

Stephanie Otts:

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Zachary Klein:

Hello, and welcome back to the final episode of the Law on the Half Shell podcast's second season. Law on the Half Shell is brought to you by the National Sea Grant Law Center at the University of Mississippi School of Law. And I'm this season's host, Law Center Ocean and Coastal Law Fellow, Zachary Klein. This season's theme has been COVID and coastal resilience; and we've spent the last eight episodes exploring every nook and cranny that this season's theme has to offer us; at least it sure feels like it.

Zachary Klein:

Before closing the lid on this season of Law on the Half Shell, however, me and my coworkers, who you've been hearing from all season, Stephanie Showalter Otts, Catherine Janasie, Terra Bowling, and Olivia Deans, have just a little more that we'd like to share with you. Come and join us as we chat about what we learned while making this season of Law on the Half Shell, ranging from surprises to longer lasting impressions. Without further ado, let's dive on into that conversation.

Zachary Klein:

COVID has been described by many at this point, as a black swan event. And I was just curious first, if anyone had thoughts about the pros and cons of regulating and governing around black swan events. And then if anybody had any examples of that flexibility or that lack of flexibility, and its impact so far.

Stephanie Otts:

I think COVID-19 just really highlighted how crucial resiliency is. And now, this is a term in our Sea Grant world that's used a lot. It can mean different things to different people. If you are an ecologist, resilience refers to the ability of an ecosystem to kind of respond to shocks and kind of come back to its original status.

Stephanie Otts:

But I think there's just a need for businesses, government, communities, individuals, to be able to adapt to changes. And of course, that's easy to say and harder to do in the moment. Unfortunately, some coastal communities have had a lot of experience with this, with storms and hurricanes. And resilience doesn't necessarily mean you come back the same way after a shock. But I think the oyster aquaculture experience really showed that that was an industry, as I mentioned, was built around the half shell market. And there were other markets for oysters, but that was really the focus and where most people were encouraged to sell their product.

Stephanie Otts:

So, in a sense, they had put all their eggs in one basket. And while we should have foreseen the possibility of a pandemic coming, I don't know that anyone really would have foreseen restaurants across the country being shut down all at the same time. But the agencies, extension agents, and others working with the seafood sector probably should just keep in mind that if you're focused all in one

market or one product supply chain, any shock can really disrupt what you're able to do. And we need mechanisms that can make it easier for people to kind of shift between sectors or markets.

Catherine Janasie:

I was going to say that that black swan event was very similar to a concept we see as environmental lawyers, which is the precautionary principle. And so, should we be kind of regulating with the kind of worst-case scenario in mind? And so, do we want to be prepared for something like a global pandemic to hit? Or are we willing to kind of take the risk that it's not going to be our time, that a once-in-a-century pandemic is going to come in and take us over.

Catherine Janasie:

And so, in environmental law, that planning for the worst-case scenario or that precautionary principle to kind of regulate with thinking that something bad is going to, may be happening in the future. It's really hard to get across policy-wise; it's not usually adopted. And I think with COVID, the government definitely has thought about dealing with the pandemic from the infectious disease side, but I'm not sure everyone was really prepared, as Stephanie was saying, for this vast economic impact that it had, and that anyone really thought that everybody was going to have to shut down completely.

Zachary Klein:

And it's an interesting line that gets walked there. Right? Because on the one hand, a lot of people might complain that the precautionary principle is too restrictive, and it limits economic opportunities for so long as that black swan event, or whatever that is being prepared against, doesn't happen. But then, if you don't prepare for it and one happens, the economic consequences are devastating.

Zachary Klein:

So, balance seems to be a theme that's emerging here already; balance between public and private, between local, state, and federal. And in this respect, COVID is no different either. So I was curious how the experience compared to what you expected, if there were any surprises that you had along the way, and big takeaways, more generally, whether it was in a strictly legal sense; and it's okay if it's not. Most people's minds, even lawyers, there was a whole side of COVID that existed outside of our work. And I was curious what your impressions of the pandemic, and of recording this season about the pandemic's impact on the coast in particular, how it all sort of shook out for you.

Stephanie Otts:

My first thought; so I took a pretty circular route to law school. When I came out of high school, I started in a Marine Biology program. I wanted to work with the whales, train them at SeaWorld. That dream did not come true. But I ended up as a history major. And so, when I started working on the podcast episodes, or even before that, when we were doing our research, a lot of attention in the news surrounding COVID-19 made reference to the Spanish Flu in the early 1900s.

Stephanie Otts:

But I remember when we got our question from Alaska Sea Grant, which related to safety of fishing crews; and maybe it was just my medieval history degree kicking in, but I'm like, "What about smallpox? What about these diseases? Didn't we have these issues before?" And wow, did that lead me down a

rabbit hole of searching early, very early, like 1800, late 1800 cases related to quarantine of ships, either for smallpox or yellow fever or cholera.

Stephanie Otts:

And what really struck me after that research is the issues raised by COVID, at least with respect to cruise ships and fishing vessels, are really not new. That we've been wrestling with this issue, this balance between protecting the safety of the port community and the health and safety of the individuals that are on the vessel that may have fallen ill and need care and sympathy, and need to dock to take care of their needs, and to be able to freely kind of move around the world.

Stephanie Otts:

And so, I guess that was one thing that surprised me, that in the beginning of the pandemic, everything felt so new and so stressful, and like, "We've never dealt with this before." And actually, we have; just not on quite the scale that we were facing it now, with such a globally interconnected world with respect to travel.

Terra Bowling:

I think on the opposite side of that coin, whereas in the beginning, everything felt very new and stressful, now, as we go back and look at the beginning and the issues we were first looking at, it seems like, "Oh, okay, that's old hat. I can't believe we were dealing with this." It's funny how quickly you become accustomed to an idea, and how quickly things become the norm, such as wearing masks, and doing all these social distancing things, and taking all these things into consideration.

Olivia Deans:

When we first were trying to come up with the topics for this season, I was a little bit worried of how to find enough content to tie COVID to wastewater and drinking water in the Magnuson-Stevens Act. But I was pretty surprised that there are just so many issues, and there were so many news articles out there about these topics. So I guess one of my takeaways was COVID has really permeated all parts of this industry and all of these different legal aspects we look at.

Catherine Janasie:

Stephanie, isn't there an Outlander episode, where there's smallpox and they burn the ship because-

Stephanie Otts:

Yes.

Catherine Janasie:

They're telling Claire not to tell them that they have smallpox, because they don't want to lose the entire ship.

Stephanie Otts:

Yes. And if anybody watches Outlander, Claire is always going to get in trouble within 30 seconds of whatever she's doing. But they, yeah, they arrive in France, and there is a sick crewman of a merchant vessel. And she diagnoses him with smallpox. And yeah, the owner of the vessel and the other crew members, they don't want her to tell anybody, because they know that they'll be quarantined. And

actually, when she does tell the port officials, they burn the ship. And so it costs, of course, the captain, a lot of money, and the crew would most likely lose their jobs. Right? They need to find another ship to work on. And then, in the books and the TV show, it causes a whole long string of events from that. But yeah, that really made me think.

Stephanie Otts:

And there was a plague outbreak, the bubonic plague outbreak, in Hawaii in 1900 from rats leaving a ship. And that was again, I thought, "Well, that is actually, that is over a hundred years ago, but not that long ago, when I think of the plague." So it just really kind of strikes home, how vulnerable port communities are, potentially, to at least being the first, maybe they're our first line of defense for some of these things.

Stephanie Otts:

And that's talked about a lot with invasive species, because ships can carry plants and animals that are not native to the area or not indigenous to the area. I don't know what the right term is; I'll get myself in trouble. But things, they move on ships. And cholera was actually one of those; cholera is... Some classify that as an invasive species, because it was not previously found in some port communities. And so, there was a cholera outbreak in Alabama; that was the first time that had happened, and it was linked to a ship.

Catherine Janasie:

I think just in terms of COVID and us adjusting, it's just been kind of like a weird time warp. I don't know if we've ever mentioned to the listeners of this podcast that we've done it all completely remotely. And so, why we keep saying, "Oh, I talked with a Terra about these episodes." Mostly, it's just been seeing each other on a Zoom screen. When COVID hit, I won't forget. It was during spring break, so like Stephanie, I went away. I dropped my dog off at my friends. They were talking about how, when I was going to come back, it was going to be the Ole Miss, LSU baseball weekend. And so both schools are huge baseball schools, so we were talking about Oxford, Mississippi, which is where most of us are located. It's this small college town, and it was going to be this influx, to tens and thousands of people coming in. And by the time I got back from my week trip, everything was shut down; and so, how quickly kind of that happened.

Catherine Janasie:

And I remember when I was driving back saying, "Oh, I might be able to come in the office in the afternoon." And we've never gone back to the office. I've never seen Zak again in person since March of 2020. We hired Olivia remotely. We've never seen her in person. And so, it's odd how well, I think, as a team we've worked together. But how quickly we all, kind of that resiliency, have adapted to this kind of new normal of working with each other.

Stephanie Otts:

Yeah. And in some ways, we were lucky here at the National Sea Grant Law Center, in the sense that we're attorneys. The legal world, thankfully, went digital before the pandemic. We have a range of ages here, but when I was in first year of law school, they still made us go into the library to do research in actual books. And I have no idea how attorneys were able to do their jobs, when they had to find a case just by looking at an index in a law book. And so, luckily, we did have online legal databases when I was in law school. But there was only one person in my class who brought a laptop. And in the 20 years since

I've graduated, things have changed a lot; but because there are legal databases online, we were able to continue to do our work remotely, because all we needed was a computer.

Stephanie Otts:

But as Cathy said, we really did lose the interaction of popping into each other's offices, and say, "Oh, I just found this crazy case. Can you believe this?" I found this case about a sailor who contracted smallpox, and has this unbelievable adventure in Alaska. And I so wanted to tell everybody about it, and there was nobody in my house to tell. I had to wait until we could get on Zoom to talk about that.

Stephanie Otts:

So yeah, it has... I'm sure everyone else has had that experience. And so, we are lucky that our work could continue, and that I'm incredibly grateful that we could continue our work, and that we were here to answer questions and support others whose lives and jobs and work were being affected much more than ours were, by both the pandemic and the programs that agencies were rolling out to try to help them.

Zachary Klein:

I'm glad you mentioned that, because it touches on what was the biggest takeaway for me. You very much spoke to the way our relationship with technology has changed. And I think what really struck me above all else, is the degree to which our relationship with nature has changed. There are plenty of headlines now about how people are doing hiking more regularly than before, as they are trying to get out of the house, being cooped up due to the conditions caused by COVID. Plenty of headlines about all the COVID puppies and kittens. I am definitely guilty, kind of; I didn't seek my dog out, he sought me out as a stray, but definitely counts as a COVID dog.

Zachary Klein:

And whether it was in big way. Right? A lot of people are interested in the impact of COVID on the environment, or rather, the impact that a lack of human activity that would have otherwise been caused in the absence of COVID, how that's going to affect the environment and our relationship with it.

Stephanie Otts:

Another thing, with respect to COVID and the environment that did not seem to get a lot of attention, is when restaurants were shut down and trying to stay viable businesses, transitioning to takeout was very popular. But when you get food takeout, it's in styrofoam or other containers. And in the last several years, there's been a lot of movement in some states and in local governments to reduce the use of plastic single-use containers, straws, utensils, because of how much waste that is generated, that ends up along our beaches, in our lakes and rivers and in the ocean.

Stephanie Otts:

In addition to that, all of the use of masks and personal protective equipment, either gloves or what people felt comfortable using; and so, one of the things that kind of came up in Sea Grant outreach initiatives, it was considered safe to go to the beach because it was outdoors, and you could kind of spread out and get away from people. But there was concern if you had masks, would they be properly disposed of? It's sometimes hard to find a garbage can, depending on where you are at the beach. And so, there were some educational infographics and campaigns to designed to kind of show beach goers

wearing masks, and then disposing of them properly in a garbage can, so that that is not an additional burden on our coastal environment.

Stephanie Otts:

So again, this balance, this need for masks and other PPE to keep us safe and to prevent transmission of the virus, or minimize transmission of the virus; but that can generate an enormous amount of waste that then needs to be addressed. And it's hard to really know where to go with that.

Terra Bowling:

Yeah. So in our interview with Jill at Ohio Sea Grant, she brought up a lot of good points. She's on the ground, they're doing beach cleanups; and she just talks about how much of this PPE she's seeing, and what we can do about it. And one thing that had never occurred to me, and I feel kind bad about this, is when you have a mask, a disposable mask, you have the loops. You're supposed to cut the loops just like you cut the six pack cans of plastic so the sealife, birds can't get caught in the circle. That had never occurred to me. So all these issues are coming..., Another new issue coming up that we really hadn't thought about before COVID.

Stephanie Otts:

I remember as a 12 or 13-year old obsessively cutting all of our six pack rings apart; and my dad would get so frustrated, because he is like... I grew up in central Pennsylvania, nowhere close to water. And so, he was always like, "Who are you protecting? We are going to put that in a garbage bag, and it's going to go into landfill." But I still it, did it just in case.

Zachary Klein:

I think it's important for our viewers and listeners to get a better sense of the National Sea Grant Law Center and what we do. One of the best ways we can do that is by explaining a little bit about us, our mandate, and something called an advisory request, and our advisory request service. Stephanie, would you please share a little more about that for our listeners?

Stephanie Otts:

Yeah. So our advisory service, even though it says advisory in the title, it does not involve legal advice. It's a research service. And so, the National Sea Grant Law Center, because we are federally funded with taxpayer dollars, we consider our mission to be non-advocacy, meaning that we do not take on clients, and we do not research the law in the sense of how a traditional law firm or practitioner would, to build a case for their client or to represent the client, to the best representation of the client.

Stephanie Otts:

And so, while we do research on federal laws and state laws and regulations, we do not conduct that research trying to go towards a particular outcome for anyone. So we present kind of a general summary of the state of the law. We may highlight different positions that are happening in litigation. So we may say, "This is the position the government is taking. This is the position that a business is taking." But we don't have an opinion about which of those is appropriate. We just kind of say, "These are the facts."

Stephanie Otts:

And so, one of the challenges during COVID, and kind of throughout our work more generally, is that things became very polarized, politically; polarized with COVID. And Congress was taking a lot of action, and different agencies, whether it was the FDA or the CDC, there was a lot of controversy surrounding CDC guidelines for cruise ships. And it is not the mission of the National Sea Grant Law Center to be advocates or to take positions about what is happening.

Stephanie Otts:

And so, throughout the podcast, you'll hear us refer to advisory requests, where we were asked particular questions; and we would do research to provide summaries about what the state of the law is, or what certain requirements were in various programs. But we were not... And we do not practice law. We are licensed in particular states, but we do our work nationally. We are not licensed in every state. And so, we are not able to practice law in the way that many of our listeners may think of, when they think of a lawyer.

Zachary Klein:

And I would also definitely explain, any times that we are being vague, or if it ever seems like there's a hot button issue, but we are not ever hitting right on it, that is very likely the reason why; because we cannot.

Catherine Janasie:

Yeah. And just to add on that, we don't take questions from the general public. So our advisory service, as Stephanie's described it is for the Sea Grant program throughout the country, that kind of give us questions. And so, we can't have individual fishermen coming to us and asking us, "What should I put in my paycheck protection program application?" But we can work with our Sea Grant programs to kind of give them background, to help them get that information to help them out. But as Stephanie says, if they need actual representation, they have to kind of seek an attorney elsewhere.

Stephanie Otts:

All of the work and research and products that the National Sea Grant Law Center does are made available on our website for the public, free of charge. And so, we feel that it's a really important part of our legal research, education, and outreach mission to make sure that our research findings are widely accessible to all. And so if anyone is interested in any of the work that we do, I encourage you to check out our website, follow us on social media, and connect with us however you choose.

Zachary Klein:

From all of us here at the National Sea Grant Law Center, thank you so much for joining us for Law on the Half Shell, Season Two: COVID and Coastal Resilience. We hope this has been an informative and entertaining look at the intersection of the law and COVID in the U.S., especially in our nation's unique coastal communities.

Zachary Klein:

Regardless of exactly what the future holds, the National Sea Grant Law Center will be there to continue keeping an eye on the legal issues playing out in coastal communities across the United States. You can keep up with these developments, and find out about all the latest news and projects out of the Law

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