



IN THIS ISSUE

McKibben & Peterson Headline
2009 Conference 1
Environment Law Clinic 1
2010 Summit Features 2
TELS Calendar 2
The Play Goes On 2
Hurricane Katrina Litigation 3
Taking back Eden 4
Water Law & Policy Institute 5
LLMS: Another All-Star Crop 6
The "Shock Troops" 6
Environmental Law Society 10
Energy Futures 14
Alumni Notes 16



Author Bill McKibben

Global Green President,
Matt Peterson

MCKIBBEN AND PETERSON HEADLINE '09 CONFERENCE

Author, activist and global human being Bill McKibben led an all-star cast of speakers and panelists at the 14th Annual Tulane Environmental Law and Policy Summit in April. Drawing nearly 500 participants, the event also featured simultaneous sessions, local bands, jam-balaya and the fourth annual environmental school play. (see related story). McKibben's presentation to a packed hall was down home, passionate and on-target for the largely, but not entirely, environmentalist audience. The summit is designed to include differing points of

Continued on Page 5

ENVIRONMENTAL LAW CLINIC: 20 YEARS OF TEACHING, ADVOCACY AND SUCCESS

In the Fall of 1989, Tulane Law School launched an environmental law clinic to offer students a hands-on educational experience and to provide needed representation to communities and individuals unable to respond to an overwhelming array of issues in this state and region. One of the first such clinics in the country, it has also become the country's largest and, along the way, incurred its share of success, controversy, and praise, including a celebrated environmental justice case involving a proposed chemical plant that led to attempts to limit the clinic's activity by members of the business community and the Louisiana Supreme Court. Organized and directed by Robert Kuehn for its first decade, the clinic then passed to Adam Babich who, with the assistance of four supervising attorneys and an outreach

coordinator, has continued to direct a remarkably hard-working, high-morale, and professional organization. Fulfilling an important educational mission, it is also a law firm with high ethical standards. And it continues to play an indispensable role.

Below, we have excerpted from the introduction by Professor Babich to clinic's recently-released 20th Anniversary Report. The report in full is available at <http://www.tulane.edu/~telc/assets/annual/2008-09%20Annual%20Report.pdf>.

August 24, 2009
Dear Colleagues:

In 1989, Tulane Law School began its Environmental Law Clinic primarily for educational reasons: to offer students

the practical experience of representing actual clients in real environmental disputes. But the minute our students and staff attorneys accepted their first client, the focus changed. They became public-interest lawyers first, students and educators second. This is because lawyers and student attorneys are duty-bound to put their clients above their own interests and above the interests of their University, law school, clinic, and funders—a realignment of priorities with a profound educational and practical impact. So our mission statement emphasizes service as much as it does education. That mission is to 1) train effective and ethical lawyers by guiding students through actual client representation; 2) expand access to the legal system, especially for those who

Continued on Page 7

2010 SUMMIT FEATURES WATER GURUS AND SYMPOSIUM



Professor Joe Sax, left, and EPA administrator Lisa Jackson are invited to keynote the 2010 conference.

The Spring conference this school year will focus broadly on water issues, a collaboration among the Environmental Law Society, the Environmental Law Journal and the Tulane Institute for Water Law and Policy. It will feature a one and a half day symposium on critical challenges, including responses to drought, water pricing, sea level rise and ocean changes. The keynote author for the symposium will be the de-facto Dean of the Environmental Law movement, Joe Sax, author of Michigan's seminal environmental legislation previewing NEPA, Professor of Law at Michigan and later Berkeley, special advisor to Secretary of Interior Bruce Babbitt during the Clinton administration, prolific author, and one of the most innovative thinkers the field has yet produced. He will not be alone.

Additional Summit tracks will continue last Spring's theme of greening government, industry and infrastructure, and urban issues relating to re-development and transit. The Summit is scheduled for April 9-10, 2010 at Weinmann Hall. It is always a festival.

TELS Fall 2009 Calendar

SEPTEMBER

Bike to the Lake
Annual Dessert Cook-Off
Beach Sweep, Bayou LaCombe
Sierra Club Green Jobs Panel
Summit Planning Meeting
Black Creek Overnight
Canoe Trip

Green Drinks
Summit Planning Meeting
Wolf River Day Trip

NOVEMBER

Algiers Bike Trip
"Cancer Alley" Bus Tour
Summit Planning Meeting
Fall Production – Tulane Law
ReVieux

OCTOBER

Bill McKibben – 350 Event
Mayoral Debate on
Environmental Issues

DECEMBER

Christmas/Goodbye/Outline
Swap Party



Current TELS Officers 2009 – 2010

THE PLAY GOES ON

Mary Nagle, (J.D. magna cum laude 2008), now clerking for Judge Benavides of the U.S. Fifth Circuit Court of Appeals, has left a legacy of theatre at the law school that will, now, continue. Over the past four years, Nagle's plays treated, sequentially, the crash of Hurricane Katrina on the law school community, the Murphy Oil spill, a futuristic look at New Orleans in the midst of climate change (and relocated in North Louisiana), and, this past Spring, the impact of lead on the residents of a small town in western Arkansas (her home town, in fact). This past year, while clerking for a federal district judge in Nebraska, she wrote yet another play on a little-known Native American case, in that very courthouse, which asked whether the Indian Chief Running Bear was entitled, as a citizen of the United States, to habeas corpus. Then she produced the play ... in the courthouse.

Meanwhile, at Tulane the play goes on. Producers and actors from last year's performance have started a new law school drama organization with the signature name of the Tulane Law ReVieux. The '10 play is being written by 3L Brian McGarry, who is, coincidentally, spending his fall semester in Paris working with an international environmental attorney on climate change.



Katrina floodwater pours over MRGO levees.

HURRICANE KATRINA LITIGATION: MOMENTS OF TRUTH *

Hurricane Katrina spawned a storm of subsequent litigation over everything from insurance claims to the evacuation of nursing homes, but the major actions have attempted to assert liability for human causes of the catastrophe itself. Three of these cases are now at a critical juncture. Each of them involves law graduates of Tulane and the environmental law program, on both sides of the issue. Whether these cases stimulate a different federal and private response to the hurricane, and to future policies on flood control, land use and climate change, remains to be seen.

In the case of *In re Katrina Canal Breaches Consolidated Litigation* (Robinson v. United States) the plaintiffs seek damages for personal and property losses in New Orleans East, Gentilly and the Ninth Wards, on evidence that the Mississippi River Gulf Outlet, a project of the Army Corps of Engineers, ushered the storm into those parts of the city. The federal trial court has denied government motions to dismiss based on statutory immunity under the Flood Control Act and discretionary function under the

Federal Tort Claims Act, and has taken testimony on the liability phase of the case. 471 F. Supp. 2d 684 (2007) and 577 F. Supp. 2d 802 (2008). A decision on liability is pending.

In *St. Bernard Parish et al v. United States*, a case pending in the United States Court of Federal Claims, plaintiffs seek damages for property losses in St Bernard Parish and New Orleans, again occasioned by the Mississippi Gulf Outlet, but predicated on the takings clause of the 5th Amendment of the Constitution. Under this theory of action, there are no statutory immunity or discretionary function defenses. The U.S. filed motions for summary judgment and to dismiss. The District Judge for Court of Federal Claims held that the plaintiffs had standing and had stated a claim for which relief could be granted, and that the claims were not precluded based on the statute of limitations, but that the plaintiff's claims for lost profits from commercial ventures was dismissed. 2009 WL 2478085 (Fed. Cl. Aug 3, 2009) (05-1119L). The court ordered the case stayed, pending final judgment in *Robinson v. U.S.*, noted above.

In *Comer v Murphy Oil*, Civil Action 1:05-CV-436-LG-RWH (S.D. Miss. Aug 30, 2007) plaintiff landowners along the Mississippi Coast seek damages from a collection of major oil

companies for their contribution to the force and scale of Hurricane Katrina, through climate change and sea level rise. An ancillary claim seeks compensation for increased insurance premiums. Dismissed in a trial court opinion that held that the plaintiffs lacked standing and the underlying dispute to be a political question rather than a justiciable issue, the case is now on appeal before the U.S. 5th Circuit Court of Appeals. Oral argument was held Nov 3, 2008. A decision is pending.

*Thanks to Machel Hall, TLS '08, for these updates.



The 9th Ward after the storm

FACULTY NOTES: 'TAKING BACK EDEN'

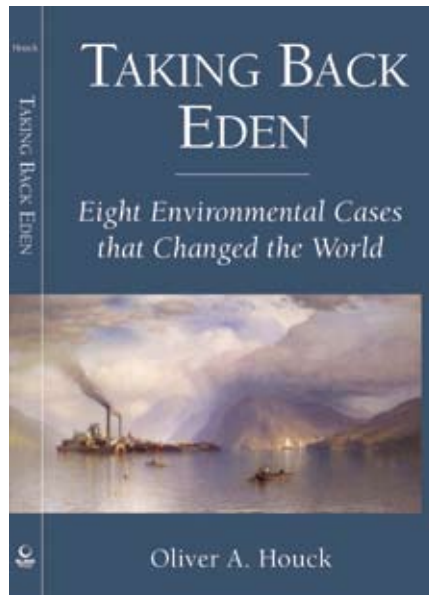
This October, Professor Houck's new book "TAKING BACK EDEN" (Island Press) will be on the street, a dramatic phenomenon: tracking the rise of environmental litigation around the world. Back in the 1960's, Storm King (Scenic Hudson Preservation Council v Federal Power Commission) opened the courthouse doors to environmental suits in the United States; the impact on air and water programs, construction projects, endangered species, wetland development, timber sales, mineral leases, and all agency behavior has been revolutionary.

What is even more revolutionary, the litigation traveled abroad. It went to countries where the courts were non-players, to others so burdened by the urgencies of development that the environment was a non-player, and yet

others where the government was God and where industry sat at God's right hand, equally sovereign and immune. There was no grand plan. A few brave and far-sighted people simply picked

up on the idea, adapted it to traditional law and provocative – a remote stone-age forest in Tierra del Fuego, the crumbling Taj Mahal, the drowning of the Cree Indian Nation – and won. And kept on winning.

TAKING BACK EDEN is not a law book, although it treats the law. It is a much a history book, with a remarkable set of players, who seized the day. Professor Houck says that he has been working on this book for over ten years, case by case, with LL.M. graduates from a dozen countries. "I couldn't have done it without them," he concludes. "They educated me every bit as much as I did them."



**...even more
revolutionary,
the litigation
traveled abroad.**



WATER LAW AND POLICY INSTITUTE: WATER AND THE MASTER PLAN

The Tulane Institute for Water Law and Policy is involved in a wide array of planning, flood control and related issues, none hotter over the past year than a first-ever Master Plan for the City of New Orleans. Long advocated by local preservationists, flood control managers and others, the idea failed for decades before an instinctual distrust for planning (a bumper sticker in Professor Houck's office reads, "Mindless-Marxist Ecologists: Working for Russia"). In the absence of a plan, city council members were empowered to make individual land and water use decisions on a case-by-case, political and even quid-pro-quo basis. William Borah, the leader of the Master Plan initiative and a 1960 Tulane Law School

graduate, called the default process "planning by surprise".

We are proud that the Institute was called on to feed its views and expertise into the process, and we are equally proud of the result. Having approved the concept of a legally-binding Master Plan, the city is scheduled to vote on the actual plan itself by the end of the year.

The Master Plan. New Orleans is a city that has long celebrated its past more than it has planned for its future. One of the most promising developments in post-Katrina New Orleans is its commitment to a Master Plan that has the force of law and is firmly rooted in making the City environmentally, culturally and economically sustainable. A central feature of the plan is the City's relationship to water—both as a driver of risk and as an asset. (Another is tearing down the elevated expressway that blighted the historic African-American community of Treme.) This is an audacious undertaking.

The Institute is a key member of the team that is crafting the Plan. We were engaged by the lead contractor, Goody Clancy, a Boston-based architectural and planning firm, to provide guidance on the city's history with water and how that history, and the present legal landscape, should inform future decision-making. Among the factors the Plan emphasizes as being crucial to the City's future resilience and prosperity are coastal wetland loss, rising seas, soil subsidence, climatic cycles and climate change. Other proposals feature the use and celebration of water and waterways as community assets. New Orleans was a city of canals, much like Amsterdam. With one exception, Bayou St. John, we paved them over. They are still there, however. Anything's possible.

McKibben *cont'd from page 1*

view on its topics, ranging this time from Carbons (tax or cap?), to Environmental Justice (law or myth?) and the Future of Oil (peak or plenty?).

Global Green President Matt Peterson also spoke to a plenary session on the green wave sweeping the planning, architecture and construction industries. Its office in New Orleans, headed by **Elizabeth Teel Galante, TLS '99**, is one of the most active in the country and has attracted considerable attention with its rebuilding initiatives in the Upper and Lower Ninth Wards, post Hurricane Katrina. The media play is due in no small measure to its close collaboration with Brad Pitt and Angelina Jolie.

Other popular events turned out to be a session (Richard Lazarus of Georgetown Law Center, John Cruden of the U.S. Department of Justice and Jim Tripp of the Environmental Defense Fund) on Are The Supremes Green, discussing litigation before the current Court, and a second session, free-ranging, called Stump The

Chumps (thanks to U. Florida for the idea), in which audience members posed no-holds-barred questions to experts from several panels.

The summit ended Sunday morning with optional field trips to the threatened Maurepas Swamp, the re-birthing neighborhood of Holy Cross, and the Louisiana Bucket Brigade's Earth Day festival on Bayou St John. Something for everyone.



Russell Jim of the Yakama Indian Nation



Lindsay Ellis, 2009 Conference Chairman, speaks to attendees. TELS president, Matt Miller, is in background.

LLMS: ANOTHER ALL-STAR CROP

The Tulane Master of Laws in Energy & Environment continues to produce, and attract, top flight talent from countries around the world. 2009 graduates included Fulbright and other lawyers/scholars from Japan, Thailand, Venezuela, Belgium, Germany, and several candidates from the United States. The 2010 class includes four US mainland lawyers plus lawyer/scholars from China, Puerto Rico, Portugal and Greece. Their backgrounds include work in national environmental agencies, law teaching, the US Department of State, journalism and the energy industry. Their research interests, developed in the LLM seminar, include environmental litigation via the Alien Tort Claims Act (Shell Oil/Nigeria), its counterpart in civil actions in developing countries (Chevron/Ecuador), trade



LLM Students 2009-2010

and the environment under NAFTA, brownfields and New Orleans redevelopment, and sequestration as mitigation in climate change programs.

Also with us is the Philippine attorney Francisco Tolentino, who is pursuing an SJD in environmental law.

A colleague and collaborator of Antonio Oposa Jr. in Manila (of Minors Oposa fame), Francisco is exploring civil liability regimes as a supplemental remedy for impacts of the mining industry, a ubiquitous problem across the developing world.

THE “SHOCK TROOPS”: A CRASH COURSE IN CLIMATE CHANGE

Dr. Will Burns, Visiting Distinguished Professor, Center for Environmental Studies, Williams College, kicked off the fall semester at the law school with an every-day-of-the-week crash course on Climate Change. The co-author (with Professor Hari Osofsky) of the recent book “Adjudicating Climate Change: State, National and International Approaches.” Burns’ shock troops focused on international developments at the treaty level and programs of the European Union and other countries. (TLS offers a complimentary US-law oriented course in the Spring.) Despite the pace, no student dropped this course, and several added it.

On his way out, Burns wrote a fellow professor here that “it’s nice to know the shock troops from the next generation are trying to save us”. At the time of this writing, what, if anything, the US Congress would agree to do about climate change was a very open

issue. As Burns describes it, the discussion in the environmental community is increasingly centered on whether to support a patently inadequate bill as “something to build on”, or whether such legislation would simply end the debate. Perhaps, the argument goes, the country then relies on EPA regulation which, as the bite sets in, may stimulate a more genuine legislative effort. These are very large stakes for all concerned.



Visiting Distinguished Professor Will Burns

“...the shock troops from the next generation are trying to save us.”

Clinic *cont'd from page 1*

could not otherwise afford competent legal help on environmental issues; and 3) bolster the capacity of community members to participate effectively in decisions about environmental issues.

Like any law office, TELC is defined by its work. Below are brief discussions of some of our most significant cases, with an emphasis on our most recent decade. More details about many of these cases are available on TELC's web page, which includes a collection of legal documents from several of the cases discussed below.

Toxics: TELC settled a lawsuit this year about mercury—a neurotoxin—leaked from meters that measure pressure in natural gas pipelines in Union, Ouachita, and Morehouse parishes, Louisiana. After TELC filed the lawsuit, the defendant reached a voluntary cleanup agreement with the Louisiana Department of Environmental Quality (LDEQ), setting a cleanup standard of 2.3 parts per million (ppm). The settlement of TELC's clients' lawsuit reduces the average cleanup standard at each meter site to 1.5 ppm and to 1 ppm for sites located within 100 feet of a perennial stream or a tower designed to raise the elevation of a meter in a flood-prone area. In addition, following TELC legal action—combined with pressure from other fronts—the two chlor-alkali plants in Louisiana have converted from “mercury-cell” technology to a “membrane cell” technology that does not release mercury. * http://www.tulane.edu/~telc/html/Legal_Documents.html. Tulane Environmental Law Clinic 2009 Annual Report Page 4 of 33

Water pollution: In 2001, TELC filed a petition on behalf of a coalition of community groups asking EPA to withdraw Louisiana's authority to administer the Clean Water Act's discharge permitting program due to inadequate enforcement and other problems. EPA responded in early 2003 with a demand letter to Louisiana Governor Mike Foster, raising “serious concerns” about the state

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CLINIC CONTROVERSY

TELC's work on behalf of clients can be controversial. This is not surprising since environmental disputes usually involve concerns about public health, economics, and the quality of life. Many of these disputes are driven by the disproportionate impacts that polluting facilities can have on lower-income and minority communities and also by disparities between the abilities of regulated companies and ordinary citizens to influence agency decision makers.

Tensions became especially pronounced in the late 1990s when TELC represented St. James Citizens for Jobs and the Environment, Louisiana Environmental Action Network (LEAN), and others in opposing Shintech, Inc.'s proposal for a polyvinyl chloride plant in a predominately African-American and lower income community in St. James Parish, Louisiana. In 1997, TELC and Greenpeace filed a petition for a formal EPA objection to the state's Clean Air Act permit for the plant, citing regulatory violations and environmental justice concerns. TELC also raised the environmental justice issues in a separate civil rights complaint filed with EPA. EPA responded with an order that objected to the permit under the Clean Air Act and noted that the environmental justice concerns "deserve serious attention" and that EPA would investigate them. The next year, Shintech abandoned its plans for a St. James Parish facility and announced it would build a smaller plant elsewhere in Louisiana.

The American Bar Association honored TELC as co-recipient of its first "Award for Distinguished Achievement in Environmental Law and Policy" in 2000, largely due to the clinic's work on the Shintech case. TELC was also a runner up for the National Law Journal's Lawyer of the Year award in 1998. But the Shintech case also sparked a backlash. The governor asked Tulane's donors to withhold support for the University. Tulane's president responded that TELC's students "have done nothing wrong; they have made a fine contribution to our state."

After members of the business community asked the Louisiana Supreme Court to rein in TELC, the Court, in 1998, revised the rule that allows law students to make formal appearances on behalf of clients. The deans of Tulane and Loyola Law Schools, the American Association of Law Schools, and others objected to the changes and the Court softened some of them. Louisiana's Attorney General and State Bar Association, among others, asked the Court to stay or rethink the revisions. Law professors from across the country rallied with representatives of civil rights and environmental organizations in front of the Louisiana Supreme Court to protest the new rule. Finally, the Court further softened the revisions in March 1999. As subsequently interpreted by the courts, the 1999 revised rule does not limit TELC's ability to represent clients on controversial or high-impact cases.

CLINIC *cont'd from page 7*

program and setting forth a list of "performance measures" and schedule for the state to restore "program integrity." In 2004, EPA found that LDEQ had completed the performance measures. TELC student attorneys continue to engage in citizen enforcement of Clean Water Act permits and appeals of LDEQ permits, especially for violation of the Act's anti-degradation requirements. In 2006, TELC obtained a federal court order enjoining a \$750 million U.S. Army Corps' project to expand New Orleans' Industrial Canal because the Corps had failed to consider environmental impacts from disposal of contaminated sediments in Mississippi River basin wetlands. TELC is proud to be part of the Mississippi River Collaborative, a team of nongovernmental organizations from states all along the river that the McKnight Foundation convened to use shared knowledge and resources to improve water quality in the Mississippi River basin.

Air quality: In 2005, a court found more than 2,600 Clean Air Act violations at an oil refinery in a citizen suit that TELC student-attorneys filed on behalf of a St. Bernard Parish community group. In another TELC-handled case the court vacated a permit in which LDEQ attempted to waive Clean Air Act requirements for prevention of deterioration of air quality. TELC-handled litigation has also resulted in admissions from LDEQ and EPA that Louisiana operated a "bank" for emissions trading that failed to meet federal requirements. In addition, TELC represented LEAN in obtaining court orders that 1) required EPA to make a determination to increase stringency of emission controls in the Baton Rouge area, 2) remanded an EPA attempt to extend Louisiana's deadline for achieving health protection standards for ozone air pollution in the Baton Rouge Area, and 3) vacated EPA's approval of an inter-pollutant trading plan that would have allowed Louisiana to increase emissions of volatile organic compounds in return for reductions in



Left, Robert Kuehn, Clinic Director 1989-1999; right, Adam Babich, Clinic Director 1999 to present

oxides of nitrogen. In addition, TELC worked with a coalition of public-interest law groups and state governments to defeat a 2004 EPA attempt to roll back Clean Air Act protections for residents in areas where air quality violates health protection standards for ozone pollution.

Global warming: On behalf of the Alliance for Affordable Energy, Sierra Club, LEAN, Gulf Restoration Network, and others, TELC has engaged in litigation to oppose construction of three new coal-fired power plants which, if built, would release pollutants associated with climate change. Construction of one of those plants is now suspended for at least three years and litigation and negotiations are ongoing about the others.

Wetlands: TELC student attorneys mounted a successful challenge to the U.S. Army Corps of Engineers' issuance of a permit to destroy wetlands in St. Tammany Parish, Louisiana,

without considering cumulative impacts. The Fifth Circuit issued an opinion in that case effectively rejecting the Corps' general approach to analyzing mitigation and cumulative impacts when issuing such permits in southeastern Louisiana. Additionally, on behalf of a coalition of environmental groups, TELC appeared as *amicus* (i.e., as an interested non-party) in a case that rejected a U.S. Army Corps of Engineers' exemption from the Clean Water Act's permitting system for a cypress harvesting operation in wetlands because the Corps failed to show that the tree harvesting operation falls within the Act's "on-going silviculture" exception *Tulane Environmental Law Clinic 2009 Annual Report Page 5 of 33*.

Landfills: In a case that TELC handled on behalf of the Oakville Community Action Group, the court revoked a permit for expansion of the Industrial Pipe landfill, which looms over the predominately African-American community of Oakville in Plaquemines Parish, Louisiana. In another TELC-handled case, the court set aside a contract for St. Helena Parish to host a new landfill for 50 years because of violations of Louisiana's open meetings law. Also, after Hurricane Katrina and Hurricane Rita, LDEQ issued emergency orders to waive rules that normally prohibit disposal of most household wastes in landfills that lack protections against contamination

of groundwater such as groundwater monitoring and leachate collection systems. On behalf of LEAN and Sierra Club, TELC brought a lawsuit in federal court, alleging that federal law preempted LDEQ's waivers. While the lawsuit was pending, TELC and LDEQ engaged in negotiations that resulted in several improvements to the emergency orders. Specifically, LDEQ 1) removed "household hazardous waste... where segregation is not practicable" from the list of materials that the landfills could accept, 2) added language to the orders to require compliance with Clean Air Act standards for asbestos disposal, and 3) narrowed the orders' application to seven landfills. Ultimately, the court dismissed the plaintiffs' lawsuit, ruling that the plaintiffs lacked standing to sue.

Wildlife: In 1997, TELC obtained a court order barring use of a local "grass and weeds" ordinance to destroy a Baton Rouge Audubon Society project to restore habitat for migratory songbirds and butterflies in Cameron Parish. Also, TELC represented Sierra Club as *amicus* in an Endangered Species Act case in which the court issued a 2007 order requiring the U.S. Department of Interior to designate critical habitat for protection of the Louisiana Black Bear. In 2002, TELC negotiated a settlement on behalf of the Coalition for Louisiana Animal Advocates which required the U.S. Army to refrain

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CLINIC IN THE NEWS

It is not TELC's goal to appear on TV or in the movies, but it is always a thrill. So far, these are some of our greatest hits:

- The 2009 documentary "Abode" features footage of student attorney Mary Nagle's November 8, 2007 oral argument before the Louisiana Public Service Commission in opposition to plans for a new coal-fired power plant (and the resulting emissions of CO₂) in St. Charles Parish, Louisiana.
- PBS featured TELC's work on air pollution from an oil refinery in its July 15, 2005 episode of "Now" called "Formula for Disaster."
- The Lifetime Television drama "Taking Back Our Town" (broadcast on December 10, 2001) focuses on the Shintech case and features the work of TELC clinical instructor Lisa (Lavie) Jordan.
- Film producer and director Laura Dunn's 2000 documentary "Green" features TELC's work on the industrial corridor between Baton Rouge and New Orleans.
- The CBS series "60 Minutes II" covered the backlash against TELC's work on the Shintech case in its March 24, 2000 episode "Justice for Sale?," as did PBS's November 23, 1999 episode of "Frontline," also called "Justice for Sale."

Environmental Law Society in Action



Dessert contest winning entry "Mountaintop Mining"



Audubon Insectarium treats at conference



Dessert slam entries





2009 pyramid



Bill McKibben and friends



Wolf River



Students at conference



Environmental Law Clinic 2009-2010

Clinic *cont'd from page 9*

from roundup and removal of wild horses from Fort Polk in the Kisatchie National Forest until completing an Environmental Impact Statement or Environmental Assessment.

Environmental justice: In 1997, EPA granted in part a TELC and Greenpeace petition for an objection to Shintech Inc.'s air quality permit for chemical plant in a predominately African-American and lower income community in St. James Parish that was already overburdened by sources of pollution. In 2004 TELC challenged FTM and Associates, Inc.'s practice of spraying sewage sludge on sugar cane fields near the homes of St. James Parish residents. Shortly after TELC issued a notice of intent to sue, FTM announced that it would stop the spraying. Also, TELC intervened on behalf of Citizens for a Strong New Orleans East and others in a lawsuit to support a cease and desist order that shut down the Chef Menteur landfill, located between a lower-income Vietnamese-American community in East New Orleans and Bayou Sauvage National Wildlife Refuge. TELC is involved in ongoing litigation to minimize the impacts of this unpermitted landfill on the neighboring community.

Rule of law: TELC's litigation on behalf of its clients includes cases to enforce the duty of Louisiana agencies, as public trustees under the Louisiana Constitution, to evaluate impacts, costs

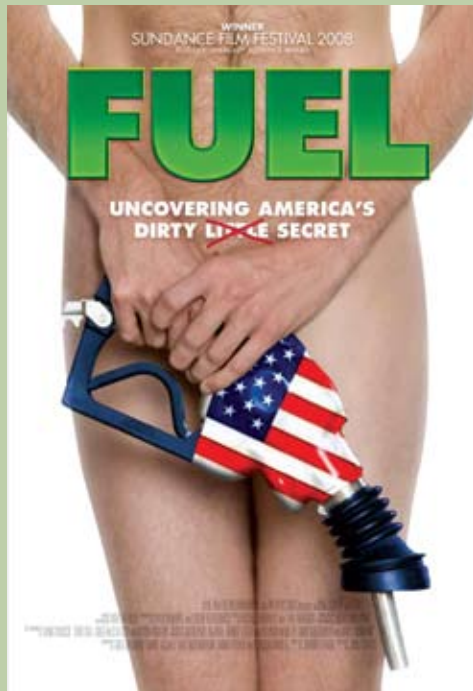
and benefits, alternatives, and mitigating measures before approving action affecting the environment. For example, in a 1995 TELC-handled case, Louisiana's First Circuit overturned a landfill permit because of LDEQ's failure to consider alternatives. Also, on behalf of Concerned Citizens Around Murphy, TELC worked with Public Justice in 2008 to challenge EPA's planned experimental burn of asbestos contaminated waste in St. Bernard Parish that would have violated EPA's own hazardous air pollutant regulations. In response, EPA dropped its plans to burn regulated asbestos-containing material during the experiment. In 1996, Louisiana's First Circuit established in the TELC-handled *Rubicon* case that when LDEQ issues illegal permits, those permits are not merely subject to eventual administrative correction, but are "null and void and must be vacated." *Tulane Environmental Law Clinic 2009 Annual Report Page 6 of 33*

TELC has an impact even broader than the cumulative effect of the cases and negotiations discussed above. This is because the mere availability of legal services empowers community members in their dialogues with regulators and industry. As the U.S. Court of Appeals for the Fourth Circuit has noted, "the comment of an ordinary citizen carries more weight if officials know that the citizen has the power to seek judicial review of any administrative decision harming him."

Onward!

There is a passage in one of T.S. Eliot's "Four Quartets" that, as I understand it, instructs life's voyagers to embrace our journeys: to "fare forward" because we may never know the satisfaction of "arriv[ing] at any terminus." Those words can strike a chord with environmental educators and lawyers, since we are all unlikely to live long enough to see what long-term impacts our efforts may have. Will our students, or our students' students, help forge a sustainable relationship between industrial society and nature? Can our work—and that of clients, colleagues, and students—help buy communities enough time for lasting solutions to emerge and take hold? We may never know. But we take satisfaction from the journey: from teaching our students to help one client at a time, from the thrill of victory when we manage a step forward (even if we take a step back the next day) and from knowing that we, and our colleagues in public-interest law and environmental education, are making the effort.

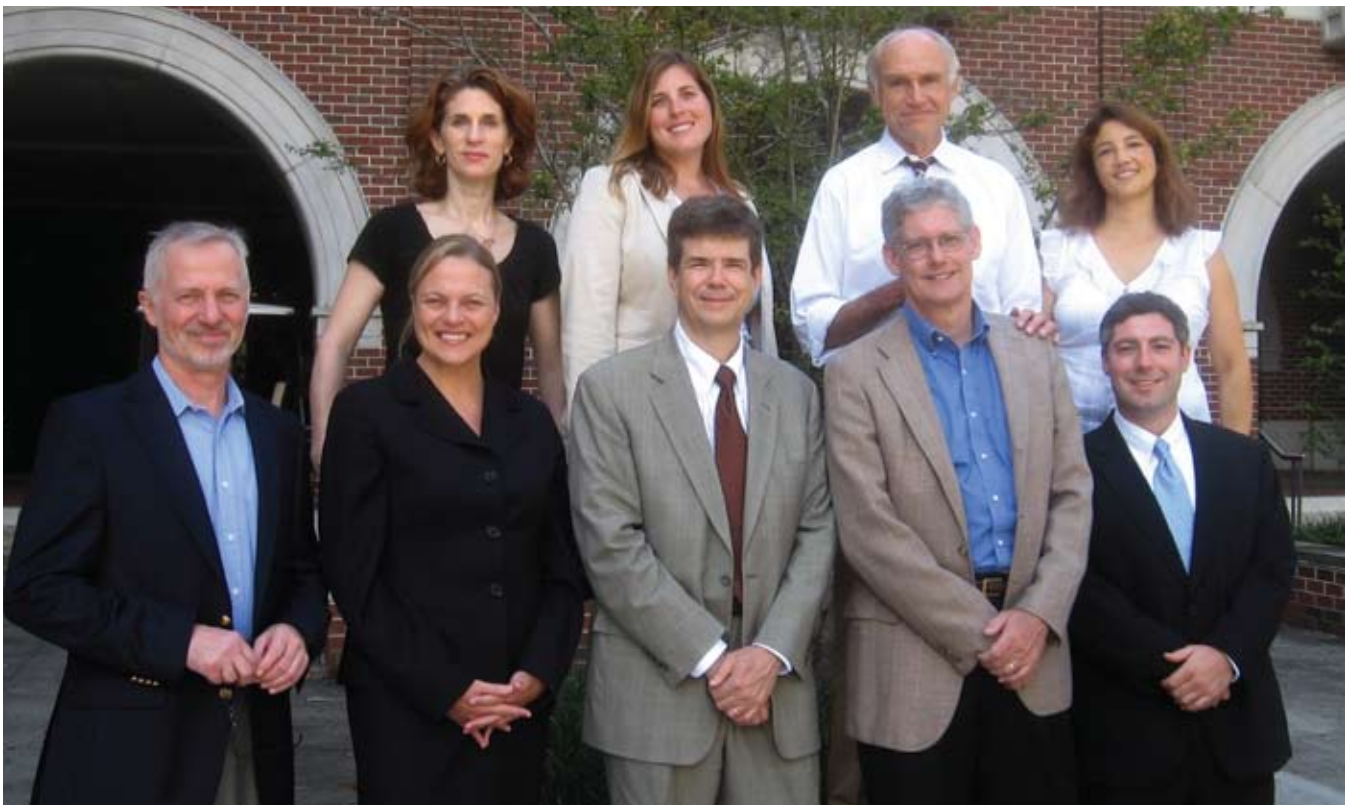
Very truly yours,
Adam Babich, TELC Director



“FUEL”: WE’RE GOING TO MAKE YOU A STAR!

Recently, an email came in from 1990 alum Lisa Kass Boyle, who had gone to see the movie FUEL, winner of the Sundance Film Festival Award for the best documentary. Suddenly, who should appear on the screen but Professor Houck, at which point she says she leapt to her feet in surprise and cried “that’s my professor!” Houck professes not to have seen the film, nor to remember what it is he said.

ENVIRONMENTAL LAW FACULTY 2009-2010



From left to right, bottom row: Günther Handl, Corinne Van Dalen, Adam Babich, Mark Davis, Michael Pappas; Top row: Elizabeth de Calderon, Jill Witkowski, Oliver Houck, Lisa Lavie Jordan

ENERGY FUTURES: Three TLS alumnae on the front edge of alternative energy solutions:



Murray S. Liebman, JD 1991, is the President and founder of Liebman & Associates, Inc., the largest clean energy advocacy firm in the nation. The

Editor-in-Chief of the Tulane Environmental Law Journal during his studies here, Mr. Liebman went on to serve as Government Relations Director for the American Gas Association and as the Executive Vice President of the Solar Energy Industries Association. He has also worked in the Departments of Interior and Energy, as well as at the White House Office of Environmental Policy, where he served for three years as the Presidential appointee at the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy. Currently, Mr. Liebman and his firm help the nation's largest utilities, telecoms, and building owners and developers deploy renewable energy, energy efficiency and advanced power and control systems. L&A also represents a portfolio of venture capital-funded technology companies which create advanced energy technologies such as solar, biofuels, storage, and

efficient semiconductors. L&A's clients deploy billions of dollars of green and clean power systems annually. See <http://www.liebman-associates.com> to learn more.

Brian Murphy, JD 2005, specializes in strategic advisory services on global emissions markets, ecological and renewable asset development, regulatory compliance, and



legislative initiatives. He has served as an emissions and environmental consultant to multi-national corporations in the Americas, Asia, and Europe, and to the recent United Nations Climate Change Conference, COP 14. He has worked on the implementation of a carbon origination and trading platform, the facilitation of a carbon offset program, the development of a carbon case study, and valuations used in the acquisition of several utility-scale wind assets. Brian is also a member of the Board of Advisors for Footnote 18, a charitable foundation born in the aftermath of Hurricane Katrina that supports investment in carbon remediation projects like reforestation and wetland

restoration that re-develop the natural barriers so vital to coastal protection.

Jesse George, JD 2008, is the in-house



legal advisor to the Alliance For Affordable Energy, a New Orleans based non-profit organization dedicated to creating

“fair, affordable, environmentally responsible, community-based energy policies for Louisiana and the nation.” Jesse first represented the Alliance as a student attorney in the Tulane Environmental Law Clinic. After graduation, Jesse began advising them on a contract basis. Several weeks into that arrangement, he was offered a permanent position and has been busy ever since working with state and city energy regulators. He and the Alliance successfully championed the establishment of a Renewable Portfolio Standard for Louisiana, and are now involved in an open docket before the Louisiana Public Service Commission to implement it. For further on this and related initiatives see <http://www.all4energy.org>.





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Hallowed Ground: The Gettysburg Battlefield
in Historic Preservation Law

Instream Flows and the Public Trust

Setting Air Quality Standards: Science and
the Crisis of Accountability

Greenworks: Alumni Notes

For what you do, we remain impressed, and very proud.

Nikki Adame-Winningham, Austin, TX [2004] has been an Associate at the firm of Vinson & Elkins during the last five years. “I have been working on cases concerning practically every type of environmental media there is: air, waste, and water. Later this fall and winter, I will be involved in three contested case hearings for Texas state environmental quality permits.”

Susan Armstrong, Austin, TX [2001] recently became the Executive Director of the Texas Land Trust Council, which promotes and sustains the conservation efforts of land trusts across the state of Texas, “a wonderful opportunity, and one for which I have a deep passion.” She was previously an associate with Fulbright & Jaworski, LLP, and an Assistant Attorney General in the Natural Resource Division at the Attorney General’s Office in Austin. She has also created and taught “Tools for Open Space Preservation” for upper-level students at the University of Texas at Austin.

Nicolás Balmaceda-Jimeno, Santiago, Chile [LLM 2000] is a partner at the firm of Barros y Errázuriz, where he has been recently helping clients involved in the development of seaweed-based biofuels.

Adam Baron, Seattle, WA [2002] continues his work for EPA’s Region 10 as the Enforcement Officer for its Underground Storage Tanks Office, and as a member of its Ground Water Unit. He enjoys the fieldwork, particularly his site inspection visits at hazardous waste landfills. Over the summer, he also took a three-day float on the Wisconsin River, where he encountered “plenty of eagles and sandhill cranes to keep [him] occupied on the slow water.”

Kimberly Bender [2006] joined a boutique environmental law firm in Boston, Massachusetts upon graduation. She has recently decided to return to Louisiana to help the recovery of the city of New Orleans.

Michael Biancanello, NY [2001] has joined his brother’s family and matrimonial law practice, after years of litigation involving products liability, asbestos, medical malpractice, and federal civil rights violations.

Kay Bond, Chapel Hill, NC [2004] works as a staff attorney at the Southern Environmental Law Center’s Chapel Hill office, on clean water law and policy. From 2004 through 2006, she worked as a Supervising Attorney at the Denver University Environmental Law Clinic.

Lisa Kass Boyle, Los Angeles, CA [1990] prosecuted environmental and other crimes in the Los Angeles District Attorney’s Office; since 1997, she has been involved with Heal the Bay as its Director of Law and Policy, as a member of its Board of Directors and Chair of the Santa Monica Pier Aquarium, and as a Co-Chair of Heal the Bay’s largest annual fundraiser. In 2006, she was awarded the organization’s highest volunteer award, the Super Healer award. She and her law-school-sweetheart and husband, David Boyle, will be coming back to NOLA for their 20th (“Yikes!”) reunion in 2010.

Jon Brooks, New York, NY [1984] has just won a case before the Delaware Supreme Court on “four first-impression questions of Delaware escheatment law.” Blackacre, revisited.

Brett Bucheit, Denver, CO [LLM 2006] reports that in addition to several articles and expeditions to bag the peaks on the Eastern Front of the Rockies, he (author) and his wife (illustrator) are publishing a children’s book on the environment.

Francisco J. Bustamante, Quito, Ecuador [LLM 2008] is the legal advisor to the Ecuadorian Center for Environmental Law (Centro Ecuatoriano de Derecho Ambiental), an environmental NGO. He has written the Center’s training manuals on Environmental Rights, Biodiversity and Environmental Impact Statements. During the last year, he became a law professor at the Universidad Internacional del Ecuador, where he has been teaching Environmental Law

Joshua Easton, College Park, MD [2002] is with the Center for Health and Homeland Security of the University of Maryland, and has been instrumental in the hiring of several TLS alums recently.

Ilya Fedyaev, Moscow, Russia [LLM 2005] is working as a safety and compliance officer for a Houston-based pipeline company doing extensive business in Russia and the Far East. He and his wife, Katrina, a civil engineer, are also (literally) building their own home, in a Moscow suburb. Biggest design challenge: six months of extreme cold.

Andrew Franz, Greensburg, PA [1990] served in the U.S. Air Force as a Judge Advocate for six years, then worked as a public defender in Gulfport and Biloxi, Mississippi where he volunteered for Habitat for Humanity. He is now an Assistant Professor at the University of Pittsburg at Greensburg. His research interests include the common law sources of environmental law and criminal prosecutions.

Chris Gobert, New Orleans, LA [JD 1984] [LLM 1986] is an attorney for the New Orleans Redevelopment Authority and involved in litigation seeking to put abandoned and neglected housing into productive uses.



Nelson Goodell, Berkeley, CA [2009] has decided to retake his life on the West Coast, where he lived before attending Tulane University Law School, and there begin his career. He spent part of the last two summers on the Pacific Coast trail; the photos are spectacular.

William Goodell, Lafayette, LA [1987] announces that he will soon retire from the practice of law and pass the torch of private environmental cleanup litigation in Louisiana to a younger generation of environmental attorneys. He wishes to “thank the oil and chemical industries for making this all possible.”

James Goodhart, Little Rock, AR [LLM 1991] serves as General Counsel to Arkansas Game & Fish Commission, which according to its website “plays an important role in keeping The Natural State true to its name.” As litigation co-counsel, he recently helped the Commission win a \$7.3 million damages award as compensation for the value of dead and dying timber and to restore the Donaldson Black River Wildlife Management Area. Since 2000, he has also been an adjunct professor at University of Arkansas at Little Rock Law School, offering courses in Land Use and Natural Resources.

Machelle (Lee) Hall, New Orleans, LA [2008] is working with the Maples Law Firm on a range of litigation, some relating to Hurricane Katrina.

Michelle Alt Hazlett, Hammond, LA [1996] has served as an Assistant Public Defender with the 21st Judicial District and as the Director of Juvenile Programs with the City Court of Hammond. She is currently a member of the North Shore firm Seale & Ross. She focuses upon civil and commercial litigation, including complex wetlands-development permitting controversies associated with the onslaught of Hurricane Katrina.

Nicole Heyman, New Orleans, LA [LLM 2007] is Adjunct Professor at the Tulane School of Architecture and counsel to the National Abandoned Housing Campaign in New Orleans

Timothy A. Holliday, New Orleans, LA [2005] is in the Office of Counsel of the US Army Corps of Engineers, New Orleans District, where easily half the work, budget and challenges of that agency currently resides. He is primarily engaged in wetlands permit enforcement.

Andrew Homer, Los Angeles, CA [2008], is in a CERCLA practice with Pillsbury, Winthrop in L.A., and Vice Chair of the ABA SEER Superfund and Natural Resources Damages Committee. He invites short articles to the Committee newsletter.

Andrew Jacoby, Austin, TX [2008] is an attorney for the Texas Water Development Board, which plays a key role in water projects from sewage treatment to dams, interbasin transfers, and the new desalination plant. He has just published an article on the Supreme Court’s Coer Alaska opinion, and is finishing another on historic preservation.

Suwalak Joosawat, Bangkok, Thailand [LLM 2009] is an attorney for the Department of Pollution Control, PCD, in Thailand following former Tulane LLM graduates **Duangrak Trongmethirat [LLM 2003]** and **Rungnapa Jatupoomdecha [LLM 1997]**. Miss Duangrak is now training to be a judge, and Rungnapa is a private attorney. Suwalak’s responsibility involves drafting laws, such as the Economic Instrument for Environmental Management Act; the Reduce Reuse and Recycle Act; and amendments to the Public Health Act. “The knowledge that I gained from my professors is very useful, and I always think of what you taught me at Tulane Law School.

Holly J. Kimball, Boston, Ma [LLM 2008]: “Since returning to Boston, I have started my own firm with both an I.P. practice and an Energy and Environment pro bono practice. How fun!”

Hiroshi Kobayashi, Japan [LLM 2005] is an Associate Professor in the Faculty of Environmental Studies at Nagasaki University, where he teaches environmental and civil law. His current research is focused on soil contamination and marine pollution by oil discharged from vessels. His latest article is entitled “The Bunker Convention and the Japanese Compensation System for Oil Pollution Damage by Non-Tanker Vessels.”

Ramón Lloveras-San Miguel, San Juan, Puerto Rico [LLM 1986] has presided over the Board of Directors for the San Juan Bay Estuary Program since his appointment by the Governor of Puerto Rico in 2000. During the last year, the Program obtained approval for an environmentally-themed license plate; declared April 24th Puerto Rico's Water Quality Monitoring Day; produced Puerto Rico's first ecologically-themed children's movie (currently showing at four international film festivals); created an underwater artificial reef trail comprised by 245 modules; and planted over 2,000 red mangrove seedlings.

Robert McMillin, New Orleans, LA [2004] is an associate at the Law Offices of Smith Stag, LLC. He works on Naturally-Occurring Radioactive Materials (NORM) personal injuries, but his practice areas include Mass Torts, Class Actions, Environmental Law, and Toxic Torts litigation.

Glen Nazaruk, Calgary, Canada [LLM 1994] has been "working the oil patch" as a lawyer and landman with BP Canada Energy. "I have been with the company for five years and "enjoy the contributions that working at BP Canada Energy has made to my career." He is the author of "Orphan Wells," an article published by Canada's "The Negotiator: The Magazine of the Canadian Associations of Petroleum Landmen" in November 2005.

Timothy Parr, Washington, DC [2003] joined the U.S. Navy JAG Corps after graduation, most recently at the Navy Installations Command, a three-star command with cognizance of all Navy installations around the world. During the last year, the U.S. Navy funded his pursuit of an LL.M degree in International Environmental Law at The George Washington University Law School.

Galahad A. Pe Benito, Manila, Philippines [LLM 2003] teaches Environmental Law at the Far Eastern University Institute of Law (FEU-IL). He has authored and published two books on Environmental Law that are mandatory readings for Environmental Law students at FEU-IL. He has also joined renowned environmental lawyer, Tony Oposa, in organizing the Global Legal Action on Climate Change, and in the initiation of legal proceedings against government officials who have failed to comply with their sworn duties to protect the environment.

Susan Richardson, Atlanta, GA [1991] is a partner at Kilpatrick Stockton LLP, where her practice focuses on environmental law and has allowed her to gain significant experience in wastewater permitting and enforcement issues—particularly as applicable to municipal governments as well as environmental issues faced by the poultry industry. She was recently selected to

participate in the Institute of Georgia Environmental Leadership, which "has helped create a 'common language' among the different environmental interests and helped in consensus building when addressing important environmental concerns."

Ankur Tarneja, Encino, CA [2009] is in solo practice doing business and plaintiff personal injury litigation. He has also been appointed Young Lawyers Liaison for the Environment, Energy and Natural Resources Section of the ABA.

Jeffrey Thomas, New Orleans, LA [2001] is with the New Orleans Office of Recovery Development Administration. Thomas was successful in raising \$411 million in state and federal grants for New Orleans projects, and worked on revamping local laws to facilitate blight removal. Real recovery, he notes, will depend on private investment. "There are things that government can do, but there's this line. And you wait and see if the private sector will come to the dance."

Lemuel Thomas, Dallas, Texas [2003] is currently an Assistant City Attorney for environmental litigation. His practice includes claims litigation as well as the provision of advice to city departments and officials on environmental law and policy matters. During the last year, he has been part of the

LOUISIANA: THE ONE, TWO THREE OF CLIMATE CHANGE

While Louisiana officials have been remarkably silent about the prospect of climate change, right up to their representatives in Washington, DC, local leaders have recently confronted the prospect in two forums of interest.

The first was a meeting co-hosted by the Louisiana Association of Business and Industry, the US Chamber of Commerce, the Louisiana Oil and Gas Association and the LSU Center for Energy Studies, at which the vice-president of the Oil and Gas Association, declared, "We don't believe in Global Warming, period".

The second was a book release from an organization called "Plants Need CO2", with the mission to "educate the public on the positive effects of additional atmospheric CO2". The contact person is identified as a geologist, author and retired energy industry executive whose previous book endeavored to "educate the non-scientist about the many causes of global climate change".

So there you have it. We don't believe in global warming, but if we do we aren't causing it, but if we are it is very good for you.



negotiations associated with the City's Trinity River Corridor Project, which involve a closed landfill facility's remediation and rehabilitation for conservation and recreational uses.

Jason Totoiu, Miami, FL [2004], continues his work for the Everglades Law Center. His article "Building a Better State Endangered Species Act: An Integrated Approach Towards Recovery" will appear in the January 2010 issue of the Environmental Law Reporter.

Deborah Clarke Trejo, Austin, TX [1998] is a partner in the Environmental, Administrative, & Public Law Department of the law firm of Kemp Smith LLP. She is also a member of the advisory board of Hill Country Alliance, dedicated to the conservation of the Texas Hill Country. She recently argued before the U.S. Court of Appeals for the Fifth Circuit in a case filed against the Edwards Aquifer Authority for denial of property rights arising from its adjudication of water rights.

Eric Williams, Metairie, [2005, LLM 2008]: "I am making headway in toxic tort litigation with causation issues that have never survived Daubert in federal court and are relevant to environmental cases. I am focusing on benzene litigation and blood malignancies. I recently survived a Daubert challenge in federal court for a myelofibrosis case and a

multiple myeloma case." *Bishop v. Shell Oil Co. et al.*, No. 07-2832 (E.D. La.). Following the defeat of the defendants' Daubert motion, Mr. Williams' clients obtained a confidential settlement of their claims from all defendants

Morgan Williams, New Orleans, LA [2008] is interim-General Counsel for the Fair Housing Project in New Orleans. He has recently secured a court order invalidating a moratorium on multi-family housing imposed by the Parish of St. Bernard on the basis of discriminatory intent and effect, in violation of a previous court order.

J. Benjamin Winburn, Washington, DC [LLM 2007] was appointed Senior Advisor of the Washington, D.C. office of McKenna Long & Aldridge. He is a member of the Government Affairs team, focusing on climate change, energy, and renewable resources. This work continues his long-standing focus on energy issues, which has included his service as a professional staff member of the House Subcommittee on Energy and Mineral Resources. During 2008, he co-authored an article for the Bloomberg Corporate Law Journal, "Climate Change Suits against Fossil Fuel Power: Will They Get Hotter or Colder?"

Janet Woodka, Washington, DC [1992] became the Federal Coordinator for Gulf Coast Rebuilding in 2009. Ms. Woodka is a former legislative director for Sen. Mary Landrieu, D-La., and has worked as the recovery office's director of legislative affairs under previous coordinators.

Tao Xu, Washington, DC [2004] is an associate with DLA Piper's Franchise and Distribution practice group, dealing with international franchising, licensing and distribution transactions. His current interests include emerging forms of property, including carbon credits and water rights.

Mingqing You, Wuhan, China [LLM 2005] teaches International Environmental Law at the Zhongnan University of Economics and Law. He has recently published two articles in the United States, entitled "Moratorium on EIA Approvals: China's New Environmental Law Enforcement Tool" and "Annual Review of Chinese Environmental Law Developments: 2008." He also published a Chinese-language article on the funding mechanisms for private environmental protections programs.

Tulane Environmental Law News

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The Tulane Environmental Law Society would like to thank everyone who contributed to this issue.

Tulane's Environmental Law Program

The Tulane Environmental Law Program is one of the largest and most diverse in the United States. Each year, Tulane graduates more than forty Juris Doctor and a dozen Masters candidates with specialties in environmental law. What distinguishes Tulane's program in addition to the experience of its **faculty** is the scholarship of its **journal**, the strength of its **clinic**, the projects of its **institute**, and the momentum provided by an engaged group of **students**. These five components of Tulane's program – in the extraordinary setting of Post-Katrina New Orleans, the Lower Mississippi River and the Gulf Coast – provide a unique academic experience for those with an interest in environmental law and sustainable development policy. For more information, contact the Law School's admission office at John Giffen Weinmann Hall, Tulane University, 6329 Freret Street, New Orleans, LA, 70118, 504.865.5930, or its web site at www.law.tulane.edu.



*Morning marsh,
Cocodrie, Louisiana*



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