal tragedy exceeded, um, um, um, four thousand individuals in that one instance and we know that nearly half a billion people, uh, were severely impacted and injured by the tragedy. And so, this is something that is a reality for all of us to, uh, continue to focus our attention on. We know that environmental justice asks us to think about the ways in which, uh, communities of color, low-income communities have, uh, have never had a voice or equal opportunity in expressing, um, um, uh, concerns when it comes to making decisions along, uh, these . . . these, um, permitting issues, um, and what happens, basically, in their communities. So environmental justice asks us to consider climate change and the destruction of the environment through the lens of political and, uh, through the lens of politics and policy and, through the lens also of exploitation and oppression, and also through the lens of social injustice and racialized economics. So, some have pointed out that prior to the focus on, uh, EJ, the mainstream environmental movement that we saw, particularly in the western countries and also in the United States, that this environmental movement was essentially built by people who cared, uh, principally about, uh, conservation, who cared about wildlife, um, who cared about trees and open spaces, but who did not actually, uh, extend that degree of concern to those human communities that were directly impacted, um, by the intersections of, uh, environmental injustice. Uh, so it's going to be increasingly critical as, uh, the effects of climate change impact, uh, our global communities, that we are going to see these same vulnerable, um-uh, populations affected once more in a very dramatic manner because of, uh, of the ways in which we have seen environmental decisions being played out, not just in this country or in this Commonwealth, but, uh, all across the globe. So, what have we done in Virginia specifically, uh, in the last two years? And that's what I'll focus on is what we've been able to accomplish or what we have, uh, focused on in particular since, uh, 2020. So, in uh, twenty-, in . . . during the 2020 General Assembly Session we, uh, passed, uh, S.B. 406, and I was privileged to carry that legislation, and on the House, uh, side, I was working closely with Delegate Mark Keam, who sponsored the House version of this particular

legislation. And, um, in this legislation, in S.B. 406 we established the definitions of environmental justice for the Commonwealth. We were able to build on the same definitions that the EPA and federal guidelines had established, and we, uh, underscored the fact that, uh, environmental justice is a policy of the Commonwealth, and that it must be taken into consideration as we make, uh, any decisions that impact, uh, particularly low-income communities, fence-line communities, and . . . and those, uh, people who are most severely impacted by, uh, the injustices that we've seen in past decision-making processes. So, this was an important and critical step for us. In 2021, then, we sought to also codify the work of the environmental justice and inter-agency workgroup. Uh, the EJ inter-agency workgroup had been, um, uh, put into the budget in 2020. It had been established through budgetary language, and had already begun its work, um, uh, that past year. And so in 2021, we sought to take, uh, the work that the EJ inter-agency workgroup had already done, and make sure that it was codified so that it could continue the work, uh, year after year and was not dependent on, uh, the . . . the budget, uh, the budgetary processes. Now this bill faced, uh, quite a few hurdles, and, uh, challenges because of, um, the-the differences between the Senate bill and the House bill, and the fact that there was also another Senate bill that was, uh, working on the area of environmental justice. We tried to reconcile, uh, all of these different versions, and, uh, some of the sticking points, uh, were that, uh, we really had an important, uh-uh, focus in the House bill on making sure that some of these decisions were also, uh, being done at the local level, not just at the state level, but that local government too was involved from the beginning in the processes of making, uh, siting decisions that would impact communities in their localities. Uh, so while we went back and forth on these issues, we were not able to reach an effective resolution at the time, uh, of the adjournment of the session. What we intended to do was to come back in, uh, 2022, in this particular session and address those issues once again, to look at that legislation, to be able to move it forward, uh, in a more effective manner and resolve the—the points of distinction that we had seen. We did not do that this past session and that was largely due to the fact . . . um, that we had an election in 2021, November 2021, that, uh, dramatically impacted the—the kind of legislative progress that we might have been able to make in this particular session. So, as you know I'm sure, uh, we, uh, lost the majority, we meaning the Democratic majority that was, uh, in the House of Delegates, uh-um, that majority was lost in the November 2021 election. And, uh, we have, uh, a Republican majority House, Senate majority, um-uh, Democratic majority Senate, and then a governor representative of the Republican party as well. And so, in conversations with many groups, uh, and other advocates who have been working in the realm of environmental justice we realized that it would be, a, a challenge to, um, bring the legislation back again, and to actually make progress this session. And so, we did put a pause

on that, uh, knowing that we have the language of EJ, the definition of EJ already in the Code, and that the inter-agency workgroup is continuing its efforts. And-and, uh, the hope is that we will be able to re-examine the legislation in, uh, a year or two we will be able to return to it. But just taking a look at what the definition of EJ now is, and what the policy is, uh, we have a-a clear statement in the Virginia Code that, uh, ... we have a policy, that is the policy of the Commonwealth to promote environmental justice and to ensure that it's carried out throughout the Commonwealth with a focus on environmental justice communities and fence line communities. Uh, this is important because of the kind of impact that we've seen, uh, within the past, uh, just within the past year, actually. Uh, that this particular definition, and the fact that it is now the policy of the Commonwealth, uh, had an impact on, uh, important decisions that are being made, uh, that impact so many communities in Virginia. So, for example, with the Lambert Compressor Station, that's part of the Mountain Valley Pipeline, um, we saw a decision made by the Virginia Air Board, that, uh, took this into consideration, that took EJ into consideration in the permitting process. So, in December, this past December of 2021, uh, in a vote of 6 to 1, the Virginia Air Pollution Control Board denied the permit, uh, for the proposed Lambert Compressor Station in Southside Virginia. The Board made its decision, uh, very, uh, relying very heavily on the EJ Act on the policy that is, uh, that we were succe- . . . able to successfully pass in 2020 and the board determined that this facility, the Lambert Compressor Station, would impact an EJ community, and that the requirements of the VA Environmental Justice Act had not been met in the permitting process, and that the site was not suitable because of VA law. So, the Lambert Compressor Station is an industrial facility that would pump gas through the Mountain Valley Pipeline in Pennsylvania County, and this site in particular lies within five miles of four communities, four different communities that have strong African American, as well as American Indian, roots, our indigenous communities, and our African American communities would be impacted severely is what the Air Board decided. So, this was a very critical decision, but it was also a indication of the power that the EJ Act has now in VA. And so, we know that the policy is a very critical and important one, and that it has had now immediate effect on very, very important decision-making process for the success of the Compressor Station and ultimately then the Mountain Valley Pipeline. In similar effect, we saw recently Attorney General Mark Herring make a ruling that the Environmental Justice Act is the policy of the Commonwealth, and it must be upheld in permitting decisions made by the Department of, I'm sorry, by the DEQ. The director of the DEQ, Environmental Quality, must take it into consideration. AG Herring's official opinion on EJ in the context of Mega-Landfills in particular came about because I requested that decision from his office. And so, in December of 2021, Mark Herring, our AG, issued the official opinion that the

Environmental Justice Act not only sets forth a policy of the Commonwealth, but it also imposes specific and enforceable duties on the Commonwealth to ensure that the policy is carried out, and therefore, the Director of DEQ must ensure that environmental justice as defined in the Act is carried out when making determinations about a landfill permit under the VA Waste Management Act. So again, we see the power of the EJ Act in VA. We saw it as part of the decision-making process by the VA Air Pollution Board, and we also saw it in the process as the AG made determination that EJ has to be part of the decision-making policy of the DEQ and the DEQ has a responsibility for ensuring that environmental justice is carried out. Of course, the pendulum always swings in the opposite direction. And so, as we saw the success of the Environmental Justice (EJ) Act in the past year, we then saw the opposite reaction to it. In particular, this past session, we saw a couple of bills that sought to dismantle the effect, basically, of the EJ Act. And so, one bill in particular, SB. 657 had an impact on the Air Pollution Control Board as well as our State Water Control Board. And what we saw happening in that bill, which was ultimately successful, was the transfer of authority from citizens, from the citizen review board, and into the Department of Environmental Quality. So this particular bill, then, limits the authority of the Air Pollution Control Board and the State Water Control Board to issue regulations and transfers the Board's existing authority to issue permits and orders to the DEQ. It, in essence, took away the authority that we had invested in the

hands of our citizen review boards that were appointed by the Governor and invested it in the hands of the DEQ. Now, we know that Virginia's citizen boards have played a key role in balancing the structure of protecting the environment and helps to ensure that citizens be citizens that are drawn from across the Commonwealth, and that have different levels of expertise in the area of these environmental decisions, have the final say-so on regulatory and permitting decisions. This was important because it brought this power to citizens, and not to bureaucrats, and not to legislative authority, but made the influence by a variety of factors. And so, these bills, SB. 657, and then another house bill, House Bill 1261, really have now limited the ability of citizen boards to ensure that permitting decisions are made in the inclusive and open manner. One thing that was at stake in the bill language was that the voices of the public, the comment period, and our own access to what the public was saying, was going to be severely limited. Amendments were made to these bills that helped to ensure that public voices and public involvement continues to be a part of the process, and that there is a degree of transparency, particularly in the concerns of citizens. But what we have now seen passed in VA is the fact that the regulatory boards are diminished in their power, that the authority really now lies in the hands of DEQ and also in our legislative and executive branches. The legislative and executive branches will continue to play a role in the appointment of the citizen boards, and of

course that may be problematic, as critical decisions are being made that impact communities that have historically not have opportunity to be as fully engaged in these processes. So, citizen boards help to guarantee that Virginia's constitutional policies protect our atmosphere, our air, our land, our water, and it is absolutely important in my eyes that we continue to ensure that they have the ability to speak for the members of our community. members of our community, and so while this legislation has passed, I don't think, um, we're going to see the end of our conversation on the issue of environmental justice and we'll certainly continue to focus on um reestablishing critical authority through citizen review processes. I wanted to touch just briefly on the diff . . . difference or the distinction that we have between environmental justice and justice for the environment. While environmental justice focuses on the human communities, there is a growing movement also now to make sure that we have um an ability for the, um, um, the environment itself to argue for justice, and an interesting development that we've seen over the last few decades is the movement around the rights of nature. The rights of nature doctrine um holds that um an ecosystem itself is entitled to legal person who'd, um, to have legal personhood status and rights, and it has a right to defend itself in court, and we are seeing some citizen um movement in this direction. I've had conversation with several communities that want to see the rights of water, the rights of land, the rights of a river, to speak and defend itself um within um a legal context and so that is something that we may see um happening in the next, um, um, few sessions of the General Assembly. These issues may be coming to the forefront. So just to quickly highlight some next steps in our EJ efforts, um, one area of effort that we continue to, um, um, need to focus on are the ideas around cumulative impacts. Cumulative impacts, um, um, this legal idea, this definition is already part of federal guidelines, but it is missing from the Virginia code, and cumulative impact really takes a look at a broad range of . . . of activities within a region, that where while the individual effect may not have a destructive . . . destructive environmental impact, when we consider it from accumulative perspective we see that it has severe impact on health issues on, um, on . . . on the ability of communities to protect themselves, and access clean air and water and so that is an important consideration. It also introduces into the discussion then, the dimension of time and so a cumulative impact can be calculated on past, as well as present, and then reasonably, um, understood of future actions, and so that is another area that I'm sure we're going to see in Virginia in the next few years. And then finally the, um, idea of .. the idea of mapping environmental justice is very very essential for us as we move forward in Virginia. And, um, this movement to map environmental justice really combines environmental, as well as public health and demographic data, um, to take a look at where the critical sites for EJ action must take place...because it's the full spectrum of data that gives us a clearer picture of how

environmental degradation affects so many of our communities. I know I'm reaching the end of my time here so I'm going to stop here, but I would be remiss if I um didn't thank the many many groups that have played such a significant role across Virginia in making sure that the issues of environmental justice continue to be front and center, um, for all of us, and, um, I will probably not do justice and in naming every group there are so many, but in particular we have a very strong, um, um, organization, the Virginia Environmental Justice Collaborative, that is comprised of some of many people across many different organizations who have worked with, um, steadfast dedication to address the issues of environmental justice in the Commonwealth and have really been strong proponents in bringing so many of these items of legislation forward. So we want to thank you all for making sure that environmental justice is a critical part of the conversation, I'm so delighted that this is the focus of . . . of this particular conference and I'm, um, sure that there is a lot of wonderful and engaging discussion to be had all throughout the day today.

Natalie King: Wow Senator Hashmi thank you so much for your insight on this, um, truly important topic. We have a few more minutes and we have some questions in the Q&A. Are you able to stick around for a second, as we try to answer those questions? OK awesome, um, the first question, um, is: "As you work to address environmental justice within the Commonwealth, have you identified other states or countries that serve as a model in terms of best practices?"

Sen. Ghazala Hashmi: Yes, um, there are wonderful efforts that are being made all across this country certainly. California has been a strong leader in this regard, um, right here on the eastern coast, Maryland has made good progress in EJ decisions, and we're also seeing it in, um, in states that might be, um, unexpected as well, um, states that do have large communities that have been historically underserved and under resourced, and we're seeing the small movements in southern states such as Tennessee um and I believe Oklahoma has made progress as well, so there . . . there is a significant conversation and discussion. Um, internationally, um, this is going to become a much more critical concern over the next few years as the direct impacts of climate change and the catastrophes that we are facing, um, and the, um, issue of climate refugees in particular, comes to . . . to the forefront of global politics, and every country is going to have to address these issues um and . . . and it's going to take a global effort to make sure that there is equity in the decisions that are being made. Because for . . . for the past several centuries, inequitable decisions have always been a part of the process.

Natalie King: Wonderful. I think we might have time for, for one more question the next question is: "Is the DEQ responsible for studying the cumulative impacts within the Commonwealth?"

Sen. Ghazala Hashmi: That's a great question. So right now, we don't have that language of cumulative impact in the code. S.B. 1316 was seeking to put that language, um, in last year, in the in the session to make sure cumulative impact was a part of our consideration, of what we mean by environmental justice and to require agencies to factor cumulative impacts into . . . into their decision-making process. That became a sticking point, not just between the two chambers but also within, specifically within the Senate itself, um, um, and it was one of the barriers that we faced in committee, and that language was stricken and wasn't able to proceed and so we really have an imperative to bring that language back, to codify it, and to make sure that DEQ is um including the issue of cumulative impact in its decision making process. . . . DEQ is, uh, including the issue of cumulative impact in its decision-making process.

Natalie King: Wonderful, thank you so much Senator Hashmi, for not only just being here, but taking a second to answer those questions. Um, we greatly appreciate your participation so thank you so much. Um now we're going to . . .

Sen. Ghazala Hashmi: My pleasure.

Natalie King: . . . um, a ten-minute break. And we'll see everyone back here at 10:40. Thank you so much.

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PANEL: CLIMATE CHANGE AND CLIMATE JUSTICE

Alice Kaswan, Michael Gerrard, Monica Esparza, & J.B. Ruhl

INTRODUCTION

Mallory Chesney: Welcome back everybody. My name is Mallory Chesney, I am the other co-editor for the symposium this year. And now it is my pleasure to introduce our Climate Change and Climate Justice panelists. First up, we have Alice Kaswan, Professor and Associate Dean for the Faculty Scholarship at the University of San Francisco School of Law. She is an expert on climate change policy and environmental justice. She has written and spoken widely about climate federalism addressing the appropriate roles of federal state and local governments in mitigating and adapting to climate change. Her work develops the field of climate justice, focusing on adaptation the role of market-based mechanisms, and the role of strategic and inclusive climate action planning. Professor Kaswan received her bachelor's degree from U.C. Berkeley and her law degree from Harvard Law School. Our second panelist is Michael Gerrard, a Professor of Professional Practice at Columbia Law School, where he teaches courses on environmental and energy law, and founded and directs the Sabin Center for Climate Change Law. He is also a member and former chair of the faculty of Columbia's Earth Institute. Professor Gerrard chaired the ABA's Section of Environmental Energy and Resources, the Executive Committee of the New York City Bar Association and the Environmental Law Section of the New York State Bar Association. He's also written an environmental law column for the New York Law Journal and is author and editor of thirteen books, two of

which were named Best Law Book of the Year by the Association of American Publishers. Professor Gerrard received his bachelor's degree from Columbia University and his law degree from NYU Law School. Next, I would like to introduce Monica Esparza, an environmental and civil rights specialist with more than 15 years of experience developing and monitoring business and social engagement strategies. She works tirelessly to ensure accessibility to natural resources and the economy and has successfully led meaningful stakeholder involvement and capacity building initiatives within state park, transportation, construction, education, and justice arenas. Her advocacy for equity and conservation service . . . is reflected in works at historic sites such as Hickory

Hills School, Prince Edward State Park, and the African Burial Ground in Richmond, Virginia. Monica is a trustee of the Renewal of Life Land Trust, and she shares her expertise toward land stewardship and food sovereignty. Lastly, I would like to introduce J.B. Ruhl, a distinguished professor at Vanderbilt University Law School and an expert in environmental and natural resources and property law. Focusing his research on climate change adaptation, ecosystem service, and adap-adaptive governance, he was named director of Vanderbilt's Program on Law and Innovation in 2014 and co-directs the Energy, Environment and Land Use Program. Over his career he has been a Visiting Professor at Harvard University and Georgia Washington University Law School. And has taught during the summer terms at the University of Texas Law School, Vermont Law School, and Lewis and Clark Law School. J.B. Ruhl received his bachelor's degree and law degree from the University of Virginia, an LLM from George Washington University, and a PhD from Southern Illinois University. And now I'd like to invite Professor Noah Sachs to start our discussion on climate change and climate justice.

PANEL

Prof. Noah Sachs: Thank you very much, Mallory. I'm Noah Sachs at the University of Richmond, and the goal of this panel is to bring together all these, uh, experts in the field to talk about the links between environmental justice and climate change. Climate change is probably our most important environmental issue and it's gaining a lot attention in recent years about how climate change also disproportionately affects, um, people of color, people, uh, living near the coast, people with low incomes, and so, uh, this panel is devoted to exploring those links and, and the path forward. We're going to begin with Alice Kaswan and, uh, Alice I'll turn it over to you.

Prof. Alice Kaswan: Great, and I'm going to go ahead and share my screen now. Pull up a PowerPoint. And if you'll bear with me just a moment while I get this, um, oriented from my screen, there we go. That's right.

Carl Hamm: That's looking, looking great, thank you.

Prof. Alice Kaswan: Okay, excellent, thanks for the confirmation. Well good morning and I'm very happy to start off the panel and talk just a little bit about what we mean about climate justice both in theory and, uh, in context, in the climate context. Um, so I'll start off talking about the different types of claims for justice, um, somewhat in the abstract. So, one side of climate justice is looking at distributive justice, how we divide up the pie we want to think about who benefits from, uh, what happens in terms of the climate or climate mitigation policies, and we also want to think about who's burdened. And so that's something we'll keep our eye on as we think about theories or approaches to climate justice. There's also an important drive for what we call participatory justice. Um, and there are a number of different

dimensions to what we call participatory justice, it's not just one thing. Uh, we often think initially about the opportunity to engage, whether it's in hearings or, uh, discussions. Uh, but it's also about the opportunity or the degree to which a person is heard, um, and in this we see really a, um, what's sometimes called a recognition justice strand of participatory justice, which is about not only, again, being-having a seat at the table, but having people listen, uh, and respond, and incorporate the views of those who are, uh, often impacted. One of the precursors to all of these forms of participatory justice, one that's challenging, uh, is the capacity to participate in terms of time, resources, expertise. Um, and so that's a continuing, really, challenge in terms of, uh, being able to have meaningful, uh, substantive participatory opportunities. Lying behind our claims for distributive and participatory justice are also principles of social and corrective justice. Um, when we think about the claims for justice that many communities are making, um, they're often not just grounded in the moment but, uh, represent or-embodiment, um, long-standing claims for social justice. Ones that are grounded in a history of disproportionate opportunity, wealth, access, um, and so it's important to remember that a-a claim for a particular distribution in a particular context or a claim for a particular opportunity to be heard in a particular context comes out of this longer legacy of social justice, uh, not just the dispute at hand. And in some places we also see um, uh, references to corrective justice, right. There's a long history of in-access, of-of having been barred from opportunity access and there's a sense in which, um, many groups or the movement is looking for something that will correct, um, a legacy of injustice. Just a little glimpse of it, um, since I know many of you watching are in Richmond, uh, when we want to think about what the legacy is, that legacy of social injustice. Um, just to take one example, um, and that is, uh, ultimately housing and wealth. Um so many of you may have heard about redlining. Um Accessed mortgages is a was historically severely limited in redlined areas which were traditionally areas of color. Um and that impeded significantly access to home ownership as well as the conditions of life in the communities that were impacted. Uh and that in turn impaired access to wealth and opportunity. So when you hear about inequality, it is important to remember it is not just about income it is about wealth. And the disparities in wealth are simply enormous um. So I just wanted to give you a little bit of a localized um glimpse um of . . . of that backdrop of social injustice and um something to help remember that every time you hear a claim for environmental justice, it's . . . it's something more usually than the particular dispute um at hand. Alright so talking more now about specifically how all this plays out in the climate justice context. Um, I want to note that there are different kinds of contexts in which claims for climate justice arise. Obviously, many of you are aware of disproportionate vulnerabilities to climate injustice or to impact some but it is also very relevant when we are looking at the policies that we

want to adopt to deal with climate change. Whether those are policies designed to adapt right to . . . to adjust to the impacts or respond to the impacts or there are policies designed to do what we call mitigate policies designed to reduce emissions and reduce what happens. So I want to think about adaptation. Turning first to, um, disproportionate vulnerability to climate change impacts. Um one context where we think about uh disproportionate vulnerability and the fairness or justice of that vulnerability is the degree of vulnerability in relation to causation. And if we look at that issue internationally, it's quite stark. The map on the left shows per capita greenhouse gas emissions um and we can see that some countries had much higher per capita emissions were a much more significant part of climate change than others. Uh and yet we see many of the areas small island states uh equatorial areas the arctic right that are much more vulnerable to climate change than uh they contributed. And there's some of that domestically as well when we look at energy use for example. Um generally the wealthy um use more energy both in their buildings and also in the consumer goods and travel and other things um that they do than people who are um lower income. Alright, focusing now on impacts as we all know catastrophe is bad for everyone um but as my friend and colleague Rob Verchick stated, um, "it is especially bad for the weak and the disenfranchised." So there are a number of variables that will determine just how severely a given group is impacted. Of course exposure matters. Are you in an area that's likely to be flooded or experience hurricanes or uh drought or, um, other factors. But it's also about sensitivity. How prepared is your community or are you? What are the underlying vulnerabilities? And uh very significantly about the capacity um about the capacity to cope. What resources what constraints could affect that obviously income being a very important one. And you can see that this is strongly influenced vulnerability is strongly influenced by socioeconomic factors. Sensitivity and capacity to cope are really about um often um your position uh in society. Just to give a few examples where we have disproportionate vulnerability um housing stock right. How vulnerable is the housing to flooding or hurricanes, um, things like vulnerability to heat. Um, in California, there are households that sometimes don't have air conditioning or if they do, um they can't afford to run it. Even with various kinds of support still can't afford to run it. Um, and then something our moderator, Noah Sachs, uh, is an expert on, um, vulnerability to various kinds of hazards from water or air emissions that maybe caused by disasters. Flooded industrial site or in for example Hurricane Harvey. You had a number of facilities that had controlled air emissions um that because of damage to, um, to polluting facilities. Also, there are, um, concerns about evacuation in disasters, um, who leaves uh in a particular context uh Hurricane Katrina which many of you may have heard of. We had, uh, many people who were unable to leave New Orleans. Either because they didn't have a means of transportation or the resources um to pay for staying

elsewhere um or people to go to. Uh, and we ended up in horrific conditions, uh, with people in the Super Dome where um many New Orleans residents landed. Um, looking longer term, we are likely to have migration right. Thinking 20, 30, 50 years out. Um, and what are those who move particularly those who are poor or have fewer resources. Or our bi-pop right. What are they going to encounter? Is there going to be enough affordable housing? Um how is ongoing housing segregation discrimination going to impact vulnerability? Um to settle in a new area. What kinds of employment challenges will they find? When we think about adaptation policies. How we are going to deal with these, um in terms of disaster preparations we need to recognize differences . . . differences in vulnerability deal also with language and communication modes to make sure we are addressing and um communicating with all who may be affected. And then when we are trying to figure out in advance what are we going to do? Right. We want to avoid having disasters we want to figure out how to plan to adapt um we need to think about various parameters. One is um how we think about what land we protect and don't. Are we just gonna do everything with a cost benefit analysis? That only protect areas that are most ___ which means usually the most wealthy. How are we gonna think about planning in ways that addresses some of our historic disadvantages, um, in communities and then also how to we develop affirmative participation opportunities, um, in these contexts. Alright, thinking about now climate mitigation, climate mitigation policy again is how we reduce emissions to try to reduce the risks from climate change. Um I want to note that climate mitigation policy is ultimately green transition policy. Um and we want to think about how we can be holistic and integrated in visionary and how we do our green transition policy. Um Just a quick example, California, for example, uh has a scoping plan process for uh determining how to reach its various targets which at least creates the opportunity or the hope of some sort of integrated and visionary plan some of the principles that we wanna have guide our mitigation policy in thinking about climate justice are how do we maximize the public health benefits right how to we reduce harmful local pollution and disparities um target the reductions in places where they will also have important benefits for reducing conventional pollutants that harm public health. Or uh again, prioritizing reductions from diesel which is one of the most um health um has some of the biggest health consequences. And how do we um develop strategies that are gonna be more likely to ___ to increase burdens and as well as producing I'm sorry increase benefits as well as reducing burdens. Uh we see a lot of concern in the environmental justice community about half the trade policies. Because they could lead some facilities to maintain sometimes even increase emissions rather than reducing them. Um or you see a lot of concern about uh undue mayhem some but undue carbon capture and storage of and how do we, um, develop strategies that are gonna be more likely to this, to increase burdens as well as

reducing ... I'm sorry increase benefits as well as reducing burdens. We've seen a lot of concerns in the environmental justice community about carbon trade policies, because they could lead to some facilities to maintain, sometimes even increase emissions rather than reducing them. Um. *Or you see a lot about undue, we may have to have some but undue reliance on carbon capture and storage of carbon dioxide, which would capture emissions rather than reducing them, and could actually lead to higher levels of co-pollutant emissions, rather than giving us those pollution reduction benefits that we hope to get from our climate justice policies or climate policies. And we also want to think about the distribution of benefits: whose clean energy transition will this be, right? Will it be primarily for the wealthy, who can afford to get solar, who can get the electric cars? Or we also gonna think about how this transition extends to people who are lower income, that poor housing stock, um, the, um, the people who can't afford, um, vehicles? And that will require investment, right? That will not come cheap. And then lastly, I'll look at participation, um, in mitigation policies, thinking about the high-level strategic climate planning, things like California scoping plan, um, various other kinds of climate action planning. Um, and then when it comes to more localized, um, investments, whether it's about how to accomplish transportation access or land use planning, um, really thinking about how we implement with meaningful local engagement that includes, um, communities that have often been marginalized. And with that, I will say, thank you, and hopefully leave a little time for my esteemed co-panelists. Thank you.

Prof. Noah Sachs: Thank you, Alice, great presentation. And our next speaker is going to be Mike Gerrard. Mike are you there?

Prof. Michael Gerrard: I am here, thanks very much. And let me share my screen here. Thanks. So, I'm gonna focus on one issue at the intersection of climate change and environmental justice, and that is: extreme heat. So, the temperature has been going up. These are global average temperatures, back to 1860s when temperature readings began. As you can see it jumps up and down from year to year, but the seven warmest years with recorded years, in years of recorded history, are the seven most recent years. How much warmer it gets will depend mostly on the, um, degrees of greenhouse gas emissions, but under the most optimistic, um, projections, um, we're going to have at least a couple of degrees of warming and under a continuation of existing trends a whole lot more. These are just average temperatures, but what is really the killer, literally, is the extreme temperatures. And as the averages become warmer, the extremes become even hotter. And we've seen, um, over the, um, last, um, many years, that we've seen an increase in the frequency of heat waves, an increase in the duration of heat waves, a lengthening of the heat wave season, and an increase in heat wave intensity (how hot it is during heat waves).

Heat waves are the greatest source of weather-related fatalities. Um, they far exceed flood, or lightning, or tornado, or hurricane, or any of the other weather or weather related for-fatalities. One of the major contributors to the degree of heat in a particular location is the urban heat island effect, the well-known phenomenon that it's, um, cooler in, um, rural and suburban areas than it is in cities, and . . . and in some parts, some parts of cities are much hotter than other parts of the cities. A major reason for that is trees. Um, trees, um, serve many, um, functions. They provide shade, they provide, um, transpi--evapotranspiration, they absorb CO₂, they do lots of other things. But there's increasing evidence in the peer-reviewed literature that the heat island effect is disproportionately, um, in effect, um, in low-income communities and communities with high populations of people of color. And this has been documented in many cities around the world/around the United states. It's the case in Boston, as we can see that the poorer areas tend to be hotter than the more wealthy areas. It's the play, it's the case in New York City, where some streets in East Harlem are primarily black community are 31 degrees hotter than just a couple of miles away in the affluent area of, um, Central Park West. It's the, um, case in, um, Philadelphia,(...)and so this is showing how this wealthy area of Philadelphia, Chestnut Hill, is a lot cooler, um, than this, um, much lower income area in Philadelph-Philadelphia. And a lot of this is because of the phenomenon of redlining, which Alice just talked about. And we see that rich Americans enjoy almost 50% more greenery in their environment compared to lower income communities.(...) This is also the case in Richmond. And Alice just talked about our redlining and in Richmond. And this is showing areas where redlining has taken place, and those areas are much hotter, um, than those areas that are more affluent.(...)So, what can be done about that? One obvious answer is to plot, um, planta lot more trees. Um, New York City has a program to, um, plant a lot more trees in . . . in those areas that don't have enough. Um, putting greenery on roofs, putting greenery on the sides of buildings, um, where that is feasible, and painting roofs white. Um, this is Al Gore and Michael Bloomberg in a ceremony painting roof white. But all of these things can have a real impact on . . . in reducing the urban heat island effect. So white roofs, and green roofs, more vegetation, more trees, requiring new developments to have landscaping, using light colored pavement, and targeting funding for all of this to disadvantaged communities. Another area of disparity concerns access to air conditioning. It's been, um, shown that in a heat wave a major factor in whether people, um, die in heat wave is if they don't have access to air conditioning. And there have been documented racial disparities in access to air conditioning and hence mortality in heat waves. Um, the, um, most, um, households in the United States, um, do have air conditioning by now, um, but the 15% that don't tend to be the poorest households. There's a strong correlation between household, um, wealth and income and their, um, whether they have air

conditioning. This, um, unequal access has been well documented. Um, fewer than half of the states, well, almost every state has a program to provide heating assistance to low-income households, fewer than half of the states have provided this for cooling. And few of these do provide for cooling, for purchasing air conditioning, um, provide to help pay the electricity bills. Um, this is something that Alice also alluded to in low income houses uh households, uh, households in uh, um, communities, uh um BIPOC communities, um, a large percentage of the household expenditures go to, um uh, buying uh electricity um and, and, and fuel oil and so these are communities, uh, where many people, even if they have air conditioners, can't afford to run them. So, a number of things can be done to address that to expand the availability of these cooling assistance programs and to, uh, include payment for electricity bills in addition to, um, buying the air conditioning. Uh, requiring all public housing to have air conditioning because most of it doesn't. Expanding the warranty of habitability which landlords are, um, uh you know, subject to include cooling as well as heating. Modifying building codes to require ventilation and shading. Uh, require the most efficient air conditioners and to do all of this in a way that does not impair housing affordability. Another area of disproportionate impact concerns, occupational exposure. Back in 1986, the national institute of occupational safety and health, um uh, issued an important report about how people in certain occupations are especially imposed to dangerous heat while at work, especially those who are working outdoors. Uh but, OSHA did not issue regulations to mandate any protections against extreme heat. On the, on the, especially on the outside. OSHA did issue guidelines, but completely voluntary, uh, unenforceable guidelines. Some states, led by California, have adopted mandatory requirements, uh, uh, for, uh, protecting outdoor workers from extreme heat. Oregon and a couple of other states have, have stepped in, um, uh but, we see that, uh, farm workers are among the populations, uh, that are most exposed to these extreme, uh, uh, weather events. But lots of people who, who work in, in outdoor, uh, jobs, whether it's, uh, uh, construction or maintenance or, uh, many other things, are exposed to extreme heat. And, uh, once again, people of color have particular exposure to, uh, uh, this kind of issue. Um uh, finally in September, uh, OSHA announced that it was gonna be taking more measures to, uh, address this issue. And in Sept-in, in, October or rather late September, uh OSHA uh issued uh a draft regulations um on uh heat in the workplace. So that, uh, they had a comment period and we're waiting the final binding regulation from um, OSHA. Another are of disproportionate exposure is in prisons. Uh, we know that there's, there are tremendous racial disparities in the prison population. Um, most prisons are not air conditioned and this has become really dangerous and we see a lot of fatalities in prisons from extreme heat. A number of courts have concluded that, it is cruel and unusual punishment, uh, to expose, uh prisoners to extreme heat without any

efforts to alleviate that. If not air conditioning, at least, uh, uh, ample water supplies, um uh, fans, and uh, uh, various other ways to alleviate the impact of the heat. Finally, there's a whole array of other areas where extreme heat is causing disproportionate impacts. It's been shown that, um uh, climate change that, that that women exposed to high temperature or air cond-air pollution are more likely to have premature underweight and still born babies, and black mothers are affected most by this. When the, uh, federal ban on evictions expired, uh, many of the people who were evicted who were evicted from their, uh, uh, units were uh then uh thrust into homelessness, or semi-homelessness, uh, without, uh, any relief from heat. Um, um, schools, uh, serving low-income, uh, disadvantaged communities disproportionately lack, uh, air conditioning. And that has widened the, uh, uh, the education gap in these schools. And finally, the, uh, COVID pandemic has, um uh, all-uh, accentuated the problems with heat because extreme heat and, uh, COVID are, are, are, are, are doubly, uh, dangerous. And we know that, uh, COVID, has disproportionately affected, um uh, disadvantaged communities. Um uh, so for all of these reasons, um, extreme heat is very much at the intersection of, uh, climate change and environmental justice, but there are a number of legal remedies that are available to address that. Thank you.

Prof. Noah Sachs: Thank you Mike, that was such a wide-ranging talk, so many issues I hadn't thought about personally about where heat, um, uh, both shows up, uh, to harm people and shows up in a disproportionate way. Thank you. Um, Monica. Would you like to go next?

Monica Esparza: Yes, thank you. Um-

Prof. Noah Sachs: Um, and before you begin let me-let me just say, you can, anyone in the audience can put questions into the Q&A, uh, and we'll take those questions as we go along. Thanks. Okay, Monica -yep.

Monica Esparza: Yes, I'm just trying to get this screen shared. OK. You can see me now?

Prof. Noah Sachs: And we see you, yep, that's perfect.

Monica Esparza: Thanks so very much for, um, for having me it's a pleasure to be here. Um, as the urgency around climate change grows, the legal and social challenges to government and industry frameworks are increasing as well. And while Virginia sighted as climate leader, compelled by economic opportunities to grow new and clean industries, outside of growing a green workforce there is questionable benefit to communities that have lived with the cumulative impact of, uh, pollution for decades and I'd like to therefore elevate environmental risk and opportunities through the lens of the Virginia community that fashions environmental, environmental and energy policy, and practices which are reflected in the enviro-in the Virginia

environmental justice map. And, um, if I, I, I'm inviting the public to, um, to pull up the map. I chose not to bring it up here, uh, due to, um, technology challenges but you can find it at www.VAEJ.com/EJmapso if you'd like to take a look at it this is what it looks like here, and um, I'll be referencing communities, um, which are highlighted in these bookmark, um, symbols. So just to give you a little bit of background, the environmental justice collaborative is a 45 member organization and their partnership with legislators helped to create the Virginia Environmental Justice Act in 2020, which in statute number 2.2 requests that "fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy." So uh, similar to the civil rights act of 1964 this aspect of fair treatment that I'd like to emphasize today is, uh, development that is planning a regulatory processes, especially local zoning and state permits, and how public involvement of these is reflected in environmental justice profiles that I'll highlight as, as, a part of our mapping project. So demonstrating the ongoing threats of climate change by historic patterns, mapping tools are used to highlight everything from housing inequities to electric charging stations, flooding, and how vulnerable populations continue to be at increased risk for climate impacts toxic facilities and pollution exposure for example. Mapping tools are also used as in the example of Virginia environmental justice collaborative map to prioritize community narratives that not only summarize legal and social challenges but also the triumphs and resiliency of Virginia communities. And the examples that I will elevate include, for example, uh, concerned citizens of Charles City County which for 20 years has been fighting two fracked gas power plants planned for construction within one mile each of each other, two pipelines within 5 miles of an existing mega landfill, and recently uh successful in the opposition of a pipeline plan to run through that community. Uh, there's the Brown Grove community which in the last 50 years has been impacted by a landfill, a concrete plant, a municipal airport, highway construction, and other industrial development, and now face construction of a Wegman's distribution center on 219 acres that would compromise protected wetlands and unmarked graves. Many of us have heard about the Appalachian Piedmont mining that has had devastating effects. And in 2020 after a six year legal battle was able to ward off the Atlantic Coast pipeline. And that's not to mention the urban areas of Virginia some were just, some that would just highlighted um that have the highest cumulative impacts of climate change in this location including Richmond, Lynchburg, Prince William County, and Newport News. And then let's not forget the unexpected that climate change uh brings forward such as federally declared natural disasters um such as Beckenham County that experienced flooding and landslides in 2020 that impacted 233 residents, 43% of whom lived in poverty. So the risk or pain point

is looking at maps and these narratives and the content in the context of what is determined slow violence. And these examples prompt us to ask questions such as how these collective narratives reflect current use, current land use policy, one, what inequities remain present from extractive and exploitative corporate injustices, what narrative is elevated when we look at these um narratives or this, these data points, and what social priorities are advanced in this landscape, and of course how are these profiles used. So, at this point environmental profiles for us are elevated as the network, they're elevated as an emerging network that has a history of fighting injustice and also possesses invaluable knowledge and wisdom and organizing not only for clean energy but ecological, economic, and social justice. And with a specific interest in visionary development, we are uh moving towards meaningful health and climate outcomes. One of my favorite quotes from Kendall Hunterman is 'Environmental justice is life justice and toward development we must look past data strategies of community engagement to expand education and negotiation within communities most impacted by climate health challenges to solve these very pressing concerns. And so here are some examples that I have uh elevated um which, um, uh, Senator Hashmi has already highlighted the wonderful work of the environmental justice collaborative including this map that we are referencing today and partner groups, um, rights of nature was also elevated this early this morning, it talks about the community bill of rights in Buckingham Virginia. We have a uh a specific local example highlighting ecological sovereignty um there are community groups that are working on green zones here which I'm thankful that we have somebody from California who has been elevating green zones to a very high degree. Uh, in some areas and definitely we have more work to do which is uh innovative development strategies similar to environmental zones to encourage economic investment and mitigation strategies in impacted communities. And uh the relationship between EJ and social services when we have communities that are poisoned by landfills, uh, like I said slow violence and also you know all the way down to child separation services. And one of our members is working very closely and in the the connection between EJ and child separation. And, um, finally I'd like to lift up this recent case that has come forward to the Commonwealth where 13 young people, uh, across Virginia have filed a constitutional climate lawsuit against the Commonwealth asserting that their state government is actively contributing to the climate crisis for permitting fossil fuel infrastructure and violating the use public trust and constitutional rights for life, liberty, and . . . and, uh, property. So, uh, with that I will um thank you all for your time in this in this, um, experience. I look forward to further discussion.

Prof. Noah Sachs: Thank you so much Monica. Uh, and lastly we have J.B. Ruhl.

Prof. J.B. Ruhl: Thank you Noah and thank you to the everyone at the law review for putting this together and uh to my fellow panelists for, uh, their very thoughtful and relevant, uh, presentations. Uh, get my slides up. Oh.

Prof. Noah Sachs: Yes, they're up.

Prof. J.B. Ruhl: Looking good?

Prof. Noah Sachs: Um. Uh, you need to go into slideshow.

Prof. J.B. Ruhl: I thought I had, okay.

Prof. Noah Sachs: Play it from start.

Prof. J.B. Ruhl: Right. Yeah, there we go. All good now?

Prof. Noah Sachs: There it is. Yes, that's good.

Prof. J.B. Ruhl: So, um I'm presenting a, a theme in a project that I'm working on with uh my good friend and colleague Jim Salzman who is at UCLA and the focus of our uh, work is on uh, climate infrastructure. Uh, so this is a uh you know climate change presents many problems but many of the solutions are infrastructure based and we have an unprecedented urgency to get infrastructure on the ground for both mitigation and adaptation. This recent report by the IPCC on adaptation sums up the theme I think quite appropriately, right? So I want this to sink in climate change is a threat to human well-being and planetary health, we all agree on that. Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a livable and sustainable future for all. I think what's important about this is many of us are already on board with the need for urgent mitigation infrastructure in the form of renewable energy clears throat electrifying the transportation fleet and providing charging infrastructure any other infrastructure challenges. I think what we've missed in the policy dialogue is how urgent adaptation infrastructure is as well. We've seen so many examples in the last few years of bizarre uh patterns of weather and climate that present uh extreme adaptation challenges. We don't have time to, to, you know waste anymore about getting adaptation infrastructure on the ground as well. Mouse click so closing the adaptat-adaptation deficit is also urgent. We're already behind in preparing for climate change. Recent studies have shown that over the next 25 years the effects of uh climate impact intensity uh such as flood risk are going to disproportionately affect low-income minority communities. Uh so we have a-an urgent need to address adaptation justice through adaptation infrastructure. Also I think that something that is not emphasized enough in the policy dialogue is that even if we succeed in our mitigation goals of-of arresting climate change and holding temperatures to 1.5 or 2 degrees centigrade average as

Michael emphasized before, that is just uh the top end. In other words climate change will continue, these impacts will continue possibly for centuries unless we develop net negative technologies or install NGO engineering approaches. So we have adaptation in our future for potentially centuries. Mouse click computer ding clears throat so, uh, uh, Jim and I unpack the infrastructure policy challenge into six forms. One is one we've been giggle dealing with for decades. Rehabilitation of our existing infrastructure it's a perpetual problem we're not doing very well but we've got a lot of infrastructure that even without climate change we want to repair and rehabilitate. But we now have new short term needs with climate change. First mitigation, that's largely the renewable energy of wind uh solar uh and then the electric transmission lines, getting those sources of energy to the uh users of energy. But adaptation we can break into three forms. Resilience uh building resilience to the harms of uh climate change through i-improved flood control, improved uh building codes. Resisting the harms of climate change through say coastal armoring clears throat increasing uh air conditioning and then Retreat. There are areas of the county that, uh, uh, demographers are predicting will be uninhabitable computer dings or certainly undesirable and we may need to pull back from the coast, pull away from areas that have extreme heat and that involves an infrastructure problem as well because whoever moves out of those vulnerable areas needs infrastructure to the areas into which they move. Long term, you know if we don't hold climate change to 2 degrees centigrade uh we may need to think about even more drastic infrastructure challenges. We can put those to the side for now in terms of urgency but it's not something we

can forget about. Mouse click so, uh, what are the trade-offs that we're facing? I think the urgency component of this, both renewable and uh both mitigation and adaptation presents a-a set of trade-offs posed by the fact that we have multiple types of infrastructure uh deployed across the nation but often having local impacts. It's critical to accomplish this. It's urgent to begin building. And this is unprecedented in our history of environmental law of infrastructure. I mean think about this, go back in time and pretend we didn't have these forms of infrastructure already in place: the intercoastal waterway, the interstate highway system, our natural gas pipeline system, the electric transmission grid. All of these were uh, in place by the time, not in place but the skeletons were at least there, intercoastal waterway was in place by the time environmental law came on board in its modern form in the early 70s. Think about building all of those today, at the same time, within 20 to 25 years. That would be an unprecedented challenge. That's the challenge we're facing with the future of infrastructure for mitigation and adaptation. Mouse click Jim and I uh raised this concern with respect to mitigation at uh infrastructure a few years ago in this uh article in the Vermont Law Review. Again, we've mostly been arguing about extensions of the existing

infrastructure we have in place in environmental law. The massive renewables infrastructure problem ahead is presenting an extreme challenge and already is facing litigation a variety of-of interest groups. Uh for example you know cape wind is is uh took 14 years to basically fizzle out. Vineyard wind is now in snarled in litigation, uh, Michael's Sabin Center has a running record of us state and local laws designed to impede the siting of uh renewable energy infrastructure and uh many of the cases that have challenged energy infrastructure both wind and solar. So this is already a problem. The-the environmental laws we have in place uh we are not critiquing those laws at all. They've done a fantastic job of . . . of mediating infrastructure development uh but the bottom line is if you wanna stop an infrastructure project you've got so many uh environmental laws at the federal state and local level to throw at it that you can slow it down and potentially stop it and we're afraid this may happen with mitigation and infrastructure a-and adaptation infrastructure. Mouse click So does something have to give? Can we accomplish all of the goals that we have in place and we've talked about thoughtfully today we need to build this infrastructure quickly but we want to protect the environment that's a well settled norm. We want to engage public participation. We want to ensure socially just outcomes today and for the future. And we want to manage costs. But we're concerned that there are potential trade-offs we're just not putting on the table and wrestling with. Mouse click So our response to this in the past, the recent past has been well let's tweak. We can tweak with general permits, we can tweak with expedited schedules, fast lead agencies dashboards, timeline tracking. Yeah, okay we can tweak, it's worked so far, but we haven't undertaken this kind of massive national scale infrastructure challenge across many fronts in our current uh regime of federal state and local environmental inciting laws. Mouse click So stepping back, Jim and I pose that we have three big options, three broad options to consider. The first is status quo, just keep everything the way it is deal with problems as they rise and hope we can manage on this on the fly and our concern is that this will increasingly pit environmental law against our nation's infrastructure goals and it might become quite a mess and slow us down, unfortunately. We could, option two, just keep tweaking and squeezing tweaks out of the existing regime try to streamline NEPA, the endangered species act, uh come up with new kinds of general permits and exemptions, further centralized decision making at the federal level. Problem is that this can only go so far. The process remains fragmented, subject to all sorts of controversy and we still wind up with federal and state and local laws that are still a regime that's difficult to manage. It's a project by project challenge but that's not the challenge we're

facing. We're facing a national scale urgent time frame. Mouse click So Jim and I suggest option three. Conceptualize our mitigation and adaptation infrastructure challenge as a national challenge, not as a collection of projects

but as a grand undertaking. Think of it as a system of infrastructure, right that we have to plan nationally even though often it is deployed and managed locally. Not 26 wind farms and 42 sea walls but all manage coherently in the same time under the same process. I think step back and also consider that when you talk about 25 years or 20 years, we don't have 20 years or 25 years to build the infrastructure and then turn it on. All of the models about, uh, the effects of mitigation depend on us bringing this infrastructure online overtime at an accelerating pace and we can't wait 25 years to build protective adaptation infrastructure either, we have to bring it online starting now. A project-by-project trade off approach will not get us where we need as a nation. It loses opportunities for synergies and thinking big. So, we envision a regime that sits above existing laws and manages this qualifying infrastructure in a unified regime. For example, we...we have to ask first of course what...what is in what is out in terms of critical mitigation and adaptation infrastructure. Right, so that's a threshold question, but once we thought that through, what would this look like? Tighter timelines. We may need more extensive federal preemption and state preemption of local laws which has happened in New York for some renewable infrastructure. One stop assessments in decision making. Do we make every project go through NHPA, the ESA, the national short preservation act, etc? Or do we consolidate for this qualifying infrastructure a one stop one law approval process. Do we need to rethink mitigation as a project by project? or we think about system wide mitigation. Mitigation that might have to happen after we have the infrastructure in place. And do we limit and expedite judicial review so that we're not fighting these battles all around the country. Excuse me. We may even consider or envision a regional federal infrastructure agency developing regional plans for all of these components. Baseline standards for lines of infrastructure. Programmatic, uh, environmental assessments that cover all of the infrastructure within the region. Exclusive oversight of federal direct and funded actions. Template permits for state local and private funded. Preempting consistent actions taken at state and local levels. And one stop public participation through dashboards and other transparent, real-time mechanisms. Certainly, don't want to sacrifice this. Just need to rethink how we do it. And one stop final impact review, uh, and permitting with limited judicial review. Of course, the concern is how to ensure local social justice considerations. We need to think through how we facilitate participation and justice outcomes in this process and maybe even have an independent sort of omnibus social justice oversight agency that's ensuring that the system doesn't, uh, sacrifice local justice concerns even though it's a national effort. So, we're on a path to potentially be two degrees centigrade and even if we hold it there, we have a tremendous mitigation and adaptation infrastructure in our future. We need to initiate anticipatory governance now and develop scenarios for short term and long term infrastructure build out. All scenarios would require

infrastructure for the six “R’s.” We need to accelerate rehabilitation; accelerate renewables; start building resist, resilience, and managed retreat infrastructure now; start planning for long term. How do we rapidly do this through environmental and social justice protection law and policy? Jim and I are concerned that we are not thinking this through clearly enough and tweaking is not going to get us where we need to be. I’ll stop there. I hope I stayed within my time frame, and happy to take questions.

Prof. Noah Sachs: Thank you J.B. Uh, yeah. I think we do have time for, for questions. Uh, uh, we have one in the Q&A. The impact of the COVID-19 pandemic on issues of climate change in the U.S. I guess that could go to climate change mitigation or adaptation. Um . . . J.B. you wanna start with that?

Prof. J.B. Ruhl: well...I...I'm not sure what direct impact the COVID-19 panic...pandemic has had on adaptation other than to expose, perhaps, um, the need for, um, uh, planning ahead, uh, anticipatory governance that failed in the COVID-19, uh, context. I mean that we had plans that were just left on a shelf and not followed. Uh, so I think if anything it has, uh, taught us that it's not too soon to begin planning for a two-degree centigrade world, in fact we have to, but it's not just mitigation infrastructures, it's habitation infrastructure.

Prof. Noah Sachs: and, uh Alice?

Prof. Alice Kaswan: Uh, I just want to note that we can come together to solve a pressing problem. And in some ways climate change is harder because it is only episodically in front of us, whereas COVID was, uh, much more, um, much more present in our eyes. But I . . . I'm hoping that if we learn nothing else it is the, the capacity, um, for large scale action both economically, as we saw to prop up the economy, as well as in terms of our disease response.

Prof. Noah Sachs: and, um, Mike I see your hand up.

Prof. Michael Gerrard: So, the pandemic slowed down construction of a lot of clean energy facilities It also slowed down oil and gas drilling. The recovery of the economy has outpaced the, um, the resumption of all of these things and has led to a lot of pressure for more oil and gas drilling to relieve the increases in energy prices worsened, of course, by the Russia invasion of Ukraine. So that's been a negative effect. I think that the . . . the pandemic also took away a lot of the momentum behind climate legislation which was really building up right before the pandemic started. It has accentuated the partisan divides, the horrible debates over vaccination and masks you know many of the same groups that oppose action on climate change, which is tragic in in many ways. The one . . . one limited positive effect, of course, is

it allows more telecommuting and more remote activity like today's conference, but that too is a disproportionate benefit because it's mostly white-collar workers who were able to avail themselves for more work and at schooling and so forth and lots of people especially at lower scales of the occupational ladder don't have that remote option.

Prof. Noah Sachs: Uh and . . . and we have one more question which is directed to Alice here. Uh, it's about just transition. It's from a Mary Kroemer, who works in Appalachia, and is particularly worried about impacts on coal communities as we transition away from fossil fuels. So, could you . . . could you speak to that issue of just transition and within the larger context of climate justice?

Prof. Alice Kaswan: I . . . I just say yes and . . . and that is given the time constraints I'm sorry and I shouldn't have omitted that reference. Um, but I think that's another very important dimension when we look at the distribution of . . . of benefits and risks and we look at participation. I think all of those apply equally to thinking about a just transition for fossil fuel dependent communities which extend well beyond Appalachia I think in some ways Appalachia's been a poster child, um, where you do have communities that have, for a long time been very dependent on the fossil fuel extraction process. Um, and so I think you know what I would urge is . . . is community driven transitions rather than you know six months of . . . of money for training for individual workers. But really trying to think forward a future that addresses new pathways for communities. I think the president has urged really focusing on transitioning to some of the cleanup that needs to happen as employment opportunities that short term, I think you know looking for more diverse opportunities is very important. But I think it's a problem that is . . . that is significant not only for Appalachia, but for Louisiana, for Kern County here in California, the many areas where we have significant dependence on, on oil and gas as well as on coal. But thank you for the question, I think it was an important point to raise.

Prof. Noah Sachs: Yeah and I think we're out of time, so I think we are going to wrap up this panel and I want to . . . I want to thank our four speakers: Alice, Mike, JB, Monica, thank you so much. . . uh. . . and also our student organizers who've just put in a ton of effort into this and to bring this event to fruition so thank you all. Thank you.

Mallory Ortmann: Thank you Professor Sachs. Thank you to all our panelists, um, what an interesting and relative, um, relevant, rather, conversation on climate change and climate justice, um, now we are going to take a short lunch and, um, we will reconvene at 12:15. Thanks again guys.

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PANEL: EVOLUTIONARY ISSUES IN ENVIRONMENTAL AND ENERGY JUSTICE

Sara Gosman, Andrea Simpson, & Laura Gonzalez

INTRODUCTION

Mallory Ortmann: Hello everyone, before we start our next panel, I just want to remind everyone in the audience, especially any practitioners here with us. First of all, thank you so much for coming, um, but I just wanted to remind everyone that we do have five CLE credits pending, um, and Mary Ruth Keys will be in touch in the coming weeks to verify your attendance, um, and to apply your CLE credits. Uh, Professor Eisen I'd like to introduce or have you introduce our next panel.

Professor Joel Eisen: Uh, sure. Good afternoon. Thank you all for being here, uh, before I get started I just want to say we have had an outstanding and wonderful discussion so far about environmental justice issues and how it factors into the climate discussion. This panel builds on that discussion from this morning. And it's titled evolving and evolutionary issues in environmental justice. As you'll see, what we're doing is taking a deeper dive into some of the issues surrounding individual subject areas and then allowing my friend and colleague Andrea Simpson from the University of Richmond to tie it all together in her experiences and decades in the environmental justice movement. So the way we're going to proceed is we're going to start with Sarah Gosman who's an associate professor at the University of Arkansas school of law. Her work on the intersection of justice issues and risk issues with the sighting of pipelines is extremely well known and we're extremely fortunate to have her here to talk about that. She'll go first. Second, will be Laura Gonzalez Guerrero who's from the local advocacy organization, Clean Virginia, and if you don't know who Clean Virginia is, they do a lot of work in trying to advocate for justice concerns in an area where it's extraordinary difficult to do so and that is in the area of public utility regulation. And we haven't talked much about that so far, but Laura is going to bring us up to speed on the intersection of environmental justice concerns and that sphere of utility regulation, and then finally as I mentioned, Andrea who has been a professor at the University of Richmond for quite a while studying these areas of environmental justice and has written extensively books and articles. I'm just so fortunate to have you here to tie that discussion

all together at the end of the panel. I will try to give about 12 minutes or so for each panelist and then we'll have some q and a which as we've done with the previous panels, I will moderate at the end. So without further ado, Sarah, why don't you go ahead and if you want to share the screen, you can certainly do so.

PANEL

Prof. Sarah Gosman: okay thank you for that kind introduction and I'm looking forward to talking to everyone about pipelines. Let me get my slides up here which I'm going to attempt here. I might need some help, I apologize.

Carl Hamm: I'm here to help if you need me uh, you should be able to just click. . .

Prof. Sarah Gosman: I see that it's working now, thank you. Okay, wonderful. Can everyone see those?

Carl Hamm: Yes

Prof. Sarah Gosman: Alright, wonderful. Alright so. I'm coming to you from the University of Arkansas School of Law and yeah as Joel mentioned my research is on the issue of pipelines um and energy pipelines, risk, risk regulation and sort of um more recently I've been thinking about uh the connection between environmental justice and pipelines. So I'm going to talk a little bit today about those issues and I'm happy to answer any questions that you might have. Um, so I want to talk a little bit, just at this stage about the expanding pipeline infrastructure in the world of our domestic energy revolution of oil and gas. I'm going to talk briefly about siting and safety laws. Um, then I'm going to move to connecting it to environmental justice and finally if I have time I'm going to talk through some case studies and if I don't, I'm happy to share thoughts on those at the end. Alright. So I always start with this map because I think we don't often think about what's underneath our feet in terms of the energy infrastructure that we have in this country. This is a map of our gas transmission and hazardous liquid pipelines and you can see that it extends across the country. There are certainly um many um in particular in the gulf coast region um but again extends across the blue are the gas transmission lines and the red are hazardous liquid and those include oil pipelines as well as refined product pipelines. Alright. So we have had a domestic energy revolution in this country courtesy of hydro fracturing and we look in terms of the production that we've been seeing, we also have seen more pipelines so in order to be able to uh actually transport all of this oil and gas that we are producing out of the ground we need to have pipelines to move it from place to place. So just again to set the stage here for why we're seeing all of these pipelines and thus all the disputes about pipelines, I thought I'd show you a little data here. This is all from the energy information

administration so if you can see the rise in shale gas there again through hydraulic fracturing, high volume hydraulic fracturing and horizontal drilling um and there we have the one for oil um called tight oil and you'll notice just how dramatic the shift has been in terms of the amount produced and the amount of our total production that is actually coming out of this particular set of technologies. So what does this do? This creates more pipelines so again giving you some statistics here from the energy information administration from the last about 10 years or so, we've had 264 projects that added about 13,000 miles of interstate gas transmission pipelines. There's more than that but that the data that comes from the federal energy regulatory commission which is charged with uh approving those pipelines and then 198 projects that added 64,712 miles of petroleum liquid transmission pipelines. So we're looking at a big build out here in terms of the infrastructure across the country. So why do we care about this big buildout? Well, we care about it because of the impact certainly of the construction of those pipelines. We also care about it because of the long-term risks of those pipelines. So here are two heat maps to show you a little bit about the incidents um or accidents that have occurred since 2010. On the left you'll see gas transmission and on the right, you'll see hazardous liquid which again you can think of as oil or petroleum products here. Green being sort of the lower incident density uh and red being the higher. So we have incidents across the country. You'll see that um a lot of . . . of them are focused down again along the gulf there in terms of the highest um but . . . but you know I think what this is intended to show you is you know you'd be again surprised perhaps that we have incidents across the country. You would be, again, surprised perhaps that we have incidents across the country, we have some very famous ones, um, but they are happening all over and, um, each year. Ok, so now I want to talk a little bit about the siting and safety of energy pipelines and the legal framework that we use. So, on the pipeline siting side, uh, it's primary state authorities. The federal government, that is the Federal Energy Regulatory Commission, or FERC, has authority over interstate natural gas pipelines. But the rest of transmission pipelines –and these are these big pipelines that are transporting oil and gas across the country from these production areas through to wherever they're gonna be ultimately used. Um, so these are, um, everything else, right, is primarily through the states. Now, not all states regulate these transmission lines. Uh, they're not required to do so, so some of them do and some of them don't. Um, in terms of how they regulate, if they do, right, they're through certificates, um, or through route permits. And the site-specific impact-so think wetlands here for example-these are regulated under traditional environmental programs. So, for example, section 404 of the Clean Water Act. Um, the process for actually approving pipelines is really a process for approving the pipeline infrastructure itself, as well as the location, sometimes more specifically the route. On the pipeline safety side, we

have a set of safety standards that actually govern all the way from design through to abandonment of pipelines. This is a cooperative federalist program, meaning that we have federal authority through the Pipeline and Hazardous Material Safety Administration and the department of transportation, an agency you probably haven't heard of unless you are in the world of pipelines. They are the ones that, uh, manage and regulate pipelines. It's a cooperative program because states are allowed to, uh, regulate intrastate pipelines, uh, while the federal government hangs on to the interstate side. Alright. So now I'm at environmental justice. So, thinking about pipelines as an environmental justice issue. So, I'm gonna take here the typology of environmental justice as really being composed of four types of justice. So, distributive, procedural, corrective, and social, and connect at the pipelines. On the distributive side, we certainly are seeing –and this is really about equitable distribution of risks, right, of these pipelines, where they're being sited. So, we see proposed projects in or near environmental justice communities, Indigenous, right, Black communities. We see some evidence of disproportionate burdens. There's work being done right now in, that's recently been public, in looking really at the locations of these pipelines across the country and comparing it to sort of socially vulnerable areas. Um, so that work is ongoing, right,

but we know certainly as to the big pipeline disputes that have been happening recently, that we can make that connection to environmental justice communities. In terms of procedural justice, then, this question of meaningful involvement. Operators make a lot of the critical citing decisions. And this is usually done within a pretty black box. I mean, more agencies are now asking for more specifics about how these operators are making decisions about where they place their pipelines. Um, but still it's a little unclear exactly the set of priorities there, and you can imagine that, you know, some of this at least is based in cost, some of it is based in not just sort of cost of land but cost in terms of social pressure and protest around where these pipelines are gonna be. All of the things we think about when we think about siting in other environmental justice controversies. Um, opportunities for public involvement historically have rarely involved meaningful, um, consultation. So that is an issue that's not, of course, limited to pipelines, but it certainly occurs in the pipeline world. On the corrective justice side, how do we correct for, um, for example, violations, right, whether . . . or just thinking of the forwards about how we're gonna handle these kinds of risk issues, um, you know the whole, particular process –and I'm happy to answer questions on this –I'm just gonna sort of make a statement here that I think there is relatively weak government oversight over pipelines both on the siting and on the safety side. Local authority over operators is very limited because of preemption. Um, so we are not seeing a very, uh, very intensive, I guess I would say, regulatory program here over risk. And then the final piece is social justice. This broader

set of issues around thinking about these issues from a social justice lens, right, and the needs of people generally. So, these laws, uh, are really focused on the technical operational issues of pipelines. And they don't you know, they don't consider pipelines in this broader sense of social justice. Part of the issue here is the operators are often granted the power of eminent domain to take properties. So, they have a particular power here, in relation to communities that gets used. Ok. So, um, I have three case studies, I think what I wanna do is just show you some pictures to give you a sense of sort of what's happening out there. So, the Byhalia Pipeline is a pipeline that is in the Memphis area. It was in the news recently. It was a 49-mile crude oil transmission pipeline. If you look up on the left, you'll see the, in the circles, in the ovals there, the beginning point and the end point. And then you'll see the orange line, that's the pipeline. So if you're asking yourself at this point in time, right, why does this pipeline go all the way down into Mississippi and back up, you would not be alone in that particular question. Right, that was part of this issue with, why were we going through this particular area, which included this, um, Boxtown, which is a Memphis community originally established by formerly enslaved Blacks after the Civil War. Um, one of my favorite parts of this particular story is that the land agent admitted that the route was taking a point of least resistance. We may not be surprised to learn that that was something somebody actually said. Ok. Dakota Access is more well known. Um this is Standing Rock but again I just want to show you two routes. Often you can sort of figure out what's happening through alternative routes here. There was a route that actually went around Bismarck, above, and um one that went close to the Standing Rock reservation. And we ended up near the Standing Rock reservation. Um, the details of that I'm happy to talk more about. But that's the bottom line there.

And then the one that I'm sure you all know about because it's in your area right, the Atlantic Coast um in Union Hill. So again, if you go back and look at the alternatives of that particular pipeline, you see that it didn't have to be placed through that community, or proposed through that community. Um, but, in the end, right, that was the proposal. Alright, and in fact the operator argued that the cen . . . census data showed that the community was not predominantly of color or low income. Alright, so where does this land me then, in terms of thinking about these issues? So, all of these pipeline projects had alternative routes that would have avoided the environmental justice community. And you see this, right, in these prepared case studies, but it also leaves us to think about these questions of why operators are sitting in these communities. Decision-making is largely in the hands of private entities and government agencies. Agencies in these situations didn't recognize the environmental justice issues, um, really or seek to correct them until they were forced to, right, in litigation in some instances. I think overall pipelines really are treated as technical problems right rather than social justice

problems and this is the set of issues here about why we might have this environmental justice problem. The extent that we really think about pipelines as technical and operational issues, we give it to experts to make those decisions. We take it away from the sort of world of environmental justice and civil rights and thinking about these social burdens and benefits. So, I'll leave it there, um, to give my, uh, other panelists time to talk and I'm very glad to answer questions. Thank you so much.

Prof. Joel Eisen: Uh, thanks very much Sarah, and we'll . . . we'll turn it now over to over to Laura. I'll mention for everyone who's here participating in the program that if you do have questions by go ahead and put them in the Q & A and I'll make sure we get them to our panelist. Ok Laura you're up next.

Laura Gonzalez Guerrero: Hello everybody and Professor Eisen, I'm very happy to be here and thank you Sarah for your presentation. I'm very glad you mentioned the Atlantic coast pipeline meant to be owned by Dominion Energy and Duke Energy, because it is a perfect example of projects that effect communities like Union Hill but also show the embedded incentives in the regulation of futility monopolies to build expensive capital projects regardless of their of their usefulness and ignoring other, cheaper alternatives and less impactful alternatives and I'll detail this in a minute. But first I want to mention one key aspect to address environmental and energy justice issues that we talk less often about. And it is the energy burden problem that we have inherited from the fossil fuel power system. What does energy burden mean? It is when families pay an unaffordable portion of their income on energy expenses. In Richmond and Virginia Beach, for example, low-income homes can pay more than 12% of their income in uh energy expenses, compared to the 3% national average. And then the challenge that we have is that as we transition to clean energy and tackle the climate change problem, we have to commit to two things. First, uh alleviating the energy burden problem and, second, democratizing the benefits of the power system that have been long concentrated in utility monopolies. Otherwise, we are going to do only half of the job that we have um to do. In fact, the new reality is that clean energy is cheaper than fossil fuels. So, why would electricity bills rise and not decrease? Why do Virginias have to pay the 8thhighest bills in the nation, and a big part of the problem is that is the incentives embedded in the regulation of investor-owned electric utility monopolies that control most of the electricity service in the U.S. This regulation compensates monopolies for the ownership of capital assets. The more expensive capital projects like transmission and distribution lines, like pipelines, the higher the profits are.

So yes, we are building huge clean energy clean energy resources to reduce emissions, but we have in place the same unfair structures, where utility monopolies abuse their power to accumulate excess profits for private investors,

while the middle-and low-income families are left with high electricity bills. And often this structure creates new Sacrifice Zones where Latino, Black, and Native American communities still struggle with land conflict and dispossessions to advance utility scale clean energy projects. There are two important tools that can reduce energy consumption and therefore tackle affordability, reduce emissions, reduce peak load, reduce the need for expensive, long-distance transmission . . . transmission lines, and reduce land conflicts and dispossession. And if you want to know the solutions I want you to unmute and say yes but I think people cannot unmute, right Professor Eisen, so I'm going to tell you anyways. And these two solutions are energy efficiency and distributed energy, like rooftop solar. So, these solutions not only have great benefits for the grid but installing rooftop solar will and can make you the cool kid in your neighborhood and if you get batteries it's going to be even better for you. So, this solution is great but sadly for us, these two tools fundamentally compete with the interest of utility monopolies. Energy efficiency reduces utility electricity sales and distributed energy democratizes the ownership of capital infrastructure, which is the source of utilities profits. This is why electric utility monopolies have not put serious efforts into energy efficiency and have fought with all their political power, rooftop solar and policies like net metering around the country. I'm going to give you 2 interesting examples but first I want to quickly explain what net metering how net metering that I want to explain that net metering is a crucial policy that compensates customers that produce solar on their roofs rooftops or their . . . their backyards at the same rate or price that the utility charges for the electricity. So, let's go to the first example in Arizona, and I think Arizona is fascinating because commissioners of the Arizona Corporation Commission that regulate electric monopolies, profits, rates, and capital investments are elected officials. So, this story begins in 2007 when a fully republican corporation Commission first implemented the net metering policy. Commissioners . . . commissioners at that time believed it was fair for Arizonans to receive the full value of the electricity they produce from their solar panels. The net metering policy was a success. The biggest utility in the state, called Arizona Public Service Company, grew from 900 net metering customers in 2009 to 60,000 net metering customers by 2012. The same year that net metering reached its peak, the biggest utility monopoly decided to make campaign contributions in the Regulatory Commission elections. Despite that, up to that moment, the utility had a policy not to participate in the regulators' elections for obvious conflict of interests. Renowned policy expert Leah Stokes explains how these contributions clearly influenced the election of commissioners that had ties with organic ... organizations supporting an anti-renewable agenda. So, what happened was that with these new commissioners, the long-standing incentives for customers' ownership of distributed solar distributed solar started crumbling. In early 2013, the Commission

established a monthly charge of \$5 for net metering customers, and in 2016 the Commission phased out the net metering policy. Again, Leah Stokes in her book describes that immediately . . . immediately after net met.. metering policy died installations plummeted and job losses in the solar industry were dramatic, falling 10% in 2018. So, without substantial solar incentive some companies even left this state entirely. I like this case because it's a clear representation of how utility monopolies incentives to keep control and ownership of generation assets fires back the public interest, and in fact hinder solutions that can cut emissions and decrease the energy costs. I'm going to briefly give you another example that I hope has a better ending because it is right here in Virginia. So, in 2020, the General Assembly created the Chair Solar and Multifamily Shared Solar programs. These policies are very exciting because they allow customers living in multifamily buildings and families that and do not own their own homes or like, a suitable rooftop, to purchase a portion of a distributed solar facility and receive credits for the energy that these facilities produce. The economics of these programs are very similar to net metering. You do not have to pay the utility for the energy your solar panels generate. And with those savings, you can recover the investment in the chair solar facility and eventually earn some money. You're not going to be rich, but you're going to recover your investment. Dominion Energy proposed an exorbitantly high administrative fee for the shared solar programs, or even zero or very little savings to finance the solar facilities. In some cases, customers will have to pay the utility a premium to participate. This space clearly will kill the shared solar program and make it inaccessible for low-and medium-income families that are already struggling with high energy bills, and often are also dealing with the impacts of climate change. I testified along with lawmakers and other advocates against these unnecessary fees for which the utility did not present any supporting evidence. The case is still pending, and we hope the Virginia State Corporation Commission sets a reasonable administrative charge that... and we also asked the commission to request Dominion to present appropriate evidence to justify the administrative fee. The point I want to drive home is that there are amazing tools like energy efficiency, distributed solar, and energy storage that decrease carbon emissions, and at the same time, help solve the energy burden problem and, furthermore, democratize the financial benefits that the clean energy technology... the benefits of clean energy technology. But, as long as these tools interfere with the entrenched power and profit of utility monopolies, any solution will face this uphill impossible battle. So, we need to think how to update the regulation of utility monopolies. So we can detach profits from owning massive from owning massive projects with hefty price tags. Like the Atlantic Coast pipeline, for example, we need to think, how to link profits to something that benefits the public interest. For example, we can link the profits of the utility to ratings in energy consumption, making the grid ready for

rooftop solar plus storage, decreasing the time it takes to get projects interconnected to the grid right now, it takes one year or more to get a project connected to the grid, etc. And I want to conclude . . . conclude by saying that there is a great power imbalance. Customers are paying the utility monopolies billions that financed the opposition to beneficial programs. We pay to maintain a status quo that is not working in the public interest. The Clean Energy Transition cannot follow the same centralized model of the fossil fuel power system, where externalities were socialized and benefits monopolized. And with that, I would like to conclude, Professor Eisen. Thank you.

Prof. Joel Eisen: Thank you, Laura. And what I'd like to do, Andrea, you and I have talked about bringing your decades of understanding of the environmental justice movement to bear here on these new challenges that our first two panel panelists have talked about. So, I'd like to turn it over to you for that. And I . . . I . . . I thank you so much for being here to bring your expertise to the to the table here.

Prof. Andrea Simpson: Okay. Well, I'll try to be very brief. But I first want to thank you for including me in this Symposium. And I learned so much from both Professors, ah, Gosman and Gonzalez, so thank you uh for . . . for bringing me up to date. I don't currently do work in environmental justice, but I still keep up with uh the progress on the research end and on the ground. One of the things that just sticks out to me that ties these two things together is this continuing tension in environmental justice issues between economic interest and the interest of the people in our health and our wellbeing. Umm, so many things connect to me personally. Sarah, I'm from Memphis, Tennessee. I was born and raised in Memphis. The first research I did was on the Superfund site, you know, the Memphis Depot, and the fight against that, where they buried all kinds of stuff, mustard gas bombs, it was it was highly toxic. And I went to a some public meetings there. And that's when I began to realize that, wow, we... this is a David and Goliath, uh, fight here in environmental justice. And when you when we talk about needing so much fossil fuel energy, I also think about the fact that we don't put any resources in public transportation, and coming up with better ways to coordinate and get people around, so that everybody's not driving a car all the time. And we don't seem to want to really expand our public transportation systems. And uh that's always been a mystery to me. Umm, I'm thinking about from the legal standpoint, Sarah, the uselessness of Clinton's executive order on environmental justice, because what I thought about is hearing this Buckingham County case that you mentioned in the pipeline. You know, the operator initially said this was not an environmental justice community, which was untrue. Union Hill was indeed... but you know, when a with an executive order, and not with policy and legislation, you cannot hash these things out. There's so many loopholes. And so, we have this problem, because, you

know, in this country, we're still dealing with, "what are we going to value?" You know, because in all the enviro Superfund sites, everything I remember interviewing, the military guys that were over the depot when they began to just dump all this stuff in the ground. And they built themselves a putting field. And I learned something from golf people. Did you guys know golf courses are really sources of toxic chemicals. And so, what they did, they actually injected DDT into the ground around the depot in order to get rid of, I guess these little gopher things. They were putting holes in their greens. And in the warehouse that was closest to their putting green. I found out 13 workers had miscarriages or children born with great deformity, because I think they poison their own groundwater. Ah, and so, if you were drinking from the water fountains, yes, so I'm thinking about that I'm thinking about Westwood, which is part of, you know, ah the Byhaliaah pipeline in Memphis and . . . and . . . and Westwood and Boxwood, my, my sister, taught at Westwood for many, many years, Westwood High School. And I . . . I . . . wonder now sometimes about the connection between a failure to thrive of our students in schools and what they've been . . . been exposed to, in terms of toxicity. So, every time now when I see stories about, you know, Black students consistently score lower on the SAT or the ACT or whatever method they're using, you know, for years we didn't even think about how this might be happening. So, um, with Laura, oh my God, this was really amazing to me. Laura, I was in graduate school when I realized utility companies were not public. I happened to get a temp job to feed myself while I was dissertating at Georgia Power. So I'm up there, I'm at, like, in the highest offices—you know I'm . . . I'm doing this temp secretary work for these executives. And I don't know, something came up and I said but wait a minute, can you, you can't do that, you know, without [X] and they looked at me and said what are you talking about? I said, this is a, isn't this a government agency? They were like no! That's when I figured out that Dominion wasn't public, Georgia Power wasn't public, and even in Memphis, you know TVA as a quasi-governmental entity, and TVA gave their people bonuses that you guys wouldn't believe, it'd blow your minds. They probably only have those bonuses at law offices. But in 1976, I'm out of college, I get my first apartment. Know what my first winter utility bill was? 350 dollars. That was half—half of my two-week take-home pay. No it wasn't—it was half of my month's take-home pay. It was ridiculous, you know, I could not, I couldn't buy anything to eat, you know, because I had to pay the rent and, and pay the utility bill, and I always thought there's something wrong here. So, um, you know, yes, energy burns democratization of energy systems. I love all of this. I want us to find a way to make it happen and here's my idea. So today I really, in addition to bringing this together, I want to talk about, um, power. You know, because politics is about power. And, um, movements, like the environmental justice movement, are always formed from people who are members of outside

groups, right? They don't have the resources, the power to play the inside game, and Laura you've referenced the inside game when you said that they start putting into the elections of these reg regulatory, uh, uh, commissions and that's a common problem, you know, um, that's what, you know, we call to, when we study agencies at the federal level, you know, going native, when the agency's captured by the very industry they're supposed to be watching. So, um, I think that, um, like, I'm thinking about the change in nomenclature in terms—when I first started working on this over 20 years ago we used environmental racism to identify our problem most of the time, and then we moved to environmental justice. I liked environmental justice better because I knew that rural communities in Appalachia and West Virginia, those were white communities and they had similar problems and I liked the term better because it was more inclusive, you know? Um, and then, so we moved from toxicity, racism, justice into talking about sustainability and resilience. Ah, this really concerned me, and one of the most influential books I ever read was John Gaventa, *Power and Powerlessness*, it's like one of my favorite books of all time. He talks about how it's so difficult to have a true democracy because of the powerful and the monied classes and when you organize, like he uses coalminers, you organize, you get better working conditions, better wages, the powerful change the game. Then they, then they start to work on ideology, right? My lifestyle with my car and my conveniences—don't you want that? Isn't this superior to you pumping water everyday in a well? So, you know, they . . . they create, you know, sort of this ideal of what you should be living like and what you can live like, you know, if you if you stick with them. So, um, and, so that's what I feel about sustainability. Ok, let's talk about sustainability. How can we preserve your wonderful community? Let's talk about building small businesses and . . . and community gardens, let's do that, so we can, you know, talk about having, um, more vegetables. Ah, we don't want to talk about funding of public schools or the redrawing of voting districts, okay, or the fact that you you still got toxic waste coming into your neighborhood. Let's talk about this other stuff. You know, giving you more money. You know, local businesses, you make more money. Then, hey, citizens of Virginia, Tidewater: let's talk about your preparedness for possible flood or tsunami, let's emphasize resilience here, you know, we should be thinking about how we going to extract you from this area and how are you prepared to deal with it. We're not going to talk about the overdevelopment of Virginia Beach. And we're not going to talk about your access to healthcare, ok? We're going to talk about building your resilience. I say this: working people and poor people use all the resilience they have surviving day to day. They ain't got no resilience left, you know, and you can't manufacture it.

So, um, you know, so I think that, I think of Tip O'Neil's famous saying "all politics is local"—what did that mean? It meant as long as we take care

of the little mundane things that's going on in your district everyday you'll be fine, you'll get reelected over and over again. But that's not true anymore because I think that environmental justice is global now because what we can do can affect others very far away from us, and air travels, and water runs downstream into our oceans. So we can poison our wells by pouring anti-freeze down sewer grates, you know, we poison our own food with chemicals that will give us a bigger yield, a prettier color, or a higher price in the grocery store. We want to sit out on our decks free of mosquitos—I myself am so guilty of this. You know, every summer I was like don't call mosquito squad, let's use a natural way to get rid of them. I truly, truly loathe mosquitos so it's, you know, these are the things that we need to think about. But I want us to stay vigilant about the ways that race and class affects the pipelines in everything we do around energy and protecting citizens. Some people get more protection than others and that is not democracy and that is not justice. I want this issue to . . . to turn into one of those big cross-cutting issues, like crime, that people will actually vote on. That we can make enough connections between each other, you know, across race and class lines because, you know, you can live in your gated community in your exurb—that will not save you. Not from toxicity, it won't save you. So, we, I, that's what I want for us. Um, I want, um, a message ah to emerge, that makes, makes these issues like maybe one of the top issues that makes a voting decision. That's when we'll get politicians to pay attention. That's when we can maybe have some leverage over the people with the deep pockets who are putting money into, um, ah, elections and campaigns, and, you know, these things, all these things are so interconnected and so problematic. We've turned government into a thing of, if you don't have money you can't, you can't hold office. Do you people know that if you want to be on a school board you need to look to spend about twenty thousand dollars? That's ridiculous

Prof. Andrea Simpson: Maybe more now, I haven't looked at those data in years, might be even more now. But it shouldn't work like that, so that we can have a truly a representation of the people. And so I-I'm going to end there, and I just want to thank, again, thank you both. I learned so much and I appreciate it.

Prof. Joel Eisen: Thank you very much for that, Andrea. And we have . . . we have a question in the Q and A from Tara Christenson that I think will tie this all together and let the three of you exercise some space on this. The question is what incentives would the utility companies have to link their profits to things that benefit the public interest? And I, I have to say, we should ask that question as, what incentives should we force the utility companies to have that would link their profits to things that benefit the public interest? So let's let the three of you take a, take a crack at that, and thank you Tara for that question.

Prof. Andrea Simpson: I think Laura should answer that one first.

Prof. Joel Eisen: Laura, I think you should go first. What should we-

Prof. Sara Gosman: Oh, me?

Prof. Joel Eisen: No, Laura, Laura.

Prof. Andrea Simpson: Laura should go first, because she has the ideas

—
Prof. Joel Eisen: Laura, if you had, if you had a magic wand, and you could design positive law tomorrow, that would bend the utility to the popular will, the way everybody on this panel has described it, what-what would it be?

Laura Gonzalez Guerrero: Yeah, so on top of my head, I will say, we need to link profits and incentives to energy efficiency. So basically, we can reduce the energy burden of low-income families by thirty-five percent if we implement these basic solutions like more efficient lighting—more efficient lighting, more efficient heating and cooling, like sealing the windows, all these basic things that are getting neglected. So, one possible—one alternative that has been implemented in other states, and Hawaii is working very hard towards it, is performance-based relations where we, where we compensate utilities for saving energy rather than building new infrastructure projects. So that's one alternative. And then another alternative that I can think of that is very important is let's compensate utilities uh based on how fast they interconnect new renewable energy distributed, small scale projects into the grid, because right now it's taking one year, like an entire one year to connect three kilowatts three kilowatts of solar. That's insane. So let's move the profit incentives towards those metrics instead of compensating—instead of compensating utilities for big, big projects that might not be the best solutions.

Prof. Joel Eisen: Sarah, I'm fascinated by something that you mentioned during your talk where you said that, in building the pipelines, the incentives are completely the other way with this. That they're really, ah, besides the power of eminent domain, there are plenty of incentives for—for operators to basically just roll over local communities. So, I'm wondering—I'm wondering how you would reverse those incentives, if you could.

Prof. Sara Gosman: Yeah, so I mean I-I think a couple things. Through the through the vantage point of risk, right, I mean essentially we have risk where we're externalizing risk, but we're not requiring the operator to pay for that risk and it's not just, of course, the risk of the construction at the front end, but it's the long term risk that we're imposing on communities. We sometimes think about this just in terms of the landowners around the pipeline and I think that that's right to think about it that way, right, but there are

broader impacts on communities with these pipelines. So, you know, I think about payment schemes right, I think about ways to try to capture essentially the money that pipeline operators are making by not having to actually pay for the risk that they're imposing. Um, and beyond that I think about, you know, the ideal world of government where we would have agencies that would really be looking very carefully at pipeline operators and the way they're making decisions about where they place pipelines, and right now it's more of a rubber stamping I think, you know, to be frank, and I think FERC is heading this direction now but it's still has a ways to go, I think I'll be curious to see um, how things play out there but that's-yeah, I think-I think money is something that's important and-and um, and good government, and really trying to find ways to, ah, have agencies take their proper role of oversight, um, rather than just sort of be incentivizing essentially infrastructure. And I guess I'll just close by saying you know, I think a lot about what's happening in Ukraine right now and I think we're gonna be looking at yet another set of issues around more production and

more possible transportation infrastructure and so how that's gonna play out. Um, this is not, you know, this is not ending anytime soon in terms of the issues.

Prof. Joel Eisen: I'm actually-I'm actually doing a webinar next Thursday on European energy policy in Ukraine. I've got two professors from, um, from, Norway and from Germany who are going to be talking about that. Andrea, I'm-I'm wondering whether anything you've heard so far in these wonderful ideas for solutions and what to do, raises to this level of your-you want this to catalyze the populace. You want people to-

Prof. Andrea Simpson: Yes.

Prof. Joel Eisen: -get fired up about this-

Prof. Andrea Simpson: Yes I do.

Prof. Joel Eisen: You want people to get fired up about this the way they would about, uh, remedying a Superfund site.

Prof. Andrea Simpson: Yes.

Prof. Joel Eisen: And, and I . . . I wonder whether any of this does or whether we need even more than these wonderful ideas that we've heard so far.

Prof. Andrea Simpson: Oh yeah, we do. I mean, we, I mean, a movement takes years to-to-to create involvement. I mean, ah, by the time the Montgomery Improvement Association got to the bus boycott they had been planning and doing other things for years and years and years and-and yet we see that the Civil Rights Movement did not even reach its (nadir?) until King's

speech, uh, in 1964 and, um, in-in Washington. Uh, but it had been going on for, for many, many years just-and so it takes a lot of time, so along with the movement, I have done research, I do have a paper I presented on the EPA, because one thing I was curious about, especially about lead toxicity-and by the way, Flint is like the tip of the iceberg. There are 110 more cities in this country with lead problems worse than Flint. And we don't know about it. One's right up the road from me-Baltimore. So, um, I think I did this paper because I was curious about who actually lobbies for lead. I-inquiring minds would like to know. So, I started delving into the EPA when it was first started, it was a direct line from the EPA to the president of the United States. Okay. And they were really regulatory and almost, um, in uh impenetrable, in terms of being co-opted um by the very interest they were, ah, regulating. The EPA-I did this chart, and unfortunately my computer ate it, something happened to it, I don't know, I think it's a conspiracy. But I did this chart where I looked at all the congressional committees with power over the EPA and the chart itself, much like Sara's chart on the pipelines, scared the be-jesus out of me. I was like, no wonder they're so weak, they are too weak, um to-to-to do us any good and we'll, we'll have to somehow get an administration-this goes for Republicans and Democrats, because as we can see, you can issue all the executive orders you want, but a new president can come in, and you guys do know legally he can ignore that executive order. He does not have to put teeth into it. Court cases. Courts have no power to actually implement anything that they make a decision on. They simply give you the grounds to go in another direction and to file a lawsuit. So I—I'm saying—to—adding to all of these things, uh, a-anew day, uh, a new deal for the EPA, and to return it to its original, you know, mission and call and un—untie it, break the links between the EPA and these tons of congressional committees that sometimes have competing interests. And it was so hard for me to finally find that, first of all, the paint indus-industry would like to put lead back into white paint, because their claim is that it—it—it's more, um, it's more durable and it provides all of these benefits. So, they're lobbying to some extent. But a lot of what's going on, especially around environmental justice, is just, um, you know, sponsoring conferences and, of course, the last few I've attended were all about sustainability. And I was like, "Oh my god, here we go." Our attention is diverted, once again, from problems of racial injustice and unequal distribution of toxic emissions, to something else. And, you know, that's a really big problem.

Prof. Joel Eisen: We have a number of other questions in the Q&A. One of them, Andrea, you'd be surprised, you would not be surprised to hear is, it says, "Dominion's name is on every arts event in Richmond that's green-washing. Why don't we do something about that?" But I—I wanna add... and there's one from Susan Miller that says "Let's put a price on Carbon," which we could talk about for the next half hour. There is another question that was,

that was here—uh—I’m sorry, it goes along with the greenwashing question, and it’s the last question I wanted to pose to all of you. Andrea, it sort of goes back to your original comments about Dominion and Georgia Power. And that is, “Why don’t we have public ownership of utilities—

Prof. Andrea Simpson: Mhm.

Prof. Joel Eisen: and utility companies and, frankly, Sarah, of the pipelines?” Alright, let’s try that for a couple of minutes, and then I know Natalie and Mallory will want to break. What do y’all think of that idea?

Prof. Andrea Simpson: I love it. Because this is the thing—I understand, um, that, you know, we—we in an ideal world, we would hope that these private entities would be incentivized by trying to be good. But I-I think in this country we should know by now there’s never enough money. There’s never enough money for people. There is no incentive, to, in my view, to get a corporation to say, “We will give up even the tiniest little percentage of our profits.” In fact, if you’re not telling us how to make more money, we don’t wanna hear it. So that is why you need regulation. Because capitalism in this country can easily run amok, you know? And so, I don’t see how we could incentivize a corporation to—you know—it’s really in your best interest to help these working class and poor people. What?! No. And it all started, right, with Reagan, where we had a change of ideology at the most basic level. And that is, corporations owe nothing to their workers or to their consumers. They owe everything to their investors. And it’s almost like, it’s their moral duty to seek higher and higher and higher profits. Because they are the ones creating the jobs. And I’m like, “You know, I think those people around the Depot in Memphis would not have worked there if they knew what was in store for them health-wise.” And I remember the military guy telling me, “You know what, I just wanna say this, Miss Simpson.” He would not call me doctor. I don’t think he would’ve called me Doctor if Jesus came down and asked him. He said “Miss Simpson, you know, I just wanna say this. You’re doing all this research, you’re interviewing all these people. We were the highest paying job in Memphis, Tennessee”—which is true. When I graduated from high school, people who didn’t go to college said, “Oh my god, I’m at the Depot!” Minimum wage was \$1.75, \$2, \$2.25, something like that an hour. But the Depot was paying \$8 an hour. People were very happy. And he says to me, “We paid a good wage. These people around here were able to buy homes and send their children to college and now you wanna turn around and point the finger and say that we harmed you.” He said, “It’s really—oh, it’s rich, Miss Simpson. It really is.” I was like “Dude! You’re killing people! What is it you don’t get about it?” That’s what I’m saying. You know, incentivize a corporation—ooh, lord, we need a voodoo priestess for that. (Laughs)

Laura Gonzalez Guerrero: Um, just this one thought, Professor Eisen, and it's that we need to remember that these are utility monopolies, which means that they have captive customers. So even if there's something good out there, it is very hard to get out of the monopoly and choose that other thing. So, the business—the deal—we have with utility monopolies is that we're going to let you, allow you to operate as a monopoly, with the condition that you provide a reliable, cheap, clean and a spectacular service. Otherwise, there is no point for you to be here. So, if these—you know—if these utility monopolies are using the money we're paying them to lobby legislators, to buy their regulators, to impede distributed solar energy efficiency, then what's the point, right? So, it is important for people to understand that the deal we have with the utility monopolies is not working, because they are prioritizing, like, I'm not against profits, like, if I—if I—if I—put a business that is successful, I don't want nobody to tell me that I cannot earn profits. But, for example, Dominion Energy has a guaranteed profit of 9.35% and, the last 4 years, overcharged customers by \$1 billion above that authorized profit. So, they are earning their guaranteed profit, 9.35%, which is above the regular market profits, and now they're overcharging above that. So, you're overcharging customers, you're not implementing energy efficiency measures, you're not allowing distributed solar for those customers that want to install their own solar panels. So, the deal is not working. So, yes, like, one option is, if this is not working, let's make it public. But if this is not working, then in the regulatory proceedings, in reg. cases for example, the State Corporation Commissions should evaluate those things and say, "I'm not gonna give you 9—I'm not gonna give you 9.35%, because you don't, you're not complying with the deal we have here. So I'm gonna give you 8% of profits." Um, so yeah, it's about people asking the commissioners and the legislators to make the deal work for us. Otherwise, they should pay the consequences.

Prof. Andrea Simpson: Yes, yes.

Prof. Joel Eisen: Sara, you get the last word on this and then I think we'll probably have to wrap it up.

Prof. Sara Gosman: Alright, so, you know, I think about um utilities—gas utilities, who are owned by cities. And I see their safety records and I don't think they're actually very different from the records of private pipeline operators. And what that tells me is that, you know, the incentives aren't there to um to create the kind of safety that I think we need, and the meaningful involvement that comes with, for example, being city-owned that we would hope for in terms of the citizens of the city being able to go back and say, "we want a certain level of safety." That is not happening in those particular utilities. So I think—I think we need more than that. I think we—I go back to regulation, really, and . . . and sort of what it means to have... I want better decision making, I want sort of you know overarching decision making in

terms of where we place pipelines and think about infrastructure in this country. I want sort of . . . you know overarching decision making in terms of where we place pipelines and think about infrastructure in this country. Whether it's public or private, I think it's . . . it's the oversight that matters.

Prof. Joel Eisen: Uh great. Thanks to all of you for a terrific panel and we'll be convening the next panel on environmental justice legislation which Natalie will talk to us about. Thank you all very much.

PANEL: FEDERAL AND STATE ENVIRONMENTAL JUSTICE
INITIATIVES

Peggy Sanner, Jasdeep Khaira, & Lemir Teron

INTRODUCTION

Natalie King: Awesome! Thank you all so much um for being with us today. We're gonna roll right into our next panel uhm and so I would like to introduce our panelists. Uhm here with us today we have Ms. Peggy Sanner. Peggy Sanner is the Chesapeake Bay Foundation's Virginia Executive Director. In that position, she works with elected officials, regulators, and other decision makers and partners, and is responsible for the program's overall operations of the Chesapeake Bay Foundation in the Commonwealth. Before becoming Executive Director, Peggy served as a Virginia Assistant Director and senior attorney for the organization, and we responsible for providing legal and policy guidance on environmental law with a per.. particular emphasis on the legal framework for restoring the Chesapeake Bay and other natural resources. A member of the Virginia State Bar, Peggy has practiced before state and federal courts, agencies, and boards on key policy issues. Before joining the Chesapeake Bay foundation in 2010, Peggy litigated environmental and other matters in courts across the country. She began her law practice in Philadelphia at Morgan, Lewis & Bockius, and also, most recently, served as counsel with Reed Smith in Richmond. Peggy received her law degree from Rutgers University and holds a graduate and undergraduate degree from the University of Pennsylvania and Swarthmore College respectively. She received in Richmond. Welcome Peggy.

Next, I have uh with us today, um, Jasdeep Khaira. Jasdeep's practice focuses on environment... excuse me, energy and environmental law. He received he JD cum laude with a Masters in energy regulation from Vermont Law School. Prior to joining the firm of Gentry Locke in Roanoke Virginia, Jasdeep was a full-time legal extern for the U.S. EPA in Colorado and held a summer law clerk position with the Sierra Club's Environmental Law Program. He also held a position as a clinician with the Vermont Law School Energy Clinic. At Gentry Locke, he currently helps clients navigate Virginia State Corporation Commission Regulations and Environmental Protection Agency and Virginia Department of Environmental Quality Enforcement and Regulatory matters. Jasdeep also provides counsel to solar developers on

local government matters and handles solar and battery storage land use matters across the Commonwealth. He is passionate about local and state government, economic development, and land is.. land use issues and believes that they are the economy and quality for life for any locality and its surrounds region. In his free time, Jasdeep enjoys playing soccer. Thank you Jasdeep for being with us today. And last, but certainly not least, I would like to welcome Lemir Teron. Dr. Lemir Teron is on the faculty at the SUNY College of Environmental Science and Forestry and the Department of Environmental Sciences, where his research focuses on urban sustainability, energy policy, and environmental justice. His work has been published in peer-reviewed journals, as well as popular media outlets. Dr. Teron received his PhD from the University of Delaware and completed a national oceanic and atmospheric administration supported post-doc at the Environmental Cooperative Science Center at Florida A&M University, where he also taught environmental justice at FAMU's College of Law. Dr. Teron was awarded the 2019 Distinguished Faculty Member for Teaching Excellence Award by the SUNY Environmental Science and Forestry undergraduate student association and received the 2020 Unsung Hero Award at the 35th Martin Luther King Jr. Celebration in Syracuse New York for his commitment to racial and environmental justice in central New York. Thank you so much for all of our panelists for being with us today, and now, I would like invite Professor Danielle Stokes to start our discussion on environmental and state environmental justice initiatives.

Prof. Danielle Stokes: Thank you Na...Natalie. Thanks to all of you who have been hanging in with us all day. We're about to round out what's been such a great day of discussion, and I'm thrilled to be able to moderate this panel with our distinguished panelists, and they'll be focusing on, as Natalie mentioned, the federal and state environmental justice initiatives. So, we'll really get a glimpse of some things that are going on in Virginia and New York. And as you see from our panelists' backgrounds, they have a lot of um knowledge and exper... expertise with several intersections between law, policy, nonprofit work, environmentalism generally. So, we'll being with Professor ... or excuse me, Dr. Teron, and we'll ask you to um go ahead and use the Q&A feature for questions have you... as you have throughout the day. We'll leave time at the end for all questions, and we'll begin with you Dr. Teron.

PANEL

Dr. Lemir Teron: Alright, so I'm going to talk to you very briefly about a project that I worked with the, uh, with NYCLU which is the New York arm of the uh ACLU. I work as an environmental justice consultant in relations to the uh forthcoming rehabilitation or

redevelopment of an interstate which is literally on top of a predominately black community. So what we'll hear today, we're looking at federal and state uh implications to this work so part of my job as an environmental justice and environmental consult is anytime you have this level of project, a redevelopment of a massive project like this, you have to have draft a final environmental impact statement. Uh this particular draft was somewhere between ten and fifteen thousand pages. When I started reading it, I had 20/20. I wear these now (showing his glasses) and that's not a hyperbole. So, when the federal government and to some extent many state governments, when they're doing this type of work, they have to do cumulative impact analysis and specifically they're looking at implications for environmental justice communities. So you're not just looking at the cost of an interstate, you're looking at everything in terms of what's the project going to do in terms of its impacts on air quality. What are the climate change and energy impac-tions? All these things we've heard about today. Noise pollution, something that is pernicious in environmental justice communities. What are the social economic uh consequences? Jobs matters, right? Are jobs going to be destroyed? Land acquisition. We can go exhaustively when you talk about a ten or fifteen thousand document. You're talking about a very comprehensive set of circumstances that are being investigated. But when we look at the federal landscape or the federal landscape, I don't want us to think about environmental justice singularly. I want us to think about all of these great lectures we've heard today, and I want you to kind of tie those together. Even though we had talk on climate change, we had talk on superfund sites. When you're thinking about the redevelopment of an interstate, it's not just the federal government's job or state government's job to say "hey, wait a minute! Let's uh do an environmental analysis of this particular project." We have to look at concomitant environmental justice conditions. And, since the project I'm working on or worked on is in Syracuse, New York, like this place is uh EGA or Environmental Inequality 101. Uh, one of our last panelists talked about Flint, Michigan's track records um it's not the only Basically saying, it's not the only city across the country with a dubious track record in relation to lead poisoning. I would offer that Syracuse, New York is probably right there at the top of the list in terms of uh childhood lead poisoning and that lead poisoning is disproportionately uh felt and experienced by young black children in Syracuse. Why? You have a lot of antiquated housing like you have in the lower right. And, since I'm in the Environmental Science school, one thing I do is I teach my students, you got to have the tools to learn where the threats are at. So that tool in the upper land corner is something called an x-ray fluorescence analyzer. It may look small; it may look cute. That costs probably about fifteen thousand dollars. Understand, there are stakes and there are barriers for environmental justice communities to find out what's in my, uh, what's in my lead, uh I'm sorry, what's in my soil, what's in my

paint? Once again thinking about overlapping inequality, uh very recently a report from the 2020 census came out, Syracuse, New York is the nation's leader in cities over 100,000 people in childhood poverty. Forty-nine-point two percent or point three percent of all children in the city of Syracuse are in low-income households. So why are we talking about that in the context of food insecurity? So if you look at this map to the top left, you see Onondaga lake. That's probably a very notorious name uh to some of you, at one point it was considered the...the nation's most toxic lake, and food and food insecurity comes in because it's not just a lake that exists for recreational purposes, it's toxic due to legacy pollution, uh hazardous waste being dumped, uh decades ago. But it becomes an environmental justice issue because you got a lot of people who are, uh, sustenance fishing at that lake, so, you have a high amount of your population is low-income and a lot of people are relying on sustenance food methods, then you are going to have some very severe consequential human health risks. And you can see that due to, uhh, the city's robust new American or immigrant population, you're having to communicate these things in a multitude of languages. That picture in the middle, that was the first line of communication, but that doesn't get it done. When you have a large percentage of people, ten thousand plus new Americans, you got to make sure that you are communicating uh in a multi-lingual capacity. And then finally something I had in the local uh, uh, published in the local newspaper just yesterday talking about heat disparities. So, this very good commentary on heat disparities earlier today, I wish I had recorded these lectures, I am happy to lean on Carl to give me these recordings, because I teach an environmental justice class, I could just play to uh these lectures for the rest of the semester and take the rest of the year off. But going back to this slide right here, this is a specific neighborhood, the southside of Syracuse disproportionately, you know, most of the population in this community is going to be African-American. This map that uh the research team that I am working with, it is looks at temperature disparities, not just across this neighborhood, we've done the entire city. So just take a look at this, this was a ninety-four-degree day so pretty hot day in Syracuse, uh couple of years back. But you can see, not everywhere in Syracuse is ninety-four degrees. This majority uh black neighborhood had a lot of it that was uh well over one hundred degrees. And why were you well over a hundred degrees? Juxtapose that map on the left with the two to the right, uh, part of the conversation is going to be your impervious cover, things like streets and highways uh that highway I am going to talk about in just a minute and then as one of our earlier commentators said, trees are cooling, or they have cooling properties, not only do they stave off floods, not only do they sequester carbon, they have massive implications in terms of cooling a neighborhood, and think about that for those communities, those low-income households that are faced with that proposition, hey, if I run my AC, then I may be

exacerbating uh the food insecurity. So very briefly just let me talk about this project for about three minutes and then we'll pass the mic to our accomplished colleagues. This is the interstate I-81, it is a viaduct. I have an engineering degree, I didn't know what a viaduct when I moved to Syracuse. It is a viaduct, that's just a two dollar word for saying it's an elevated road, that elevated road goes right on top of uh pioneer homes, which is New York state's oldest housing project. So I want you to turn your attention to the lower right corner of your screen, those of you who have been to Syracuse, you recognize the carrier dome. Just south of the carrier dome, you see my campus, you can actually see my office. I want you to look very closely, you see me waving at you? That's a joke, hopefully somebody at home is smiling. And then here's another shot of that same interstate with pioneer homes, uh, housing development in the background, once again this is public housing and you see that tall smokestack, that actually is a natural gas power plant. So, what did I leave with, when you're talking environmental justice or inequality, you're not talking singular phenomena, you have to understand become committing threats, so not only do you have a uh interstate over your roof, you have a, guess what you have the indignity of having a, uh, uh, fossil fuel plant in your backyard. Here are more shots, more indignity, from an engineering perspective, this is awesome right, you can build an interstate on top of somebody's home, you can build an interstate on top of somebody's playground. This should never happen right, children should never be faced with this proposition as a matter of fact in that ten to fifteen thousand page environmental impact statement, only have of this uh, only half of this park was supposed to be closed, so when this interstate gets torn down, at least in its initial rendition, that basketball court was going to disappear, but that playground, you can see the sand uh to the far left, that was slated to stay open uh during the course of a two billion dollar construction project. So, when I talked to the planners, because I'm the guy that goes to all the meetings, I always ask, would you let your child play adjacent to a two billion dollar construction project. I've never gotten an answer, no child should ever be faced with that proposition, no mother no father that lives in that community should ever have to send their kid to play in a park whether the . . . the interstate comes down or while it is in effect and then here's a school, this can't happen in the state of California, they've banned this level of relationship unless you have a serious level of remediation. This is steam at Dr. King, it's an elementary school, you can see the interstate in the backdrop, so when we're talking about uh the exposures that children are having in the city of Syracuse, think about the lead, think about the food inequality. As a matter of fact, food inequality and low-income households are so pervasive, every school qualifies for free and universal free and uh free lunch free breakfast, due to a community wide exemption, so that's a good thing right, uh low-income households are so pervasive that's not a good thing, but at least every

child gets a free breakfast and free lunch every day in that school system. So to add to that, you get an interstate uh right next to your schoolhouse. So finally as we turn the final corner, meeting regulatory thresholds aren't enough, it's not enough to say well we . . . we looked at the need to check and we did an environmental justice check and we had a public meeting and we took input, that's a function of bureaucracy, it does not ensure public health. If you think it does, well we've had that statute on the books for more than forty years, fifty years, you still have pervasive inequality, environmental inequality in relation to public projects development projects all around the country so if I've said anything compelling today I believe democratizing my research I don't believe in the academic journal firewalls, I do a lot of things in relation to energy inequality, energy justice, so if you want to check my website out look at some of my papers, feel free to do so. With that being said I will pass the baton back to our uh commentator, Professor Stokes the floor is yours.

Prof. Danielle Stokes: Thank you, Dr. Teron um I think I mentioned to you briefly that I used to work at Syracuse College of Law so I had a front row view to that overpass or I can't remember that word that means elevated highway already, but um so I know exactly what you're talking about and the challenges that many in those neighborhoods experience so thank you for those insights and we just welcome any questions anyone might have, um to go ahead and enter those into the q and a feature while we move to Peggy Sanner who is going to give us her thoughts as she, um, is now with the Chesapeake Bay Foundation but she has a robust background so we will turn it over to you, Peggy.

Peggy Sanner: Thank you very much Danielle, thank you all uh for the work that you're doing and . . . and for the privilege of being here today talking about a really important subject. What I do in the Chesapeake Bay Foundation focuses a great deal on policy. I'm going to be talking about policy right now, not because I think that environmental justice will be achieved only through policy initiatives. There's a whole universe of work that's going on in Virginia outside of this specific policy field and I tip my hat to the people that are involved in that. We hope to work together but what I do is policy so that's what I'll talk about. Virginia as a Commonwealth has been moving forward sort of in fits and starts on incorporating environmental justice in its environmental and other, uh, rules and I would say that you... lot of things you could point to. The first one I'm going to mention is a statute in 2006 which was the Commonwealth Energy Plan and no longer in effect as such in the same way but in that relatively early period, the General Assembly said, required that new and expanding facilities, quote, not have a disproportionate adverse effect on economically disadvantaged or minority communities. As you all know there's a lot... there are lots of loaded and, uh,

meaningful words in that in that, um, framing. I'm not going to talk about specifically what I think they meant or should have meant at that moment but just keep them in mind as what, I will call a, um, moment where the process began in Virginia. Another key moment was in 2017 when then Governor Terry McAuliffe in one of his outgoing initiatives issued an executive order creating the Council on Environmental Justice, an advisory group designed to advise and make recommendations to the governor on how to incorporate environmental justice. That initiative was continued by the next governor... few months down the road... governor Ralph Northam who's council met over the next four years again in an advisory capacity. So all of that's good, it's helpful to have a recommendations. It's an important step in creating policy movement but from my own perspective a key moment was in 2010... early 2010... when the Fourth Circuit Court of Appeals issued its opinion in *Friends of Buckingham versus State Air Pollution Control Board*. 947 F.3d 68, for those who are taking notes on the specifics. This decision, fair disclosure CBF was an appellant in this case, this decision was a challenge to a... to a decision of the underlying agency process which approved a minor source air permit for a compressor station to be located in Union Hill, Buckingham County, Virginia, a community that was founded by freed people who had been enslaved and it was a minority community, it is to this day, minority... majority minority community. The proposed compressor station would have among other things emitted quantities of nitrogen oxides PM 2.5 formaldehyde BOCs and other deleterious substances. What is notable for the quick survey that we're going to do right now is that the court relied on that 2006 energy plan and a long standing piece of Virginia's Air Code, which required a careful analysis of the suitability of a site for a facility that proposed to admit as part of the permitting process, and the court found that the Air Board failed to make necessary findings. One, regarding the character of the local population i.e. was it a minority population? and if so then, uh, evidence of asthma and other health risks associated with proposed emissions ought to have been considered relevant and taken into account. The court also found flawed in that decision was the Air Board's failure to consider the potential degree of injury to the local population. It was not enough, and this is to take a point from Doctor Teron, it was not enough to assure that the facility would meet national regulatory standards under the Clean Air Act. No, in fact what matters, the court says, is whether the board performed its duty to determine whether this facility is suitable for this site in light of environmental justice and potential health risks for the people of Union Hill. It has not. Ok so this decision, I think kind of shook up the regulatory framework in Virginia and inaugurated a year of very significant policy changes in Virginia. So on the General Assembly level, we saw three pieces of legislation which, um, dramatically changed the policy in Virginia regarding environmental justice. First, the Virginia Environmental Justice Act which said it is the policy of

Virginia to ensure that environmental justice is carried out throughout the Commonwealth with a focus on environmental justice communities and notably it very carefully defined about eight different key terms, um, that are necessary in understanding what the concept means. I'm not going to read them all but they're pretty comprehensive. The one that I consider to be among the most notable is its definition of what is meaningful involvement... the meaningful involvement of environmental justice community. It, um, it takes into account access and opportunities to participate and an obligation of decision makers to take that input into account. Um, in the same time frame the Council on Environmental Justice, formerly resulting from an executive order, was made...was put into code and made permanent and the policy statement for Virginia's Environmental Agency, the Department of Environmental Quality was amended to make environmental justice part of that agency's purposes. So lots of big, uh, changes on the high level policy, um, position. Perhaps more or at least equally significant in that same year the third-party consultant to that agency, the environmental... Department of Environmental Quality issued its reports, the Skeo report we call it, making specific recommendations on what needed to be done particularly at the legislative level to move this process forward. The recommendations included very specific recommendations on how public engagement needed to be undertaken by facilities intending to pollute, what steps needed to be authorized in incorporating environmental justice in permitting processes for environmental permits, what legislation was required to ensure necessary monitoring and enforcement vis-a-vis the environmental justice communities, and technical assistance and so on. These were very detailed and very thoughtful, I think, recommendations made by a key agency. So we thought we were in pretty good position by the end of 2020. 2021, the following year, saw a very different approach to some of these issues. The General Assembly at that time was asked, in fact, to consider legislation that would have adopted some of those recommendations into law in really concrete way. In other words, to bring the stated policy of supporting environmental justice down to a level where agencies and others could act on it. Two bills were defeated roundly and in a bipartisan way amid concerns about the effect on economic competitiveness for Virginia and concerns about interference with the prerogatives... prerogatives and responsibilities of local government. Two Bills were defeated um roundly uh and in a bipartisan way, amidst concerns about the effect of economic competitiveness for Virginia and concerns about interference with prerogatives and responsibilities of local government. One involved the pre-notification of

communities to be affected by proposed facilities. All of that notification um process was to take place before a permanent application would have occurred. That was to feed it. And the second one would have required, among other things, the adoption of environmental justice considerations. When

look how these were engaged in developing or mending their local comprehensive plans again too burdensome for communities that was part of the discussion. So, pretty discouraging session that year, uh but I would say that it wasn't just in the legislative session that was so um concerns about implementation. The department of environmental quality had begun a fairly traditional process about how to do site suitability analyses in connection with air permitting. This was specifically to implement the Fourth Circuit's decision. Can't do it the old way, what's the new way of doing it? The traditional process frankly broke down. There was a real lack of, what I would call, leadership among our good friends at the department of environmental quality. And uh, I don't see any likelihood that we are going to see something regulatory in a helpful way going forward.... While 2021 appeared to end on a pretty dismal note in environmental justice, we saw something fairly dramatic and that is a regulatory agency, the state pollution control board picking up the ranks of environmental justice. In considering a permit for a new compressor station on the mountain valley pipeline, this time one to be situated in Pennsylvania county, further south in Virginia. Uh the proposal was to begin located in a community that already had several compressor stations from other pipelines. It is a minority community. The air emissions similar to those in the Buckingham case. Uh, PM-2, Nitrogen Oxide, Formaldehyde, uh, BOCs. This time the state air pollution control board rejected the permit overcoming the recommendation of the department of environmental quality. Finding that fair treatment um required under the Virginia Environmental Justice Act and the site suitability requirements articulated in the Fourth Circuit decision required a rejection of that permit. Okay, so great, right? This is a really good agency decision based on what we think was the evidence. And that decision was immediately appealed, and I will note that that appeal was withdrawn recently. What is most devastating is what happened thereafter and that's in the 2022 session just completed. There were three bills. Hotly contested, ultimately passed in uh various uh amended uh forms to um target the state air pollution control board. And its sister board, the water board. To then take from them the long-standing authority to prove, deny or modify environmental permits and transfer that authority to the department of environmental quality. Taking it away in effect from a citizen board and putting it back into the uh the uh agency level. Um the discussion related to these um decisions had to do again with concerns over economic competitiveness. There was of course a fair amount of political rhetoric involved in that which you could probably imagine so I won't go into. Um but that leaves us at the beginning of April with a question of where are we going to go from here in environmental justice? When you have an agency who has its hands significantly slapped for trying to actually implement it. Um, I would say we don't really know. From our perspective, we have a new governor here, we have a differently constituted general assembly. Um, but we have some positive

steps which I'll just alert you to, and and . . . and let you know that other work continues. Those positive steps include the following: the new department of environmental quality director uh indicated last week in a public forum at an, um, um, um, an environmental conference that he will be instituting the requirement for major permits. That's major permits of a publicly transparent critical path for the permitting process with environmental justice considerations placed at the head of that process in a public way. Again, we don't know what that will look like. It looks pretty good. We know it will be subject to public comment with respect to each one if it lives up to its promise uh it will be a step forward. The second thing um is sort of on the level of uh public assurances. Both the new director of environmental quality and the new director of conservation and regulation, our two key environmental agencies, both of them have said publicly and repeatedly that they are um committed to ensuring that environmental justice and diversity and equity, uh, and inclusion within the agencies will be part of the uh work of their tenure. So, we're looking forward to seeing how that plays out in each case and certainly we will be looking forward to new opportunities to try to get the policies um in a form where they can uh be actually acted on. Thank you very much.

Prof. Danielle Stokes: Thank you, Peggy. And, as we hear from the panelists thus far, we are building on that theme of policy and regulations and statutes alone are not enough and there are bigger things that we also have to contextualize and consider with these discussions. So, we will move to our final panelist, Jesdeep Khaira from Gentry Locke who we will ask you to give your thoughts.

Jasdeep Khaira: Great, thank you so much. And thank you Peggy and thank you Professor Taron. Um, I'm really happy to be here and provide um a presentation that might be relatively similar to Peggy's in a lot of ways. Um but I think that's um a byproduct of the environmental justice uh you know court cases and uh regulations that we are seeing right now in the Commonwealth. So, first let me try to share my screen. So, again, my name is Jesdeep Khaira and I'm an attorney at Gentry Locke and um what my article in the law review highlighted and what my presentation hopefully will highly is just a quick legal update. Similar again to Peggy's. Um, in terms of what's going on with environmental justice uh in the commonwealth right now. So, there's going to be primarily four parts. Part I will be some quick background on the environmental justice act. Uh, Part II will be some legal opinions and decisions that have come out uh relating to environmental justice. Part uh, excuse me, Part III will be studies. Part IV will be some of our predictions moving forward. Um, I think the main takeaway that I would like people to um bring from this presentation and for at least legal lands of environmental justice in Virginia right now is that not a lot of people know how to comply with it just yet. Um, so the regulators are still trying to figure out how to weigh

environmental justice factors about what considerations to include environmental justice decision making. And in that same vein, the regulated community is having uh, what some would describe as troubles, what others would describe as very good ways of and decisions that they're having to make. With that being said, let's get into the Environmental Justice Act. This Act was carried by Senator Ghazala Hashmi, and as Peggy had mentioned, it is more of a policy statement for Virginia regarding environmental justice. Meaning, that it does not provide any legal standards or requirements as of right now. There's several definitions that are of incredible importance, I would say, in the Act, and some of those are on the screen right now. I'm not gonna read those out for you, but you can see those there. Going into Part Two, some of the legal decisions and opinions that have come out. We're going to start with former Attorney General Herring's on the Environmental Justice Act. And recently, Senator Ghazala Hashmi requested the former attorney general to determine whether the DEQ must consider the Environmental Justice Act in a landfill site suitability determination. In his official advisory opinion, Mr. Herring said that the DEQ must consider the Act during the permitting process of any kind of construction program or policy. He also said that environmental justice impacts and consequences should be considered with construction that happens within the entire Commonwealth. And so what we can take from that, is that according to the official advisory opinion, the DEQ must consider the Environmental Justice Act, whereas certain other agencies might have more leeway. The important factor to remember here is that an official advisory opinion is not binding authority. Courts can find it persuasive, but it is in no way binding. The next big case that we have is the *Friends of Buckingham v. State Air Pollution Control Board*, the case that Peggy beautifully articulated. You know, briefly again, it was the Fourth Circuit that vacated a permit for a natural gas compressor station in Buckingham County, which was part of the Atlantic Coast pipeline. Specifically, the Court took issue with two of the site suitability provisions in Section 10.1-1307. The first site suitability determination that the court took issue with, that the court determined that the board didn't take into account enough, was the character and degree of interference or injury the proposed activity causes to the community's safety, health, or reasonable use of the property on which the activity will be located. Here, the Court effectively mentioned that the board did not make enough findings nor considerations on Union Hill, which, again, is the community founded by formerly enslaved people after the Civil War. Whether that community, Union Hill, was a minority environmental justice community, and the reason that that's an important consideration is because—if you designated a minority environmental justice community, which is usually based on census data, then certain health impacts affecting individuals should be considered. For instance, African American populations tend to have high rates of asthma and certain

other health-related issues that can be rapidly exacerbated by air pollutants in the local air. And then the Court also took issue with a third factor out of the four and the site suitability provisions but overall it was a landmark case, as Peggy said, and an important one for environmental justice in the Commonwealth. And then again, as Peggy mentioned, the Lambert Compressor Station, which was a decision that happened on December 3d, 2021, again by the air pollution control board, in which they voted 6-1 to deny an airport permit for the proposed Lambert Compressor Station in Pennsylvania County. Again, that compressor station would have been the third compressor station in a relatively small area, and what was a really important fact that I would like people to remember is that the air pollution control board denied the permit against a recommendation from the DEQ for approval. Peggy had mentioned that, but it's going to be a really important consideration as we move closer to some of the General Assembly decisions that have been made recently. Regarding the Lambert Compressor Station, the Air Pollution Control Board really took issue with three different factors. What I want to hone in on is the second factor, and three members of the pollution control board looked at the fair treatment requirement of the Environmental Justice Act. And again, that definition is on the screen right now. What was interesting was that one board member out of the seven who voted against the permit focused her comments and analysis on the word "any" that's immediately preceding "negative environmental consequence." And she said it was difficult to find that there was not any environmental consequence based on the information provided regarding the compressor station. A different member who voted against the permit focused her entire fair treatment analysis on the disproportionate share language up on the screen. She used reports provided to the board to show that there were minimal environmental consequences at one, three, and five miles from the compressor station, but at ten miles, an environmental justice community showed high levels of cancer and other illnesses. And she argued that the environmental justice community at 10 miles away from the compressor station would bear a disproportionate share of negative environmental consequences stemming from the compressor station. And finally, the last board member focused on two factors, one of which was that there wasn't enough and there were already two compressor stations located in the nearby vicinity. And so again, another really important decision you know relatively recently with several environmental justice considerations that were needed. The final area where we're seeing some new environmental justice considerations being factored into decision making, is in state corporation commission proceedings, specifically with the request for proposal and renewable portfolio standards that Dominion and Appalachian Power Companies have to comply with. And so just recently the Virginia Clean Economy Act, which was passed in mid-2020, amended Section 56-585.186 of the Virginia Code and now requires the Commission

ensure that the development of new or expansion of existing energy resources or facilities does not have a disproportionate adverse impact on historically economically disadvantaged communities. And so from a practical sense, from a from a legal practitioner sense, what that means is that Dominion and Appalachian Power Companies now have to consider environmental justice and the environmental justice impacts of projects when they are showing their renewable portfolio standard in front of or environmental justice being included into renewable, excuse me, request for proposals in the state corporation commission proceedings. Right now, our request for proposal is effectively Dominion Appalachian Power Company put out an RFP and asked for developers of

different energy resources to apply, and Dominion will then sign a contract sometimes with PPA to take the power from those facilities. Right now, Dominion and APCO—before, Dominion and APCO had seven requirements that they needed to consider when looking at RFP applications. I won't go through those seven right now but just recently again, because the Virginia Plan Economy Act and 8th requirement was included—which is they must consider environmental justice. Again, relatively broad regulation, right? What does that mean? How do you, how do we consider environmental justice? What data do we have to show? How much will it be weighted? How far from the project do we need to go and look at environmental justice communities? So, all of those questions are still outstanding, which is making it difficult for both the regulators and the regulated community to understand what exactly is needed of them. (Additionally, Peggy) talked um about several of these different studies, report groups and reports so I won't go too much into them. Um several of these have been working for um years now to uh come up with either, uh, reports on how environmental justice can be implemented in the Commonwealth. Um the Environmental Justice Inter-agency Working Group provided a report on all of the agencies in Virginia that already consider environmental justice without explicitly saying that, um that was an interesting report and then the Regulatory Advisory Panel was put into place to try and clear up some of the site suitability provisions that we talked about earlier that the Air Pollution Control Board has to consider uh when making the decisions. So um you know, th-there is an effort to try and make things clearer and how to apply the regulations clearly um but we'll see where it goes from there. Um and then some of our predictions moving forward and also some policy updates, uh, one of the biggest ones is that, as Peggy mentioned, the General Assembly voted to strip the Air Pollution Control Board and State Water Control Board of their authority to question DEQ's issuance of permits uh and to effectively uh disapprove of a DEQ uh recommendation to approve a permit. Um, the Gen-the General Assembly felt that activist boards had no place in robbing businesses of their ability to seek permits in Virginia, nor was it their job to undermine DEQ.

Um...you know a relatively . . . disturbing finding but, uh, hopefully there's a path forward here. Our predictions are really that, uh, environmental justice right now, as the regulations are written, uh really provide local authorities the most power to determine whether they will consider environmental justice, um how much they will consider environmental justice, if at all, um until we get a-a more robust state mandate and more clear state mandate. So, uh, that's it for me. Thank you.

Prof. Danielle Stokes: Thank you . . . and I think we have time for at least one question and I think you might have alluded to um a response to the second question that we have here but I'll direct um Will to maybe follow up with you offline about that particular question um Jasdeep, so, but for each of our panelists, before we go, would like to address this question of, "What do you see as the biggest impediment to advancing environmental justice?" and I'll ask you to go a bit further and maybe offer one recommendation or something that might help us to circumvent some of the impediments...and any-anyone can chime in, I see you're unmuted Peggy so if you want to take a stab

Peggy Sanner: Okay

Prof. Danielle Stokes: -at that question and then we can go from there.

Peggy Sanner: Thank you. Um, so I-I would say that the biggest impediment, and again uh Jasdeep...um was alluding to this point as well so looks like he and I are very much on the same page on a lot of these issues. Um what I see as a problem, a-a whole mountainous set of problems is-are the specific actions that need to be taken: the agencies don't want to act unless they have specific authorities, the local governments don't want to act, they can't act in Virginia unless they have specific authorities, there are tools lacking to help the agencies and-and permittees or would be permittees to um make the determinations that are required and so some work needs to be done uh I think and I would recommend based to a great extent um recommendations and reports already issued. I mentioned the Scale report, Jasdeep has a longer list, a lot of thoughtful people have been hammering out some specific steps to be taken. So real specifics need to be articulated, and then, and I'll just stop uh in a moment, and then work needs to be done to, if you will, help educators understand how environmental justice in fact will enhance economic activity, economic competitiveness, and not be you know that great thing that they fear more than anything which is, um you know, a drag on and you know eco-you know on the economy. Um and so that's-that's gonna be a hard nut to crack, I think, but I think unless we figure out away as a Commonwealth to show how eco-eco normal justice and a vibrant economy work together, it-we're gonna have a lot of obstacles so, thank you.

Jasdeep Khaira: Yeah, and I think going off of that what Peggy mentioned there is uh what I think one of the biggest impediments is uh regulation that either doesn't stick or doesn't have teeth um and so I-I mentioned about um you know environmental justice and state corporation proceedings right? well if you go and look at Dominion's uh 2020 RPS filing, their environmental justice consideration was the testimony of somebody that worked at Dominion who said there is no environmental justice issues. And that-that was it right? and so um...if that is what it takes to comply with-with some of the regulations then I-I think that's a big impediment. We want to have regulations with teeth if we want to make a difference with environmental justice moving forward.

Dr. Lemir Teron: I'll throw this in from an enforcement capacity, we see uneven enforcement. One of the earlier speakers said, "ay, I'm not a big fan of the phrase environmental racism, but you know when you look at the dimensions of whether it be super fund remediation or brownfield remediation, in so many places enforcement is racialized and then from a law and policy standpoint, a lot of the uh, at least on the federal level, a lot of the language is aspirational-it's not necessarily outcomes driven. What do I mean by that? Um you know core point of federal environmental justice policy is, "Did we meet with people?" "Did we promote participation?" "Did we give people a microphone?" that doesn't guarantee you-it doesn't come anywhere near guaranteeing you environmentally just outcomes. Um I think about the landmark piece of legislation that just arrived from New York State, the Climate Leadership and Community Protection Act, it affords it grants 40% of all benefits uh climate and energy benefits to environmental-or excuse me-to disadvantaged communities. The one problem with that is, at the law's inception, disadvantaged communities wasn't defined so you have a working group that's working after the law was passed to define: well who is disadvantaged? that's a problem so good piece of legislation, but there are deficiencies.

Prof. Danielle Stokes: Thanks to all of you so much for your invaluable insights we thoroughly appreciate your participation here with us today and look forward to speaking with and working with you in the future....so back to you Natalie.

Natalie King: Awesome, thanks Professor Stokes. That concludes today's presentation of PILR's symposium on environmental justice. Mallory and I want to take the time to especially thank each and every one of our attendees for being here today, as well as Professor Sachs, Professor Eisen, and Professor Stokes for being our moderators and helping us execute this event. We really couldn't have done it without their guidance. Also, we want to thank all of our speakers for being with us today. We appreciate your insight on this important topic.

Mallory Chesney: We also want to thank Lizzie Richer, our EIC for being the best and for being our right-hand woman for the symposium. We couldn't have done this without your assistance and support. Additionally, we would like to um give a huge thanks to our associates, Teresa Sun and Jessica King, who helped us tirelessly throughout this entire process, finding speakers for the event and for helping us with the symposium issue um in general. You both are so phenomenal.

Natalie King: Lastly, for those who came to today's event, for CLE credit, 5 CLE credits are pending. Mary Ruth Keys will be in touch in the coming weeks and we'll-we-we'll receive confirmation from the bar to apply a retro-active CLE credit, but in the meantime you can expect to receive a follow-up email next week to submit feedback on today's program. Again, thank you so much for participating with us in PILR's symposium on environmental justice. Enjoy the rest of the day and have a great weekend.

Natalie King: Thank you!

Mallory Chesney: Thank you everybody! Thank you so much!