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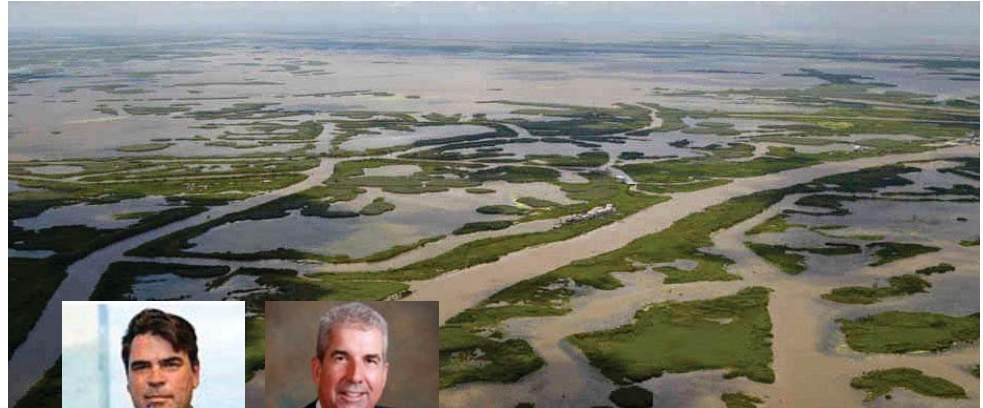
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Gladstone Jones,
TLS 1992



J. Michael Veron,
TLS 1974

TLS ALUMS IN MEGA LITIGATION: Two Cases That Shake Their Worlds

Two lawsuits have been recently filed in opposite points of the globe, putting Tulane graduates on the front lines of issues that society has not seriously addressed, anywhere. *One here in New Orleans on behalf of the New Orleans Levee Board seeks damages from 97 oil and gas companies, some as large as Chevron, for the loss of marshes buffering the Board's protection system for the city.* The other, filed in the Philippines capitol of Manila, seeks no less than *to return 50 percent of the nation's highways to pedestrian, mass transit and non automotive uses.* Together they illustrate the power of law to address (and to educate on) long-standing harms that we have long taken, as a price of progress, for granted.

Crisis in New Orleans

The facts of the New Orleans case are quite strong. Despite state and industry efforts to downplay the damage, it is now known that oil and gas pipelines and access canals have wreaked havoc on the Louisiana coastal zone. More than 10,000 miles of these facilities have cut through the marshes like blunt knives, interrupting the water and sediment flows that kept these systems alive. They bring salt water up into freshwater environments, killing out the plants, at which point the whole marsh disappears. *Continued on pg 6*

Payson Center

New field courses, new degrees, new teaching programs, highlighted 2012-13. The Payson Center has now become a catalyst for change.

Cuba

In March 2013, Tulane students participated in the first iteration of the Center's newest field course in Havana, Cuba. We examined first hand what happens when a socialist system opens up private property markets. Multiple course sessions on property theory also examined literature on the transition from state socialism in other countries, from China and the countries of the former Soviet Union to Vietnam. *Continued on pg 5*



Payson Center students in the field

Fall 2013 Calendar

- FRI., SEPT. 6:** Bayou St. John Paddle
MON, SEPT. 9: Summit Planning begins
SAT., SEPT. 14: Bayou St. John Wetland
Creation Project (“work where you play”)
SAT., SEPT. 21: LPBF “Beach Sweep”
Service Project
MON., SEPT. 30: BP Trial Phase II Field Trip
TUE., OCT. 2: Divest Tulane Discussion
with Richard Mott
SUN., OCT. 6: Annual Environmental Dessert
Competition chez Professor Houck
WED., THUR., OCT. 9-10: Overnight Canoe
Trip, Wolf River
SAT., OCT. 12: Mississippi Levee Bike Trip
TUES., OCT. 15: Coastal Restoration
Discussion with Dr. John Lopez
SAT., OCT. 19: Common Ground
Wetlands Restoration Project
(in cooperation with Tulane Public Interest
Law Foundation)
Thurs., Nov. 21: Thanksgiving Potluck



TEELS Officers, 2013-14

Front (L-R) Stephan Reed, Caroline Wick, Catherine Maness, Sam Skains, Daniel Newman, **Back (L-R)** m Beth Sonne, Vanessa Graf, Jared Pessetto, Will Lindsey, Sean Skinner

2013 SUMMIT: Biggest and Best So Far



Keynote Speaker,
Yvon Chouinard

Patagonia founder Yvon Chouinard engaged a standing-room-only audience at Tulane’s 18th Annual Summit on Environmental Law and Policy, explaining how his company has evolved to address business challenges while also trying to lead consumers and other businesses to be more ecologically responsible.

More than 700 people attended the summit, which drew attorneys, academics, government and industry reps, non-profit staffers and students to the Tulane campus in February. The event, organized and run by a team of 44 Tulane Law students, presented 20 sessions, that included GMOs, Gulf sturgeon, world energy consumption, SLAPP suits, water resources, urban landscapes, public interest practice, the state of nature in the Anthropocene, and the challenge of consumerism.

Mr. Chouinard, a renowned rock



David Waggoner, architect of proposed New Orleans Water Plan.

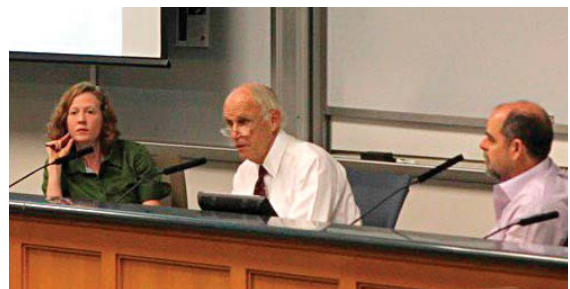
climber, and entrepreneur, said his company exists “to put into practice what all the smart people are saying we have to do to save this planet.” Patagonia, he said, attempts to “make the best product,” “cause no unnecessary harm” and “use business to inspire and implement solutions to the environmental crisis.”

More information on speakers, panels and schedule, plus video of several high-profile presentations, including Mr. Chouinard’s highly entertaining and

informative keynote address. Planning for **Summit ’14**, set for **FEBRUARY 21 – 23, 2014**, is underway and can be followed on www.facebook.com/TulaneEnvironmentalSummit. The theme will be Water, from aquifers to oceans and everything in between. *Save the date and make plans to attend.*



Fracking draws an elite audience.



Emma Marris, author of *Rambunctious Garden*, Tulane Law Professor Oliver Houck, and Kieran Suckling, Executive Director of the Center for Biological Diversity on environmentalism in the anthropocene.



Three Summit Committee Chairs

Environmental Summit 2014

Brett Korte, *Executive Chair and Coordinator*
Harry Vorhoff, *Speaker*
Allison Parks, *Fundraising Chair*
Shannon Derksen, *CLE*
Chris Valletta, *Outreach and Advocacy*
Catherine Maness, *Logistics*
Marina Knize, *Summit Travel Chair*
Beth Sonne, *Technology*
Laura Cottingham, *TEELS President*
Ben Fuchs, *TEELS Vice-President*

Faculty:

Recent Publications

ADAM BABICH

Why Environmental Law Clinics? (with Jane F. Barrett), 43 *Envtl. L. Rep.* (Envtl. L. Inst.) 10039 (2013).

The Supremacy Clause, Cooperative Federalism, and the Full Federal Regulatory Purpose, 64 *ADMIN. L. REV.* 1 (2012).

COLIN CRAWFORD

Crawford publications 2012-2013
DERECHO Y POLÍTICA AMBIENTAL: TEORÍA Y PRÁCTICA, (under grant from the US Agency for International Development/Higher Education for Development) (2013), and accompanying teachers manual.

MARK DAVIS

Escaping the Spill Maze: Protecting State Waters Within the Commerce Clause, 73 *Louisiana Law Review* 175 (2012), (co-authored).

=Lessons Unlearned: The Legal and Policy Legacy of the BP Deep Water Horizon Spill, 3 *Journal of Energy, Climate, and the Environment*, Washington and Lee Law School, 155 (2012).

At the Borders: The New Horizons of Water Management and Water Law, submitted for publication to the *Indiana International and Comparative Law Review*.

Multi-State Compacts and Regional Water Management, submitted for publication in the special issue of the journal *Water Policy*.

GÜNTHER HANDL

Flag State Responsibility for Illegal, Unreported and Unregulated Fishing in Foreign EEZs, 44 *Environmental Policy & Law* ____ (2014).

Le droit à la santé dans le contexte du droit de l'environnement, in JEAN-MARC THOUVENIN & ANNE TREBILCOCK, EDS., *MANUEL DE DROIT INTERNATIONAL SOCIAL* 1596 (Bruylant, 2013).



Left to right (and front to back): Lisa Jordan, Colin Crawford, Elizabeth Calderon, Corinne VanDalen, Adam Babich, Machele Hall, Mark Davis, Gunther Handl, Chris Dalbom, Oliver Houck



Amy Stein
(on sabbatical)

Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992" United Nations Audiovisual Library of International Law, at <http://untreaty.un.org/cod/avl/historicarchives.html#envir> (2013).

OLIVER HOUCK

The Battle of Lake Pontchartrain, 26 *Tulane Environmental Law Journal* 1 (Winter 2012).

Breaking the Golden Rule, 81 *Rutgers Law Review* 1473 (Fall 2012).

Rescuing Ophelia, *Mississippi Law Journal*, (Spring 2012).

Willow Springs: A Civil Action in Louisiana, (submitted for publication).

SOUTH TOWARD HOME: A LIFE THROUGH RIVERS, in publication, (LSU Press, 2014).

Book Reviews:

Gold, *The Environmental Forum*, to be published (November/December 2013).

Drinking Water, *The Environmental Forum*, (July/August 2013).

Charles Waterton, *The Environmental Forum*, (March/April 2013).

Tears of the Cheetah, *The Environmental Forum*, (November/December 2012).

Conservation in the Anthropocene, *The Environmental Forum*, July/August 2012).

1493, *The Environmental Forum*, (March/April 2012).

AMY STEIN

Reconsidering Regulatory Uncertainty: A Path Forward for Energy Storage, 41 *Florida State University Law Review* (forthcoming 2014).

Renewable Energy Through Agency Action, 84 *University of Colorado Law Review* 651 (forthcoming 2013).

CORINNE VAN DALEN

Oakville--Unprotected: A Study In Environmental Injustice, 58 *Loyola Law Review* 391 (2012).

NEW COURSES

2013 debuted two new courses in the E and E Program, one entitled **OUTSIDE THE BOX** explored the relationship of environmental law with everything else, ie Religion, Risk, Science, Property, Population, you name it, it came up.

The second was an **LLM SEMINAR** focused on the overlap of Energy and the Environment with Sustainable Development and with International and Comparative Law, companion disciplines in the Tulane Masters programs. We opened class with greetings in new languages each time, and took it from there.

Both seemed to work. The more one mixes in this field the better it seems to turn out.



Front Row (L-R) Zumrud Msaeva, D'Ann Penner, Huo Alberto Wood Nunez; **Back Row** (L-R): Mukesh Kumar, Francis Yancy, Professor Houck, Daniel Collier, Roberto Sepulveda Olavarria

Institute for Water Law and Policy



The plan estimates that investing in its recommended actions, particularly those that slow the region's subsidence rates, would produce over \$10 billion dollars in saving...

Over the past year the Institute submitted briefs to the Supreme Court on water-related cases, supported the work of the Louisiana Water Resources Commission and the Louisiana Law Institute (both of which count the Institute's director as a member), and tracked damage issues from the Deep Water Horizon oil spill. But nothing was more important—or challenging—than helping to craft a comprehensive Urban Water Plan for metropolitan New Orleans.

The new strategy was two years in the making, but way overdue for a region facing profound subsidence and seal level rise challenges. It has been well received but raises questions, including how its estimated \$6.2 billion cost will be met. As it turns out, while the cost is a big number it is actually not so big as the status quo. The plan estimates that investing in its recommended actions, particularly those that slow the region's subsidence rates, would produce over \$10 billion dollars in savings: when soils don't sink, pipes don't break, streets don't crumble, and foundations don't shift the way they now do, recurringly. More savings come from flood insurance rates. On the income side, treating water as a community asset opens a wealth of possibilities for stormwater retention and water-side urban renewal. Real estate

values soar. The tax base follows suit. Canoes and excursions appear. Everyone wins.

The plan was sponsored by Greater New Orleans Inc. and compiled by a team led by the architectural firm, Waggonner and Ball. The Tulane Institute's director Mark Davis and research assistants Harry Vorhoff and Fredric Augonet, TLS 2013, were also members of the planning team.

Payson Center for International Development

Continued from page 1

We examined first hand what happens when a socialist system opens up private property markets. Multiple course sessions on property theory also examined literature on the transition from state socialism in other countries, from China and the countries of the former Soviet Union to Vietnam. Students attended daily lectures on some aspect of the property law changes, followed by a field visit related to the lecture. At night the entire group would reconvene to consider the day's events and discuss their ideas for subsequent research. Upon their return to New Orleans, each student wrote and presented a research paper on a topic of their choosing. "I have seldom had a class that so uniformly produced such a high level of student work," Crawford said. "I think this was a reflection not only of the talent in the group, but also of the stimulation of being in Cuba at a time of radical change."

Rio

The Law School's summer program in Rio de Janeiro went 100% environmental in the summer of 2013, focused on questions of environmental sustainability. "We met our students at the airport and took them directly to the Atlantic Rainforest, deep inside Rio state." This ecosystem is one of the largest tropical rain forest systems in the world, with some of the world's highest rates of biodiversity; it is under serious threat of further degradation. "The aim," says Crawford, was to help students understand the connection with these forest resources and the mega-cities of Rio and São Paulo, both just a few hours away." The group spent a week speaking with multiple stakeholders in the forest, from park managers and conservation officials to small business owners, farmers and even a bee keeper struggling to save indigenous bee species from extinction as a way of preserving the forest's biodiversity. Returning to Rio city, the group visited the last vestiges of Rio's

once abundant mangrove swamps. Back in Rio, they concentrated on the social and economic consequences of environmental degradation. Student John Hays commented, "I'd been to Rio a lot before, and I thought I knew the city pretty well. But the course introduced me to completely new places, people, and ideas, all challenging."

"I'd been to Rio a lot before, and I thought I knew the city pretty well. But the course introduced me to completely new places, people, and ideas, all challenging."

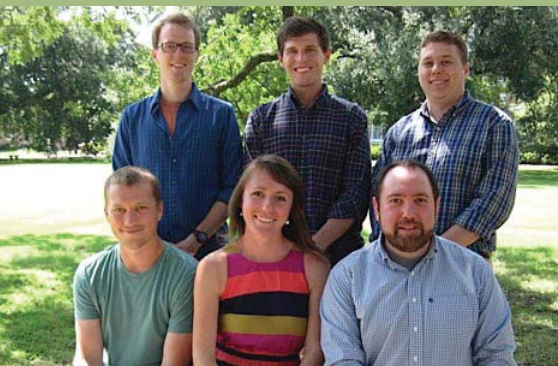


Beyond these new programs, (and the original one in Panama), the Center welcomed its first two candidates in the newly approved Master's in Law and International Development – one of them a Panamanian national who received a prestigious scholarship to be a part of the new master's inaugural year. For the first time as well, this year a majority of the Payson Center's master's degree students are also law students. The advantage, says Crawford, is that students can get two degrees and acquire distinct but complementary skills.

Beyond the classroom, Payson's law-related profile continues to grow as well. A large US Department of Labor grant was extended and received additional funding to study the problem of child labor in the cocoa sector. The DOL project brings together all of the stakeholders in the west African cocoa

industry to try and reduce child labor problems. These are also environmental problems, Crawford explains: "part of the problem is that many of the cocoa farmers work on a subsistence basis, and that can lead to unsustainable environmental practices."

Payson and Crawford have also completed a five-year project to prepare a course book and teaching guide for environmental law and policy in Central America and the Caribbean, see faculty publications this issue. In tandem, the Iberoamerican University in Santo Domingo, Dominican Republic is using the materials to develop a Masters program in Environmental Law.



TELJ Board Members, Volume 27

Back Row (L to R): Paul Tilley (*Senior Articles Editor*), Spence Dabbs (*Senior Business Editor*), David Gallichio (*Senior Business Editor*); **Front Row:** Lucas Henry (*Editor in Chief*), Allison Parks (*Senior Managing Editor*), Dave Samuels (*Senior Managing Editor*)

Tulane Environmental Law Journal

The Journal will publish Volume 27 during the 2013-2014 school year. The first issue, to be published in Winter 2013, will explore water pollution caused by Mountaintop Removal Coal Mining in West Virginia and the enormous potential costs associated with treating this pollution and legacy issues for the state unless current practices are changed; the LEED guidelines and potential for improvement; and the legal regime for Surface Waters in Louisiana and a proposal for reform. The second issue, to be published in Summer 2014, will be centered around Plastics, evaluating several chronic issues and new opportunities. For this themed issue TELJ has partnered with 5 Gyres, a group employing strategies to eliminate the accumulation of plastic pollution in the five subtropical oceanic ecosystems. The Journal staff is comprised of six senior board members, seven managing editors and twelve junior members.

TLS ALUMS IN MEGA LITIGATION: Two Cases That Shake Their Worlds

Continued from page 1

The time lapse pictures are dramatic: here is an intact wetland, then come the first canals, then the breakup, open ponds, and ... gone. Just one such canal, the ill-fated Mississippi Gulf Outlet, destroyed 28,000 acres of cypress and ushered Hurricane Katrina into the city.

The Levee Board's injury is also apparent. It is engaged in a titanic struggle to keep New Orleans dry against hurricanes and sea level rise. The costs of levee lifts, maintenance, and replacements will be extraordinary. As Board member John Barry has put it, "If we had the Delaware-size wetlands still out there to protect us, we wouldn't have to spend a penny raising our levees further; what we have would suffice.

The legal theories include counts in negligence and nuisance, and other based on statutory protections for levees and rights against unwanted flows that, while tested in small cases, have not been used in major claims. Where the case runs into trouble, however, is from the state, which protects oil and gas interests as an article of faith. The largest refinery in America stands right behind the capitol building in Baton Rouge, dominating the skyline and emitting leading levels of toxins. It is more than a metaphor.

The state has, predictably, launched a counter-offer against the Levee Board lawsuit, "hijacked by a group of trial lawyers", according to the governor, speaking from a convention in Las Vegas. His coastal manager accuses Board members of getting "drunk on dollar signs", and has turned to other levee boards who serve at the will of the governor to oppose as well. The saving grace here is that, post Katrina, recognizing how politicized and ineffective Louisiana levee boards had become, the legislature gave the New Orleans board extraordinary independence, and the right to hire its own counsel. Which it has now exercised. The governors, in turn, is moving to eliminate board members who proposed the litigation.

It is not a pretty picture.

The anomaly of the state's position is that the damages from this case would go directly to the state itself, to help fund a mammoth (\$50 billion) coastal restoration program that has only a fraction of that money on hand. Such is the state's subservience to the industry that is willing to forgo these contributions, which could be quite significant (oil and gas is credited nearly half of all coastal loss here), because of the dominance of this industry. Which one day not too far off will leave this state entirely. And leave it holding the bag.

The action now is in several venues, including the court and the legislature, which could of course neuter the Levee Board any way it wishes. It is also before the public, however, where support for the action is very strong. As an oysterman recently told a reporter, "It was a gutsy move, to say the least".

Lead attorneys in the case include two Tulane alums, Gladstone Jones and Michael Veron, see page 1, and the following Tulane graduates as well:



Tad Bartlett,
TLS 2000



Bessie Daschbach,
TLS 2001



Kevin Huddell,
TLS 2000



Rose Murray,
TLS 2012

Tulane alums on the Levee Board litigation team.



Left, Francis Tolentino, SJD Candidate, and, right, Chairman Metropolitan Manila Development Authority, and Antonio Oposa, lead plaintiff attorney

The Hot Seat in Manila: The Ultimate Petition

“Frankly, my attitude towards things like this is that I am going ahead with whatever it takes. We create the parade. If they (govt officials) work with us, we put them at the head of the parade. If not, then it is for them to step aside. It is only when we sue them that they actually pay attention.”

*Antonio Oposa,
Email to Professor Houck, Aug.14, 2013*

To onlookers Francis Tolentino, currently on leave from the SJD program at Tulane, has the perfect government job, Chairman of the Metropolitan Manila Development Authority, in effect the czar of the largest city in the Philippines and one of the largest in the Far East short of, China. Then you have to consider the problems he faces, which include the implementation of a sweeping court order to clean up Manila Bay, crushing traffic congestion, and the protection of his city from rising seas. As we write, Manila is under water for the second time this year.

Oh, and one more problem, the insistent pressure from his mentor on Philippine environmental issues, Antonio Oposa, best known for a lawsuit in the name of generations yet unborn to arrest the logging of his country’s remaining old growth forests. Not surprisingly, Oposa was behind the Manila Bay litigation as well. He has now brought a legal action that in terms of rocking the establishment is yet more daring than any before: a demand that one half of

the nation’s roads and highways be re-dedicated to alternative transportation uses. In America such a suit would be laughed out of court, but then again so would the logging and pollution cases have been as well. The Philippines, however, has some unique law to apply and courts willing to apply it. The case has legs.

The petition (signed by some 126 attorneys including several Tulane law grads), presents a suite of causes ranging from statues and regulations to constitutional and even global concepts. Its fact allegations include the contribution of automobile emissions to climate change, the dramatic impacts of climate change on coastal populations, their equally dramatic impact on human health, and the consumption of urban space by an ever-increasing road and road service complex, which seem equally true around the world. What is most compelling is the allegation that some 98 percent of the Philippine people do not own motor vehicles, which means that the status quo favors a small slice of society.

The relevant law includes a far-reaching Executive Order directing the powerful Transportation and Publics Works agencies to “reform the transportation sector” on the following principle: “Those who have less in wheels must have more in road”; they shall further “favor parties who have no motorized vehicles”. Other state agencies are also charged one for failure to “make immediately available” funds from the highway trust for these purposes. Per the petition, nothing has happened to implement any of these directives in five years. Instead, the government is proposing to build a new \$275 million elevated highway.

The petition adds broader claims too,

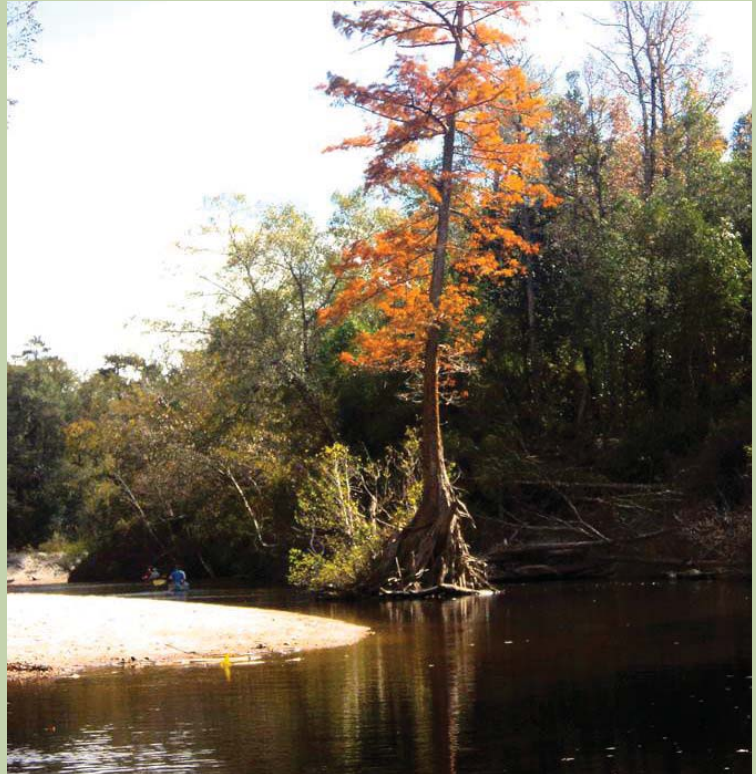
including violations of the public trust, (guaranteed in the Constitution), an Equal Protection argument (that the non-car owners are restricted to dangerously narrow sidewalks and spaces), and a Right to Life claim based on acute pollution from existing systems (the judges are invited to stand in the middle of Manila’s most polluted intersection for 12 hours a day to take their own measure). Lastly, petitioners invoke a provision authorizing damages against officials who “without just cause” refuse “to perform an official duty”.

All of which, we can conclude, makes for a rather loaded gun and a difficult challenge for Tolentino et al. On the one hand, the power of the auto industry and its dependencies is terribly strong, and the momentum behind building yet more roads for them is nearly irresistible. On the other hand, here is the law. Early indications are that Tolentino is taking at least partial steps, designating bike lanes in key areas of Manila. Whether these are first or last steps remains to be seen. As he himself would probably agree, they fall short of the law, and the complaint. Which brings us back to Oposa’s email above. Environmental litigation has always pushed public policy. These two lawsuits at opposite parts on the globe, continue that tradition.

DOWN BY



Bayou St. John wetland restoration project



Red Creek, Fall 2013



Seining critters at Louisiana Marine Consortium, Cocodrie, for Coastal Law class, Spring 2013.

THE RIVER



Atchafalaya Swamp, Spring 2013



Wolf River paddle, Spring 2013



Faithful TEELS mascot Ms. Bear and paddler, Fall 2012.

Environmental Law Clinic

For many years, Baton Rouge residents have had a difficult neighbor. On March 19, 2013, a federal court in Louisiana addressed a long-standing environmental injustice, relocating some of them away from a sewage treatment plant producing foul odors and carriers of disease. The story behind this ruling illustrates some of the challenges that student attorneys face in real lawsuits, and the persistence it can take to forge a solution.

Baton Rouge began operating its North Wastewater Treatment Plant in 1960. Large-scale expansion of the plant in the 1990s included replacing a neighborhood park with large tanks containing “trickling filters,” which soon began to smell. Residents of the predominately low-income and African-American community neighboring the plant filed a state court lawsuit in 1996, without the Clinic’s involvement. Over a decade later, however, a Louisiana court ruled that odors were not actionable, noting that the plant had been under EPA supervision since 1988 with a 2015 deadline to comply with federal standards. By then, residents of the surrounding community would have been living with foul air and sewer flies for more than two decades. Worse, Baton Rouge had failed to meet interim deadlines and EPA had collected none of its stipulated penalties.

In 2010, the Louisiana Environmental Action Network (LEAN)—working with a neighborhood group called Concerned Citizens of University Place Subdivision—filed a citizen suit against Baton Rouge. EPA—which was not named in the lawsuit—responded with a letter copied to Baton Rouge stating that the suits claims were barred under the Clean Water Act. A few days later, however, EPA wrote to withdraw its determination, explaining that it had no authority “to determine the standing of a citizen action.” Next, the U.S. Justice Department followed up with still another letter to assert that EPA had “not reversed itself on the legal position” of the first letter! Apparently, there was disagreement within the government about the value of citizen enforcement.



Environmental Law Clinic Students and Supervising Attorneys, Fall 2013

Attaching the first and third of the government’s letters, Baton Rouge moved to dismiss LEAN’s lawsuit. Despite a strong presentation at the motion hearing by student-attorney Carol Hand, the trial court dismissed LEAN’s case, encouraging affected residents “to take up the matter ... with the EPA.” LEAN appealed. After oral argument by student-attorney Kirk Tracy, the U.S. Court of Appeals for the Fifth Circuit set national precedent by determining that the Water Act’s preclusion of citizen enforcement when EPA is “diligently prosecuting” the violation does not limit the federal courts’ ability to inquire whether the agency’s actions were in fact “diligent”. On the basis of LEAN’s evidence, the Fifth Circuit reversed the dismissal and reinstated the case. During these proceedings, of course, the neighbors continued to receive the plant’s smells and vectors in their homes and daily lives.

Meanwhile, however, EPA proposed to extend the plant’s compliance deadlines until 2018. The clinic’s clients opposed the extension in comments prepared by student-attorney Kate Alexander, and moved to intervene. The U.S. Justice Department asked the court to deny intervention, arguing that residents living with offensive odors and sewer flies “lack an interest sufficient to support intervention as of right.” (Imagine that!) The government also rebuffed the Clinic’s efforts to negotiate, explaining that it did not anticipate “discussion items at this time.” In response, a “source” for the environmentalists told Inside Washington that “The agency

of course in general says environmental justice is one of its top priorities but then case-by-case the answer tends to be, ‘That’s really not our problem.’ [We hope] that by filing the intervention we get someone’s attention at EPA.”

In June 2012, the U.S. Justice Department convened negotiations with EPA, Baton Rouge, the State of Louisiana, and the Clinic on behalf of LEAN and the Concerned Citizens. With the help of law students Lauren Kasparek and Rick Eisenstat, the parties ultimately achieved a settlement. The plaintiffs agreed to EPA’s extension of the compliance deadlines. In return, Baton Rouge agreed to create a buffer around the offending plant by relocating more than 40 households from the neighboring community, to pay fair market value for affected homes, and to disregard any reduction in that value caused by the sewage plant. Baton Rouge would pay all moving expenses and additional sums necessary to get displaced residents into decent, safe, and sanitary homes.

None of this, of course, compensates the sewage plant’s neighbors for decades of breathing offensive fumes and living with vectors of filth and disease. Further, the plant presumably will continue to violate the Clean Water Act for several more years. Settlement and compromise, however, emphasize the achievable over the ideal. And for the Clinic, it is a victory whenever our student attorneys manage to help affected citizens obtain relief from the legal system. It is rarely an easy road.

Selected Recent Clinic Judgments

Hurricane Debris Landfill Case

Settled: On May 15, 2013, the Mary Queen of Vietnam Community Development Corporation, and others settled a lawsuit (filed in 2012) against Waste Management of Louisiana, L.L.C., over the Chef Menteur Landfill, located less than a mile and a half from a Vietnamese-American community and Bayou Sauvage National Wildlife Refuge in New Orleans East. The landfill opened without a permit and was subsequently closed in earlier litigation. The 2012 lawsuit alleged that the landfill does not meet federal requirements for the types of waste disposed there. In the settlement, Waste Management agreed that it would never re-open the landfill and to pay for monitoring of the Maxant Canal, which flows near the landfill and which residents use for irrigation of small traditional agricultural operations.

District Court Imposes Additional Requirements for New Orleans

Sewerage and Water Board: On April 24, 2013, the U.S. District Court for the Eastern District of Louisiana entered a Consent Decree imposing deadlines for the New Orleans Sewerage and Water Board to complete repairs on two of the nine collection basins in the City. As a condition of consent to the extension, the Plaintiff, Lake Pontchartrain Basin Foundation and others, obtained agreement to add additional milestones to keep repairs on track, to stipulated penalties for failure to meet them, and a commitment to pursue green infrastructure as part of the project.

District Court Sides With Clean

Water Act Citizen Suit: On November 7, 2012, the U.S. District Court for the Southern District of Mississippi denied motions to dismiss Gulf Restoration Network's citizen suit seeking compliance with the Clean Water Act at the City of Hattiesburg's sewage treatment lagoons. The Court found that pre-litigation consent of the Mississippi Department of Environmental Quality did not moot the Plaintiff's lawsuit

because only "developments subsequent to the filing of a citizen suit may moot the citizen's case." The Court further found the redressability requirement of standing satisfied the "suit is premised upon the theory that MDEQ's actions are not sufficient to ensure that the City will cease violating the CWA."

Louisiana Court of Appeal Blocks Disclosure of Personal Data on Members of Plaintiff Citizen Organizations.

On September 14, 2012, Louisiana's Fourth Circuit Court of Appeal reversed a trial court judgment that would have required intervenor citizen organizations to disclose the names, addresses, and telephone numbers of all their members residing in Plaquemines Parish. The Court explained because the citizen groups satisfied the three-part test to prove associational standing to sue on behalf of members, "the additional information sought ... is irrelevant and would not lead to the discovery of relevant evidence."

Student Summers: A Sampler



Laura Cottingham, 3L, Virginia

I was a law clerk with the Southern Environmental Law Center in Charlottesville, VA., researching oil and gas drilling in Virginia, water quality in the Chesapeake Bay watershed, and stronger state renewable portfolio standards, all of which led me to many stakeholders and leaders in the Virginia environmental community. I spent weekends exploring Shenandoah National Park, locating local swimming holes, and enjoying the outdoor environment to which I feel so strongly drawn.

Morgan Embleton, 3L, California

I worked for San Diego Coastkeeper, reviewing environmental impact reports for CEQA compliance and public records for industrial storm water permit compliance. I also prepared written and oral comments to the San Diego Planning Commission on two proposed projects threatening the endangered San Diego fairy shrimp. The Waterkeepers groups are very much on the front lines.

Ben Fuchs, 3L, Massachusetts

I worked as a law clerk with EPA's New England (Region One) in Boston, with much attention to responses to lawsuits and permit challenges filed by industry, environmental advocates, and individual citizens. I also assisted the agency's enforcement side, preparing litigation on a major

Superfund case. The silver lining of the sequester (and Congress' history of grossly underfunding regulatory agencies in general) was that we summer clerks received plenty of challenging and substantive assignments. Region One's attorney corps is dedicated, pragmatic, savvy and whip-smart, as well as —perhaps most critically from a selfish perspective—eminently approachable and willing to teach. The experience was hugely enriching.

Will Lindsey, 2L, Louisiana

I worked as a policy-partnerships intern with the Mississippi River Delta Campaign at the Environmental Defense Fund. My issues revolved the RESTORE Act that dedicates a large majority of CWA penalties from the Deepwater Horizon Oil Spill to Gulf Coast restoration. I came to realize the extent to which the Gulf Coast economy is intertwined with a healthy Gulf ecosystem.

Dan Newman, 2L, Guatemala

I worked for the Secretariat for Environmental Matters, an administrative body of the Central American Free Trade Association. SEM operates an administrative law mechanism whereby citizens of CAFTA can report their countries for not enforcing environmental laws. I researched several cases including one in which attorney's reported improper granting of environmental permits, one involving a polluted lake in Nicaragua, and another involving a battery recycling facility. I gained valuable experience about this legal option for citizens of developing countries that does not require hiring an attorney. Additionally, I completed a major life goal of photographing wild toucans. Turns out they are not attracted to fruit loops.

Allison Parks, 3L, Washington D.C.

With the U.S Department of Justice, Environmental Enforcement Section. I worked in the power plants division focusing most of my time on Clean Air Act and New Source Review. One of the most challenging tasks was to evaluate a case referral from EPA and build a potential lawsuit from its facts. It was a major undertaking.

Dana Sabghir, 3L, Washington D.C.

I was a legal intern with the Coast Guard Judge Advocate General in the prevention law division of their office of maritime, international, and environmental law. I worked on the marine transport of coal, submarine cables, and MARPOL compliance. It was refreshing to actually see my government in action being taken to require compliance. Being at Headquarters in Washington D.C. also provided a lot of opportunities to interact with other agencies.

Bethanne Sonne, 2L, New Jersey

This summer I interned for a group of Deputy Attorney Generals, which give legal aid to state offices such as the Department of Transportation and Motor Vehicle Commissions. I reviewed DOT and MVC policy and made policy suggestions for the NJ Spill Act and for the Department of Aviation and Aeronautics. I also dealt with easements and takings for public use by the DOT, and the trial work such actions entail. My externship ended on a hotly-contested taking that actually improved the property, with several million dollars at stake.

Rachel Talentino, 3L, Maine

I worked at Maine Audubon in Falmouth, focused on the state legislature where my supervisor and I helped get bills passed by the senate and house. Maine Audubon was successful in explaining expand protections for loons and piping plovers, as well as funding for energy efficiency efforts. I also looked over wind project permits and coastal development permits, and assessed their potential impacts on the environment. I had a well-rounded and enjoyable experience.

Paul Tilley, 3L, Colorado

I worked at the Colorado Attorney General's Office in the Natural Resources & Environment Section, also RCRA and CERCLA enforcement cases focused primarily on groundwater pollution, Endangered Species Act and water rights disputes. It was a hand's on introduction to the west and to issues in water law.

Christopher Valletta, 3L, New York

I interned with the NYC Department of Environmental Protection, which manages the city's water supply. I researched other issues ranged from environmental, energy, labor, property, and general liability law. I represented the city at the NYC Environmental Control Board in administrative hearings to enforce asbestos and air code violations and worked on protection of the Catskill/Delaware Watershed; compliance with Clean Water Act permits, and combined sewer overflows. A highly diverse menu.

Caroline Wick, 2L, Washington DC

I worked for the EPA in the Office of Environmental Enforcement and Compliance Assurance, in the Water Enforcement Division. Exposed to various CWA issues, the majority of my summer was dedicated to researching the pretreatment program. One highlight were twice-weekly sessions organized for interns during with EPA employees from different divisions spoke about their work.



Alumni Reports

We are proud of what you do; a sampling of recent news below.



Galia Aharoni, JD 2009, California

Ms. Aharoni operates her own law firm, HG Business Law, LLP, where she specializes in benefit corporations and B Corp. certification, encouraging businesses to consider their societal and environmental impact and create a material positive impact on the world. “I think it’s a really great way to incorporate good, environmentally friendly business practices into any type of business.” She lives in California’s Bay Area but said she misses New Orleans daily.

Mark Beutelschies, JD 1989, Tennessee

In addition to practicing corporate and real estate law, Mr. Beutelschies stays active in environmental law as a part-time attorney for Shelby County, Tenn., which he has represented in matters such as air quality and waste oil disposal. “The Tulane Environmental Law Clinic equipped me to handle a variety of environmental matters,” he said. He also continues to follow the work being done at Tulane: “Over the years, I have been proud of the initiatives undertaken by Tulane to protect the environment in Louisiana and the gulf coast,” he wrote. “Please keep up the great work.”

Rebecca Fromer, JD 2011, New York

Ms. Fromer, an Assistant Attorney General in New York State’s Environmental Protection Bureau, works on some of her office’s progressive environmental initiatives and represents the state environmental agency’s enforcement actions involving wetland protection, water and other resources. This past year, she was accepted into the New York City Environmental Law Leadership Program, a seminar series for new environmental attorneys that explores dynamic ways to improve the city’s environmental landscape.

Gary Lucks, JD 1985, California

Mr. Lucks is a partner with Environmental Resource Management (ERM), a leading sustainability consultancy, where he advises clients on environmental compliance and sustainability strategies. He is a Certified Professional Environmental Auditor with 29 years of environmental regulatory experience. He also advises the Bay Area Air Quality Management District and is on the California State Bar Environmental Legislation Committee.

Karoline Mehalchick, JD 2001, Pennsylvania

Karoline Mehalchick was selected in 2013 as a U.S. Magistrate Judge for the U.S. District Court for the Middle District of Pennsylvania. She previously was a partner at Oliver, Price & Rhodes in Clarks Summit, Pa., where she practiced general civil and commercial litigation for nearly 11 years.

Brian McGarry, JD 2010, The Hague, Netherlands

Mr. McGarry is Assistant Legal Counsel at the Permanent Court of Arbitration, which is currently flush with cases involving the law of the sea and transboundary environmental concerns. He is also a Ph.D. candidate at the University of Geneva, where his work has centered on fresh water interests in transnational dispute settlements. He has recently been a contributing researcher for Columbia University’s Vale Columbia Center on Sustainable International Investment. Andrew Homer, JD 2008, California Mr. Homer started work as Corporate Counsel with California-American Water Company in San Diego after five years in the Environment, Land Use and Natural Resource department at Pillsbury Winthrop Shaw Pittman, LLP, in Los Angeles and Houston. He said that reading (and re-reading) *Cadillac Desert* while at Tulane helped spawn his interest in the water challenges of the American West.

Doug Frankenthaler, JD 1999, Pennsylvania

Doug Frankenthaler is an Assistant Regional Counsel with the US EPA Region 3 Office of Regional Counsel based in Philadelphia. His work in the Water Branch focuses on Clean Water Act and Safe Drinking Water Act enforcement and permit program counseling. He has been working extensively on water issues concerning pretreatment and energy extraction. In his free time, he said, he runs, coaches his kids’ soccer teams and enjoys the outdoors.

Sarah Bittleman, NEWSMAKER

“EPA and farmers should be friends? Sarah Bittleman’s working on it E&E News, September 10, 2013 Sarah Bittleman’s, JD TLS, 1993, job isn’t the most difficult in Washington, D.C., but it’s up there.

As U.S. EPA’s chief agricultural adviser, Bittleman is the intermediary between the agency and farmers -- a job akin to that of a boxing referee. And for good measure, she’s also in the middle of intra-EPA squabbles as agriculture issues butt up against air and water regulations.

“I explain EPA to agriculture, but I also spend a lot of time explaining agriculture to the EPA,” Bittleman often says.

Asked what she does to relax, she replies, “I don’t have a lot of time for fun.”

Jennifer Lewis, JD 1998, Georgia

Ms. Lewis is the Senior Regional Criminal Enforcement Counsel at EPA region 4. “It’s interesting work and I enjoy it,” she wrote. “I can tell my 10-year-old that I work with Special Agents, and she thinks it’s very cool. What more could one want?”

Jordan Lesser, JD 2009, New York

As a legislative aide in the New York Legislature, Mr. Lesser prepared an amicus brief for the landmark case of *Norse v. Town of Dryden*, which is awaiting decision in the New York Court of Appeals. He has prepared comprehensive public comments for Assembly Member Barbara Lifton on New York’s proposed fracking permit guidelines and has written a package of six bills to improve leasing law in New York for landowners. He also is analyzing state law and legislation to allow electricity and heat generated from Ithaca’s wastewater treatment facility to provide low-cost utilities in a select area.

Kay Jowers, JD 2004, North Carolina

Ms. Jowers is a Senior Policy Associate with Duke University’s Nicholas Institute for Environmental Policy Solutions, focusing on urban sustainability and climate change adaptation. She also

is working on her dissertation for a Ph.D. in political and environmental sociology from the University of North Carolina at Chapel Hill. Her research focuses on environmental inequality and environmental justice issues.

Endre Szalay, JD 2011, Washington

Mr. Szalay works in the EPA’s Region 10 in the Pacific Northwest, primarily on CWA and SDWA issues. He has been active in the Region’s stormwater enforcement initiative, especially industrial stormwater discharges impacting the Puget Sound, and is the Region’s lead attorney on CWA 404 matters. “One of the interesting projects I’m working on now is Alaska’s and Oregon’s efforts to become only the third and fourth states to assume the 404 program from the Army Corps of Engineers,” he said. “Mostly, I’m in over my head, which is right where I want to be – always a challenge and never bored.”

Uwe Erling, LL.M. 2001, Munich, Germany

Mr. Erling works in Munich as an environmental and energy lawyer. He chairs the Environmental Practice Group of Lex Mundi, a network of lawyers from 160 top-tier firms in more than 100 countries.

Diana Csank, JD 2010, Washington D.C.

After serving as an Attorney Advisor to the Council on Environmental Quality, Ms. Csank accepted a position as an Associate Attorney with the Sierra Club, also in Washington. “This is the right way forward for me and I’m elated by the potential,” she said.

TEELS Newsletter

© Tulane Environmental & Energy Law Society
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The Tulane Environment and Energy Law Society would like to thank everyone who contributed to this issue.



New Photo outline here

Tulane's Environmental Law Program

The Tulane Environmental Law Program is one of the largest and most diverse in the world. Each year, Tulane graduates more than forty Juris Doctor and Masters candidates with specialties in energy and environmental law. What distinguishes Tulane's program in addition to its Faculty is the strength of its Clinic, scholarship of its Journal, the projects of its Payson Center and Water Institute, the energy of its Environmental Law Society, and the momentum provided by an engaged group of JD, LLM and SJD students. These seven 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 admissions@law.tulane.edu, 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.



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