

Tulane Environmental Law News

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Tulane Environmental Law Clinic Takes On Precedent-Setting *Shintech* Case

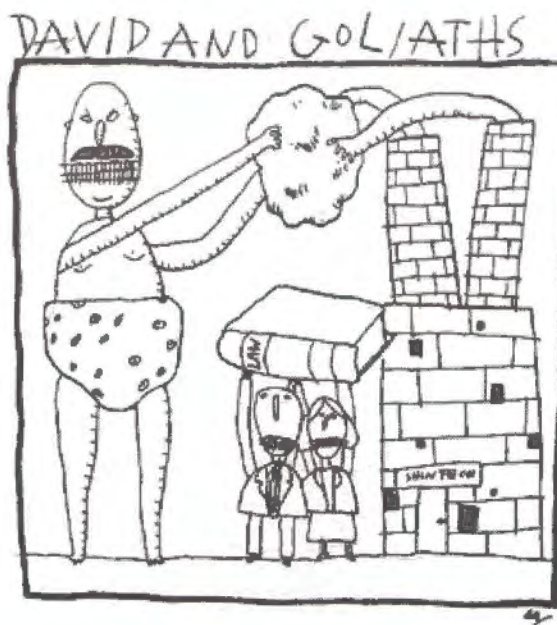
By Leigh A. Lowry

When a concerned citizens' group approached the Tulane Environmental Law Clinic last fall asking for legal help in addressing their concerns about a new polyvinyl chloride (PVC) facility that would be permitted to operate in their backyards, they were asked to come back once all other options were exhausted, since the Clinic staff was uncertain about its ability to staff the case. And they did. Last November, by a unanimous decision of its legal advisory board, the Clinic accepted the St. James Parish Citizens for Jobs and the Environment as clients and embarked upon a journey of unprecedented effect.

The Clinic

Although Tulane's Environmental Law Clinic is the largest and most active of its kind in the nation, it is only one of eight legal clinics at Tulane Law School. What the Tulane Environmental Law Clinic does is not so unusual; law schools across the country have legal clinics that allow third-year law students to practice law on behalf of indigent clients or community organizations under the supervision and license of a practicing attorney. The clinic manages roughly fifty cases with twenty-six student attorneys and a staff consisting of a director, three supervising attorneys, a community outreach coordinator, and two support personnel. The students are wholly responsible for the work on the case from conducting all of the research and writing the petitions and motions to arguing the case in court. To

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David and Goliaths

By Alan Gersen. Please see "About the Artist," page 3.

Fisheries Experts Gather for Conference at Tulane

By Brian Moore

Marine resource managers, scientists, lawyers and other interested parties from across the nation and Canada gathered at Tulane Law School on the September 6th and 7th to discuss timely issues in fisheries management and the conservation of United States fisheries. Coordinated by the Tulane Institute for Environmental Law and Policy, the conference, entitled "The Magnuson-Stevens Act: Sustainable Fisheries for the 21st Century?", focused on the newly revised and re-authorized Magnuson-Stevens Act and the proposed implementing regulations. These changes represent the latest efforts of marine scientists and policymakers to address

what has been characterized by Gary Matlock, director of the National Marine Fisheries Service Office of Sustainable Fisheries, as "the sad state of affairs" of fisheries in the United States, in a keynote address.

After introductory remarks by Andy Kemmerer, director of the National Marine Fisheries Service, Southeast Region, the first of six panels, "Overfishing: What Does It Mean?" explored the underlying reason for all fisheries management. The majority of attendees at the conference agreed that legislation concerned with overfishing is still inadequate. While it may appear

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A Letter from the President



ELS President Ethan Lerman takes a break outside the Law School patio.

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The Tulane Environmental Law Society (ELS) was established to promote environmental consciousness on a local, state and national scale. Traditionally, the Society has been one of the largest and most active student-run organizations at Tulane Law School. We are looking forward to another exciting and productive year.

ELS is currently in the process of planning for our third annual Environmental Law Conference, which has continually grown and diversified every year. This year, the Conference will be held on March 6-8, 1998. It will include a variety of panels discussing issues of national concern (from hog farming to the environmental impact of the oil and gas industry). Local issues, such as water quality in the Mississippi River and Lake Pontchartrain, will also be addressed. The anticipated quality of the panels, speakers, field trips, food and cultural activities at this year's conference promises to make it another exciting event.

In addition to the conference, our Society continues to sponsor an initiative for the required use of recycled paper in all Louisiana court filings. The Society initiated this project a few years ago and, though it has not yet achieved its goal, important progress has been made.

ELS is also planning community service activities for the year ahead. We are continuing to participate in the Christmas Tree Coastal Restoration Project. This project gives students the opportunity to gain hands-on experience in protecting the environment. We help build shoreline fences and fill in dead-end canals with recycled Christmas trees, which in turn result in the creation, protection, and enhancement of valuable wetlands. Also, ELS members continue to be active in other service projects, such as 'Christmas in October'. The program assists the needs of local families and neighborhoods by demolishing blighted structures and building new ones. Another annual event is the 'Save Our Cemeteries' clean-up; members of ELS work with organizations within the city to clean up New Orleans' historic cemeteries.

Outings have become an integral part of our organization, and we have already completed two trips this year. The first outing was a canoeing trip to Jean Lafitte National Park. Our second trip was an overnight canoeing/camping trip on the Red Creek, in Mississippi, under the expert guidance of Professor Oliver Houck. Several more trips are in the works and, as always, they will be a welcome respite from the rigors of law school.

I am extremely excited about all that lies ahead for our organization this year. Thanks to the copious amounts of time and effort expended by our officers and members, as well as through the continued support of our dedicated professors, our ability to contribute to the protection of the environment grows each year. ELS reflects the genuine dedication of the faculty and students to the field of environmental law.

Sincerely,

Ethan Lerman

Tulane Law School, Class of 1999

President, Tulane Environmental Law Society



Canoeing is always a popular outing among ELS members.



Third Annual Environmental Law Conference Largest in the South Comes Together Again in March

By Dana Hanaman and Kristin Reyna

Tulane Law's third environmental law conference is scheduled for March 6-8th and the planning is well underway. Building on the experience of the last two years—with more than 500 people attending the 24 panels, 8 field trips and a banquet—organizers hope to make this year's event even more "bizarre and beautiful" (as one evaluator termed last year's).

The conference brings together a unique mix of lawyers, scientists, students, business people, and government officials who are constantly forced to make decisions from among four very strong panels.

Last year, for instance, you might have chosen between a panel on disappearing amphibians, national forest problems, coastal restoration projects, and development incentives and the environment—all of which were going at the same time. If you were in a touring mood, you might have gone on a field trip to the Mississippi River industrial corridor, Honey Island swamp, the Turtle Cove Research Station, or the Mississippi River Gulf Outlet.

Last year's conference was also fortunate to have a very timely and informative keynote address from Mary Nichols, EPA's Assistant Administrator for Air and Radiation, on the new particulate matter standards.

The 1998 conference will follow the same format as previous years, but with an entirely new mix of topics. This year's attendees can expect to be treated to the latest in the environmental issues surrounding hog farming (Confined Animal Feeding Operations, or CAFOs, as those "in the know" say), oil field wastes, environmental enforcement, and urban demolition/preservation. In addition, registrants can expect the latest on public health, transportation, energy, environmental justice, wetlands and a host of other topics.

This year's invited keynote speaker is Robert Costanza, Economics Professor at the University of Maryland, who (with a team of researchers) recently published "The Value of the World's Ecosystem Services and Natural Capital" in *Nature*. The article set a value of \$33 trillion per year on the world's ecosystems and, predictably, generated a fire storm of controversy. (Global gross national product for the base year was pegged at \$25 trillion per year.) Whatever one may think of such valuation notions, there's no denying that there will be greater and greater pressure to make them—and to provide a ground for policy decisions about relative values of certain projects.

As Costanza himself puts it: "We (both as a society and as individuals) make choices and trade-offs about ecosystems every day. These imply valuations. To say that we shouldn't do valuation of ecosystems is to simply deny the reality that we already do, always have, and cannot avoid doing so in the future." Costanza has a Louisiana background as a former LSU professor, so he knows the area and the implications of valuation on Louisiana's fragile coastal ecosystems. His talk—and the question and answer session following—promises to be a highlight of the conference.

The conference is a project of the Environmental Law Society, with the support of the Institute for Environmental Law and Policy.



L to R:
Mary Penney
Thompson, Student
Coordinator of the
1997 Conference;
Mary Nichols, EPA's
Assistant
Administrator for Air
and Radiation;
Oliver Houck,
Professor of Law

Tulane Environmental Law News

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About the Artist

Our deepest thanks go out to Alan Gersen for his generous donation of "David and Goliath," depicted on the front page. Gersen, a Tulane Law alum, applies his artistic talents to the legal profession, mixing in a bit of watercolor wit and whimsy to produce the "visual puns" he is renowned for.

Law was not his chosen path, however. Earning a BA in philosophy from Boston University and an MFA from the University of New Orleans, Gersen began his career in the art arena teaching art at both Loyola and Tulane Universities and serving as the visual arts director at the Contemporary Arts Center for five years. Feeling restless, Gersen scouted for new challenges and found himself enrolled in law classes at Tulane. Following graduation, Gersen accepted a labor law position at McGlinchey Stafford Cellini & Lang. A year and a half later, he moved to a smaller, plaintiff's firm, Gertler, Gertler & Vincent. Still unsatisfied with the legal field, Gersen left to pursue his love of art full time and has been wildly successful.

Gersen has participated in exhibits from the East to West Coasts, winning numerous awards and accolades along the way. His latest exhibit opens November 1, 1997 at the LeMieux Gallery, 332 Julia Street. We look forward to viewing his latest efforts at injecting humor and good-natured cynicism into a profession in need of both. Thank you again, Alan, for supporting the efforts of the law clinic and your alma mater.

Tulane Law Students In the Field

Current Students Share Their Work Experiences

By Dita Kayas

Pedro Brufao-Curiel (L.L.M.)

Pedro began working for the Spanish Ecologist Group's Legal Office (CODA) in 1991. He has dealt primarily with issues concerning Water Law, Land Planning, Agricultural Law and access to environmental information. A crucial issue that environmentalists in Spain are confronting presently concerns Water Law. A National Hydrological Plan and a reform of the National Water Statute are pending, which together will make possible the construction of an additional 100 large dams for irrigation development and another 700 mini-hydroelectric power stations in the upper areas of a number of rivers. Pedro notes that Spain already has an annual surplus of agricultural products, which runs counter to European Union directives aimed at crop reduction.

Pedro has also worked at the Legal Office of the Spanish Fly Fisher Association, where he has been involved in fighting the development of the mini-power stations. Both organizations lobby members of European, national and regional parliaments and agencies; they also influence public opinion regarding environmental issues via their public relations offices.

Ondrej Sekanina (L.L.M.)

Prior to attending Tulane Law School, Ondrej worked for four years as an attorney for a law firm in Prague. He was the sole environmental attorney in the firm and is one of only a handful in the Czech

Republic. Ondrej's work included representing environmental public interest groups who brought suits against industry. In a major case that is still pending, he represented the village of Libkovice against a coal mining company. The residents of Libkovice were forced under pressure by the former communist government to sign a sale agreement of their land. (The present government continues the policy.) Residents were evacuated and the town destroyed so that the company could begin mining coal. They are presently suing the coal mining company, claiming that the agreements were signed under duress, which included physical attacks carried out against the residents. One of the leading plaintiffs is the last mayor of the town.

Additionally, Ondrej assisted environmental groups with regulation concerning nuclear power laws. He attended a short course for environmental attorneys at the Environmental Law Institute in Washington, D.C. last year, and Ondrej plans to continue his work upon his return to Prague.

Elizabeth Teel (L.L.M.)

Elizabeth is a teaching fellow in the Environmental Law Clinic where she instructs students under the supervision of Professor Kuehn. After obtaining a J.D. in environmental law at Tulane, Elizabeth worked as a criminal prosecutor for the Orleans Parish District Attorney's office. In her five years of work there, she handled one substantial environmental case.

That case involved asbestos contamination during renovations to a New Orleans hotel. The Louisiana Department of Environment Quality (LDEQ) had received a tip that during renovations workers were releasing asbestos without any safety provisions and were not adhering to legally required methods of disposal. The LDEQ investigated, documented the exposed asbestos and gave it to the DA's office. Though Elizabeth had a strong case and could have prosecuted the owner, her office decided to settle out of court because it turned out to be the best means of protecting the health of the workers. The offender was required to set up the funds for a baseline health monitoring system for the workers as well as to pay a sizable sum to LDEQ. The LDEQ settlement was one of the largest amounts ever paid for this type of violation in the state of Louisiana.

Lance Tolson (L.L.M.)

Lance, a full-time law student, is also working part-time for Texaco, Inc. He has been one of the company's inside staff attorneys in the areas of environmental and safety law for the past 6 years, working in all media (water, air, and waste issues). He advises Texaco on compliance with environmental regulations and handles any legal or administrative actions that may occur.

Prior to his position with Texaco, Lance spent five years in similar work for the Oklahoma Corporation Commission, where he began specializing in environmental law. His environmental experience consisted mostly of on-the-job training, which is why he has decided to return to school and pursue Tulane's L.L.M. in environmental law.

Jennifer Lewis (3L)

Jennifer clerked at the National Resource Defense Council in Washington, D.C. last summer. She worked with Erik Olson on drinking water issues pertaining to the new Food Quality Protection Act with respect to chlorine. This act is an amendment to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as well as the Federal Food, Drug, and Cosmetic Act, and it gives increased protection to children and to other at-risk groups.

A large portion of her work included



Student Work Experiences

Continued from Previous Page

congressional lobbying in response to threats to the Superfund Act, posed by businesses lobbying Congress to gut Superfund provisions for natural resource damages. Jennifer contacted environmental and citizens' groups around the country and encouraged citizens at Superfund sites to write letters to members of Congress asking them to see to it that Superfund provisions were not weakened.

Additionally, Jennifer worked on the Shrimp Journal web page, an international dialogue on shrimp issues. She is presently completing a web page of a U.S. overview of the shrimping industry.

Leigh Lowry (3L)

This past summer, Leigh worked at the US EPA Region 5 in the Office Regional Counsel, assisting her section's attorneys with their cases. Among other things, this involved doing research and attending meetings with the investigators and administrators, and she wrote Consent Orders and Consent Agreements, Motions and Memoranda of Law for administrative cases.

In addition to cases involving the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA) and the Toxic Substance Control Act (TSCA), a large portion of her work involved water cases under the Clean Water Act, especially wetland fill issues.

Leigh also worked closely on the methyl parathion crisis of the Chicago area. A Chicago man purchased methyl parathion and used it to spray over 300 homes to eliminate roach infestations. Because this highly effective pesticide can be lethal in very small doses, the legal use of this chemical is restricted to the spraying of cotton fields. EPA sampled all of the homes and is now tearing down and rebuilding any homes that demonstrate a threshold level of the poison.

Many other Tulane Law students are also interested in practicing environmental enforcement. Several others also clerked at the US EPA this past summer:

- Robin Mintum, 3L Region III
- Jason Holleman, 3L Region V
- Mary Desmond, 2L HQ
- Melissa Johns, 2L Region IX
- Peggy Campbell, 2L HQ



Roberta Stewart (3L)

Roberta was a clerk at a solicitor's firm in Leeds, England, in the Environmental and Health and Safety division. She noted that in England there is no "pure" environmental law the way we think of it here, but it is linked very closely to health and safety law. Her firm typically represented industrial clients who were charged with violations of health and safety laws, which are criminal offenses prosecuted by Health and Safety Inspectors. The boards of directors of companies who are found to be in violation are subject to criminal penalties which often include hefty fines.

Some of her cases included effluent discharges into water, liability for chemical spills and exploding gas tanks at a liquid gas facility. Another major client was a builder and refurbisher of railroad cars who was concerned about possible asbestos releases during the renovation of older train cars.

James Taylor (3L)

Last summer James clerked for Mitchell and Associates, an environmental consulting firm in Greenville, North Carolina. He worked with biologists on the determination of wetlands delineation, and his firm consulted with state agencies and the Army Corps of Engineers, helping clients obtain permits for development. His firm's clients typically were developers who either wanted to know what real estate development would entail with regard to wetlands creation or clients who needed to create wetlands for mitigation.

James spent most of his time with the firm this past summer out in the field surveying wetlands and was, therefore, able to use his degree in biology along with his legal expertise. He will begin working for the firm full-time upon graduation next Spring.

Doug Frankenthaler (2L)

Doug clerked last summer at the Tulane Environmental Law Clinic, working on a case involving a bird and butterfly sanctuary in Cameron Parish, Louisiana. The sanctuary was established by the Baton Rouge Audubon Society, and it long served as a stopover place for migrating birds. Last year, Cameron Parish tried to enforce a "Grass and Weed Ordinance" on the sanctuary which would have turned it into a lawn, destroying the vegetation that is necessary for the wildlife. The parish appealed a trial court ruling in favor of the sanctuary, and Doug was responsible for writing the brief for the appellate court.

He spent the rest of the summer writing comments on behalf of citizens' groups who raised objections to the issuance of permits for dredging and drilling operations and the creation of additional canals. He directed these letters to the Louisiana Department of Environmental Quality, the Department of Natural Resources, and the Army Corps of Engineers.

Lara DeCaro and Yarrow Etheredge (2Ls)

Lara and Yarrow spent three weeks in Costa Rica, studying international environmental law with Professor Findley of Loyola Marymount School of Law, under the auspices of *Justicia para Naturaleza*, a Costa Rican non-governmental organization (NGO). Lectures were organized by *Justicia*, and in the final week they visited alternative development projects in rural areas (for example, a butterfly farm and a campesino farm). They also learned about the Constitutional Court, a body established by the Costa Rican government to provide a forum for citizens to bring constitutional claims to a right to a healthy environment.

Shintech (continued)

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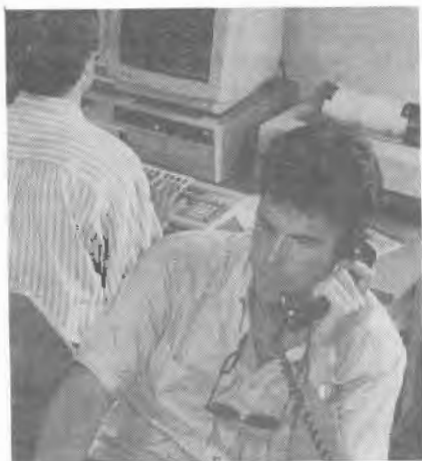
ensure the learning process is maintained, the supervisors' role is just that—supervisory.

The Case

"Enough is enough," demands the client-group, St. James Citizens for Jobs and the Environment, headed by life-long Convent resident Patricia Melancon. St. James Parish and its 21,000 residents already have their fair share of industry with twenty Toxic Release Inventory (TRI) facilities, including oil refineries, chemical plants and fertilizer manufacturers. Parish residents are already surrounded by 17 million pounds of toxic emissions per year. Convent alone has thirteen reporting facilities, as it lies in the heart of the notorious "Cancer Alley" along the Mississippi River corridor and has already been declared an environmental justice area by the United States Environmental Protection Agency.

Citizen concerns about the proposed polyvinyl chloride plant are numerous. Shintech, a subsidiary of the Japanese company Shin-Etsu, plans to construct three separate industrial facilities and one

Students in the Clinic find time between classes to devote to their work and their clients. Membership is selective, and participation is considered an honor.



on-site incinerator on approximately 3500 acres that presently grow sugar cane. The three discrete plants, consisting of Polyvinyl Chloride (PVC), Vinyl Chloride Monomer (VCM), and Chlor-Alkali production plants, will create the largest facility of its type in North America. In addition to the currently unquantified amounts of toxics, including dioxin, that the on-site incinerator will emit, the three production plants will also emit 600,000 pounds of air toxics, including vinyl chloride and ethylene dichloride, into the surrounding air per year. The three production plants are also permitted to emit the criteria pollutants ozone and nitrous oxide, and the facility will discharge 6.8 million gallons of industrial wastewater **per day** into the town's only drinking water supply: the Mississippi River. In addition to these enormous emissions and discharges, the proposed facility will produce and/or handle in excess of four million pounds of highly toxic vinyl chloride, six million pounds of toxic ethylene dichloride (EDC), two million pounds of highly toxic and corrosive hydrochloric acid (HCl), three million pounds of ethylene, and four million pounds of toxic chlorine gas (Cl gas) **every day**.

Accompanying these health concerns, the citizens are also seriously worried about their personal safety in the event of a release of hazardous chemicals from the plant. In 1996 alone, Convent facilities reported an average of eight hazardous incidents per month. All evacuation routes coincidentally double as hazardous waste transport lines, and "sheltering in" (the emergency plan implemented due to lack of effective evacuation routes) is not especially effective in an area where some of the houses closest to the facility site do not have tight windows or sturdy foundations to keep the toxins out of the homes.

The Federal Petitions

In response to these serious issues, the Tulane Environmental Law Clinic, on behalf of eighteen community organizations, filed petitions and complaints at the state and federal levels.



Convent, Louisiana is a poor, rural community which already bears a disproportionate burden of local pollution.

On May 22, 1997, the Clinic filed a Title V Clean Air Act petition with the United States Environmental Protection Agency (EPA) demanding review of the air permits recently issued to Shintech by the Louisiana Department of Environmental Quality (LDEQ). Section 505(b) of the Clean Air Act authorizes the Administrator of the EPA to review state issued operating permits and to object to permits that fail to comply with the requirements of Title V of the Act. Citizen petitions are allowed pursuant to § 505 (b)(2) if the EPA fails to object to the permits on its own initiative.

The petitions identified several Title V problems with the operating permits as issued. After considerable review, Carol Browner, EPA Administrator, granted the citizen petition and issued a stern order to LDEQ requiring correction of the permits before the project could move forward. The order enumerated fifty technical problems that required rectification, in addition to changing the permits so they regulate all potential sources of air pollution.

To help remedy the problems with the air permits, LDEQ decided to reopen the permits to the public. Administrator Browner noted that "[u]nder Louisiana and EPA regulations, that process will include an opportunity for public comment and a

(Continued on page 13)

Fisheries Conference (Continued)

good on paper, the revised Magnuson-Stevens Act, which governs commercial and recreational fishing in federal waters, lacks the precision marine managers say is needed to further conservation efforts.

As defined by the revised regulation, overfishing is the rate of fish mortality that threatens a species' ability to continually produce "maximum sustainable yields." Jack Dunnigan, executive director of the Atlantic States Marine Fisheries Commission, said that the definition establishes standards that are difficult to ascertain, given that scientists lack the information necessary to make such determinations. Panel speaker Larry B. Simpson, executive director of the Gulf States Fisheries Commission, reminded colleagues that "you cannot legislate good fisheries management; you've just got to do it. And we have not done it." Management in the face of growing populations of commercial and recreational fleets has proven to be a problem of major proportions. The \$50 billion-a-year business of commercial fishing in the U.S. and a sport fishing market which is likely to be as large, have led to "too many fishermen chasing too few fish," according to Kemmerer.

The panel discussions concluded Friday with the topic of essential fish habitats. "Essential habitat" is a new concept in the law designating areas that are necessary for the spawning, breeding, feeding or completion of the life cycle of an organism. The proposed regulations would require federal fisheries management councils to determine the essential fisheries habitats for specific species. According to James P. Burgess, director of the National Marine Fisheries Service Office of Habitat Conservation, the essential habitat area of a specific species is initially broadly defined when little is known about the life cycle of the species or its health. "If all we know is where the fish is," explains Burgess, "all of its habitat is determined to be essential."

Once these essential areas are designated, protecting them becomes the unenviable responsibility of the various fisheries councils and the National Marine Fisheries Service. Actual protection may prove illusory and frustrating for fisheries

officials whose enforcement powers are limited to recommending that state and federal agencies recognize the frailty of these areas and limit their actions to those which are not injurious to the habitats. Scott Burns, senior program officer of the World Wildlife Fund, concedes that the regulations do not provide absolute protection for fisheries, but contends that "merely designating an area as an essential fisheries habitat on a map" is a notable advancement in both legislation and conservation. Making these maps available to state and federal agencies will allow these agencies to take into account the existence of essential habitats in areas proposed for projects.

Saturday's panels began with a discussion of bycatch reduction issues. "Bycatch: How Serious and What Solutions" addressed the constraints of



Gary Matlock, Director of the Office of Sustainable Fisheries at the National Marine Fisheries Service, addresses the September fisheries law conference.

bycatch mortality and examined new technologies proposed to reduce these constraints. Under the regulations, "bycatch" is any fish caught unintentionally by fishermen, and includes any fish not sold or kept for personal use. To illustrate the excessive bycatch numbers of last year, Penny Dalton, of the Senate Commerce, Science and Transportation Committee, and Subcommittee on Oceans and Fisheries, made reference to the fact that Pacific fishermen threw back more fish than the New England fleet put in its holds. The need to reduce these numbers has driven the search for new bycatch technologies. Following the same principle as the turtle excluder devices, (or TED's, that have pulled in the nets of coastal fishermen for the past eight years), bycatch reduction devices that allow specific species to exit the net have been proposed for installation in shrimp trawls. However, not all panelists agreed on the quantitative aspects of bycatch, nor did all recognize

the need for bycatch reduction devices. Robert P. Jones, executive director of the Southern Fisheries Association, said that bycatch has been reduced by 50 percent in the Gulf of Mexico by way of TEDs, fewer shrimpers and closed fishing areas. Jones argues that other fish and birds eat the majority of what is thrown back, thereby reducing the wastefulness associated with bycatch. Biologist Richard Condrey, associate professor of Oceanography and Coastal Sciences at Louisiana State University, questions the ecological impacts of employing bycatch reduction devices, as scientists still do not have a fundamental understanding of what will be the ecological outcome of removing only certain species from the population.

International fisheries management was the next topic of discussion on Saturday. "International Management: Who Is Leading Whom?" examined the significant challenges that the global fishery presents to national and international management regimes. Within the panel's broadened ecological view on international issues, the 200-mile territorial fishing limits of individual nations took center stage. Tullio Scovazzi, a professor at the University of Milan, suggested that biology might ultimately become the basis for such boundaries. Other panelists looked beyond the current 200-mile limits and praised new international agreements that have shown promise in halting overfishing in open waters.

After break-out panels on coral reefs, hypoxic zones, and marsh management, the conference concluded with a discussion of individual transferable quotas, a market approach to fisheries management that was postponed by the new law but which is expected to have a higher profile in coming years.



Tulane Law Takes a Hands-On Approach



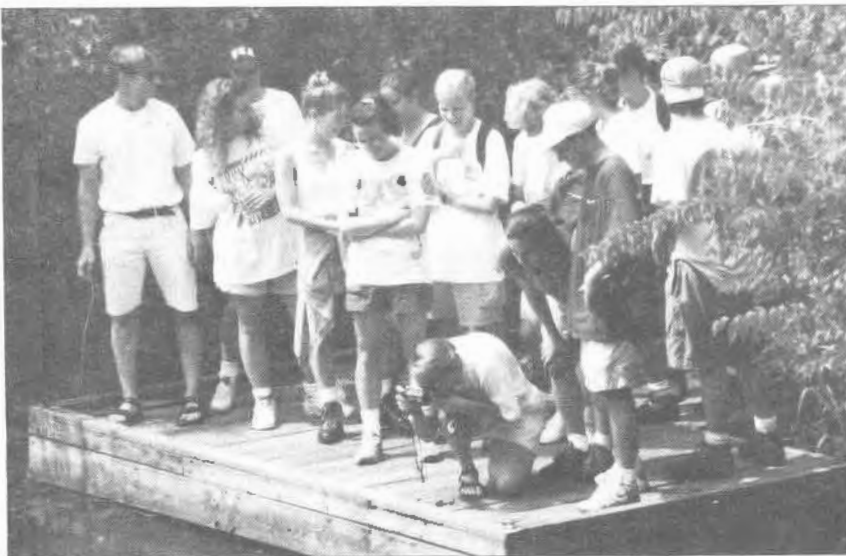
Netcasting:

Richard Esquivos takes environmental law to the field.

ELS outings take law students to a variety of ecosystems, but frequently they focus on the unique wetland systems in Louisiana.



Students experience the natural environment just a half hour away from the law library, at Jean Lafitte.



To Learning About Environmental Law

*Recycled
Christmas trees
rest in cribs. This
community service
project helps
maintain the
wetlands.*



*A grasshopper attends an
ELS outing...*

*Yarrow Etheredge and
Ethan Lerman take
advantage of all that
the law school has to
offer.*



Faculty and Staff Focus

Professor Kirsten Engel

Spring/Summer 1997 continued to be a very busy time for Professor Engel, both professionally and personally. Professor Engel turned her research interests to the rapid deregulation of the electricity industry and its potential for imposing widespread negative environmental impacts. As a result of expansions in the use of coal and a reduction in investment in renewable energy resources, many environmental scientists and policymakers fear that the restructuring of the electricity industry will result in the worsening of pollution on the local and regional level and an increase in the U.S. contribution to global warming. Professor Engel has found, however, that consistent with the trend toward competition within the electricity industry itself, many states are experimenting with market-based regulatory mechanisms to mitigate the potential adverse environmental impacts of deregulation, such as tradable emission credits, tradable obligations to purchase renewable power and carbon taxes. In a newly-finished article, Professor Engel analyzes the implications of the constitutional preference for a national market in goods and services upon state incentives to implement such market-based mechanisms.

In July, Professor Engel's most recent article, *State Environmental Standard-Setting: Is There a "Race" and Is It "to-the-Bottom"?*, was published in the *HASTINGS LAW JOURNAL*. The article includes the results of Professor Engel's extensive empirical research. While numerous studies indicate that environmental standards are only a minor factor in firm location decisions, a survey conducted by Professor Engel (with assistance of Damon Kirin '97, Danielle Cover '97 and Ester Rodriguez '97) showed that a substantial minority of states relax their environmental standards in order to attract industrial firms. Thus, Professor Engel finds that not only does interstate competition in environmental standard-setting seem to exist, but that we are all "worse off" as a result of it. Consequently, Professor Engel concludes that pressure to abandon federal minimum environmental standards should be resisted and federal regulators should experiment with methods to induce cooperation between states in environmental standard-setting.

On the personal side, Professor Engel got married in June. Her husband, a global warming scientist, is finishing his doctorate in the Energy and Environmental Resources Program at the University of California at Berkeley and moved to New Orleans in late October.

During the Spring 1998 semester, Professor Engel will be a visiting professor at Vanderbilt Law School in Nashville, Tennessee. At Vanderbilt, she will teach both a general environmental law course as well and a course on the public and private regulation of toxic substances.

Professor Oliver Houck

In Spring 1997, Professor Houck published a book-size analysis of ecosystem planning entitled *On the Law of Biological Diversity and Ecosystem Management*, *MINNESOTA LAW REVIEW*, Vol. 81, No. 4, April 1997. Surveying planning efforts on public and private lands, the article concludes that, until more adequate tools emerge, the most effective means of measuring and protecting biological diversity and the integrity of ecosystems is through measuring and protecting the needs of indicator species.

In the Summer of 1997, Professor Houck published two articles on water quality standards-based regulation under the Clean Water Act, 27 *ENVIRONMENTAL LAW REPORTER* 10329 *The Resurrection of Water Quality Standards-Based Regulation Under the Clean Water Act* and 27 *ENVIRONMENTAL LAW REPORTER* 10389 *TMDLs, Are We There Yet?: The Long Road Toward Water Quality-Based Regulation Under the Clean Water Act*. Litigation forcing the states and the Environmental Protection Agency to develop Total Maximum Daily Loads (TMDL) has been filed in more than twenty states, and EPA has established a Federal Advisory Act Committee of state, federal, industry, agriculture and environmental representatives, to seek consensus on how to proceed. A third article dealing with the future of the TMDL program awaits the outcome of these deliberations.

This Fall Professor Houck is on sabbatical, which started with driving his younger son to college: three days in the car with your eighteen-year-old as he steels himself to leave home is, he reports, a "life event." After moderating a panel at the Tulane Fisheries Conference in September, he travelled to the Northwest, where he was honored to be the Distinguished Visitor at the Northwestern School of Law at Lewis and Clark. He delivered a lecture there, called "Are People Part of Ecosystems?", spoke at an Endangered Species Act conference and conducted seminars. Following these events, he met up with Eric Ames (Tulane Law '90) and they canoed the Salmon River, across Idaho, through the Frank Church River of No Return Wilderness. The name notwithstanding, he returned in October to prepare to leave for Spanish-language training in Guatemala (he characterizes his current Spanish as "poor to worse"), followed by a visit to Cuba. In Cuba, he will address a meeting of the Cuban Zoological Congress, and meet with members of the Cuban Department of Environmental Protection on the implementation of the Cuban-United States Exchange in Maritime and Environmental Law, a venture of Tulane, the Cuban DEP and the Washington, DC-based Center for Marine Conservation. Somewhere in the middle of all this he has promised to take the Environmental Law Society on an overnight paddle down Red Creek in Mississippi.

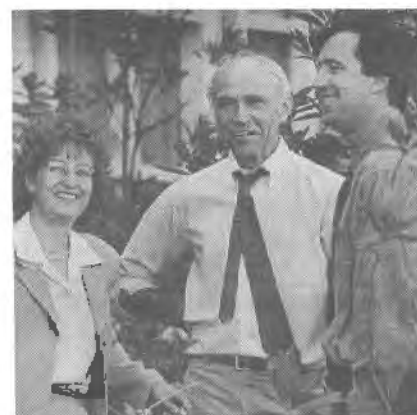
Professor Robert Kuehn

In the spring of 1997, Professor Robert Kuehn presented an environmental justice critique of risk assessment at Drexel University's Olin Corporation Charitable Trust Workshop on Risk Assessment. Later, he testified at a United States Senate Committee on Environment and Public Works hearing on the results of his previously-published research on the effectiveness, efficiency, and equity of federal and state enforcement of environmental laws. At the International Legislative Drafting Institute's annual meeting, he gave an overview of enforcement of environmental laws to a group of lawyers and legislative aides from Africa, South America, Europe and Australia.

This summer, before traveling to South America for vacation, Professor Kuehn updated some research on quantitative risk assessment that will be published in the fall 1997 edition of *Risk Decision and Policy*, "An Analysis of the Compatibility of Quantitative Risk Assessment with the Principles of Environmental Justice in the United States." This article argues that the use of quantitative risk assessment in environmental decision making may not reduce the inequities in the distribution of environmental risks.

This fall, Professor Kuehn continues to supervise a precedent setting case in the Environmental Law Clinic involving the proposed siting by the Japanese petrochemical company Shintech of a new PVC plant in Louisiana's "Chemical Corridor." The Clinic students' work on the case resulted in the first citizen petition granted by the U.S. Environmental Protection Agency under section 505(b)(2) of the Clean Air Act. Also pending in the Shintech case is a complaint filed with EPA alleging, under Title VI of the Civil Rights Act of 1964, that the permitting of the plant would result in a discriminatory impact and violate the Act. Professor Kuehn is also busy this fall researching federal and state patterns of enforcement for use in a future article.

Professors Engel, Houck, and Kuehn pause for a moment outside the law school.



Faculty and Staff Focus

Professor Günther Handl

Volume 6 of the *Yearbook of International Environmental Law* of which Prof. Handl was, until recently, the editor-in-chief, was published by Oxford University Press at the beginning of 1997. In March, Prof. Handl participated in a workshop in Bonn, Germany, organized by the United Nations Institute of Training and Research (UNITAR). The purpose of this expert meeting was to continue preparation and review of evolving "course materials" for a global UNITAR-sponsored Program of Training for the Application of Environmental Law. A final version of these teaching/training materials is to be published in 1998. Prof. Handl, who had been asked to author a course packet on the topic of "Trade and Environment" delivered a status report on his chapter.

In May he was invited to speak at the annual meeting of the British Branch of the International Law Association (ILA) in Nottingham which focused on Transnational Environmental Litigation in European and International Perspective. He gave a paper on "Human Rights and the Environment." Following that meeting, he helped organize a workshop on an ILA-sponsored book project on the definition and valuation of environmental damage from an international and comparative legal perspective, and agreed to take on responsibility for a chapter entitled "Issues of Valuation: Health, Restoration, Loss of Opportunity and Other Economic Costs."

Also in May, Prof. Handl was asked to assist the Secretariat of the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal, in its efforts to secure some progress in international negotiations in Geneva on the draft Protocol on Liability and Compensation. (He had been involved in earlier drafts of the proposed Protocol and the author of a several thereto related position papers). The exercise was reasonably successful, by the way. He then proceeded to teach a course on the Law of the Sea at Tulane's summer school in Rhodes, Greece.

In the summer, he published two articles, one on compliance issues in international environmental law, namely in 5 *TULANE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW* 29, *Compliance Control Mechanisms and International Environmental Obligations*, the other on issues arising from international law-making in the field of navigational safety, marine environmental and fisheries protection: "Regional Arrangements Having Effects on Third State Vessels: Is the *Pacta Tertiis* Principle Being Modified?" in H. Rinkbom, ed., *Competing Norms in the Law of Marine Environmental Protection* (1997). He also completed editorial work on volume 7 of the *Yearbook of International Environmental Law*, his last volume, as he had decided earlier in the year that, after seven years as editor-in-chief, it was time to step down from that position.

Jerry Speir

As Director of the Institute for Environmental Law & Policy at the Law School, Jerry Speir continues to find himself involved in quite a group of diverse and interesting projects. His primary research of late has been into some of the programs that fall under the umbrella of "re-inventing environmental regulation." In particular, he has followed the development of environmental management systems (especially ISO 14001) and proposals to use those systems as instruments of environmental policy. He published a short article on the subject in the March/April issue of *The Environmental Forum*.

For the past year, Speir has been the public interest representative on a Multi-State Working Group of state regulators from ten states who are designing pilot projects to test whether these management systems can be shown to produce identifiable improvements in environmental performance. If they can, the next question will be: What incentives should governments offer to encourage their implementation?

"It's at that incentive level," Speir says, "where this really becomes an important public policy issue. Government regulators are enamored of the idea that voluntary systems can offer opportunities for improvements both in environmental performance and regulatory efficiency. Perhaps they can. But the fear is that they also offer certain opportunities for collusion and general skulduggery."

Law School Welcomes Visitor: Watson to Teach Water Law

During the Spring 1998 semester, the Law School will welcome Professor Blake Watson as a visitor (while Professor Kirsten Engel makes her own visit to the Vanderbilt Law School).

Prior to joining academe at the University of Dayton School of Law, Professor Watson was an appellate attorney with the Environment and Natural Resources Division of the U.S. Department of Justice for ten years, where he participated in numerous U.S. Supreme Court, state supreme court, and federal appellate cases. His published work covers a range from CERCLA to Indian Law.

While at Tulane, he will offer a course in Water Law, surveying the three principle doctrines: riparian rights, prior appropriation, and reserved rights. The course will take a special look at the history of state and federal involvement in dam building, and the creation of massive water distribution systems, in the West.

Professor Watson has been named Professor of the Year by one or more of Dayton's classes for each of the last five years. Tulane's students may, therefore, look forward to an interesting and provocative class.

Speir has been a frequently invited speaker on this subject, addressing an EPA conference in the Spring, a meeting of the U.S. TAG (Technical Advisory Group) on ISO 14000 (the official U.S. body in the international development process) in September, and meetings of such organizations as the environmental managers of the Electronics Industry Association, and the Association of State and Territorial Solid Waste Management Officials. He has also participated in roundtable discussions at The Wharton School on these issues; in December, he will take part in a similar discussion at The Brookings Institution. In addition, he serves on an EPA Working Group examining the relevance of management systems to worst-case accident reporting requirements under the Clean Air Act.

In October, Speir moderated a New Orleans "town meeting" on Climate Change and served as a panelist for the local down-linked portion of the White House Conference on Climate Change.

In his spare time, he has coordinated the September fisheries conference, and is now coordinating the Spring conference and the upcoming Cuba project (all written about elsewhere in this issue). And he hopes to launch soon a project researching the law and policy of the Mississippi River batture (the land between the river and the levee), which he describes as "a kind of regulatory no-man's land."

Institute Launching Cuban Environmental Law Project

The Tulane Institute for Environmental Law & Policy, in collaboration with the Washington-based Center for Marine Conservation (CMC), has recently received funding to support the development of environmental law in Cuba.

CMC has been conducting fisheries research with its Cuban counterparts for the past ten years. The project is an outgrowth of that research and of a perceived need for assistance with environmental law reform in the country.

Cuba passed its first comprehensive environmental law just this past summer. A first task of the project will be to make the text of that law available on the Web, via the Law School's home page (www.law.tulane.edu under "Institutes and Conferences"). Look for it before the end of November. It will be available in both Spanish and English. And organizers of the project hope to add to that Web site as more materials become available.

Planned for a three-year period, the project will be structured primarily around a series of meetings of U.S. and Cuban experts, with each meeting designed to address a particular issue of concern. It is anticipated that meetings will, at least initially, focus on such issues as: coastal zone management, marine pollution, and shared species or "straddling stocks."

Initial contacts for launching the project are underway this fall, with the first meetings expected in the spring. Funding for the project is provided by the John D. and Catherine T. MacArthur Foundation and by The Arca Foundation.

Alumni Making Environmental Law

By Courtney O'Hara and Tad Bartlett

Kathryn C. Macdonald, J.D. 1992, works as an Assistant Attorney General with the Environmental Protection Bureau of the N.Y. State Attorney General's Office in New York City. She practices before both federal and New York state courts. Two recent cases illuminate her work to prevent resource destruction. Kathryn filed a lawsuit against the U.S. Coast Guard's Oil Spill Liability Trust Fund asserting that the Fund unlawfully denied the State of New York's natural resource damage (NRD) claim for air contamination and for a public beach closure caused by a fuel spill near Long Island. After considering the claim, the U.S. Department of Justice issued an opinion conceding that the Comptroller General's decision incorrectly interpreted the Oil Pollution Act of 1990 (OPA) by assuming that NRD payments could be made only through Congressionally appropriated funds. The Justice Department agreed with New York's interpretation that OPA authorizes payment from the Fund without further Congressional appropriation. This decision will likely have national implications.

In a local New York, Hollywood-like case, Kathryn won a legal battle in state court against the Garofalo brothers for their illegal operation of an unpermitted transfer station and their unlawful theft of sand and subsequent dumping in the remaining hole. The Garofalo brothers pled guilty to criminal charges, and they also agreed to install 24-hour surveillance cameras at their site and to pay stipulated fines for any future violations.

Following graduation from Tulane Law School in 1982, **Stacy White** clerked for the Chief Judge of the District Court of the Virgin Islands. After his clerkship, he joined the law firm Bryant, White & Barnes, where he is now a partner. In the late 1980's, Stacy and other pro-bono lawyers worked on behalf of the St. Croix Environmental Association (SEA) to limit the development of St. Croix's sensitive environment. The major impetus to organizing SEA was a proposed condominium, hotel and marina development project in the Salt River Basin, St. Croix's largest remaining estuary and an essential part of its coral reef environment. The legal challenge began during the permitting process, administered under the Virgin Islands Coastal Management System, where Stacy's team initially lost to the developers. An appeal to the Federal Court in St. Croix was ruled untimely. A subsequent appeal resulted in the U.S. Court of Appeals for the Third Circuit reversing the lower court's decision and remanding the case to be determined on its merits. The lower court then rendered a decision holding that the developers must complete all issues under an Environmental Assessment (EA) before applying for permits.

Andrew Simpson, J.D. 1988, followed Stacy's path to the Virgin Islands. Andy also provided pro-bono assistance to SEA on a resource preservation issue. Potential residential developments threatened two pristine beaches, Jacks and Isaacs Bays. Andy pursued the Jacks and Isaacs Bays controversy by attempting to deny the developers' Coastal Zone Management permit applications. He followed the project through numerous appeals to administrative review boards. The final decision established an important precedent by persuading the administrative court to require developers to complete an EA before applying for permits and also before closing the public comment period. As an obvious recognition of his work, Andy became a SEA board member and chairman for three years. In '94, SEA was awarded one of 24 EPA Environmental Quality Awards. SEA's combined advocacy has helped reform the way that the Virgin Islands government handles environmental issues.

Blair Batson, J.D. 1985, has been a staff attorney responsible for farmland preservation at 1000 Friends of Oregon since 1988. 1000 Friends is a private, non-profit watchdog group established in 1975 to oversee Oregon's land use planning program. In 1994, Blair represented 1000 Friends before Oregon's Land Conservation and Development Commission (LCDC) in a successful effort to get the agency to adopt more protective land use regulations for the state's valuable farmland. After one county appealed the new rules on the grounds that they exceeded the agency's rulemaking authority, Blair intervened on behalf of 1000 Friends. The county won before the Court of Appeals, and LCDC's rules were held invalid. On August 7, 1997, however, the Oregon Supreme Court reversed the Court of Appeals and upheld the rules as a valid exercise of LCDC's rulemaking authority.

As a litigator for the Pennsylvania Department of Environmental Protection, **Ember Jandebour, J.D. 1991**, offers future environmental litigators sound advice on winning cases. In *Oley v. Pennsylvania Department of Environmental Protection*, Ember enlisted the support of hydrogeologists, botanists, engineers, and biologists to present logical, valid scientific evidence at trial. These witnesses and their compelling display boards enabled the judge to become an instant scientist, to understand the critical information, and led to a finding for PADEP. Ember feels most judges appreciate such clear presentations, and more often than not, this effort results in a victory.

Hilda Pena, L.L.M. 1993, is working as an advisor for the Forest and Wildlife division of the Ministry of the Environment in Bogota, Colombia. "I am very happy," she says, "since many things are going on with our natural resources, such as the increasing enforcement of our environmental laws and the creation of instruments of financial aid for the development of certain projects." Pena reports, however, that while the work itself may be enjoyable, getting that work done can sometimes be quite difficult. The political situation in Colombia and the frequent guerrilla attacks combine for a worrisome situation. "Every day, the confrontations are closer to Bogota," says Pena. "Everyone in the city acts as if nothing is going on, which makes the situation even worse."

Graduates of Tulane environmental law programs often find themselves participating in what could be termed "important moments in their field." **Eduardo Ortega Ruiz, L.L.M. 1993**, finds himself in just such a moment as he is involved in the "oil opening" process in Venezuela, which he describes as "a very important moment for the development of environmental regulations." One example of Ruiz's personal involvement in this process is his service as a defendant's attorney in a case involving an oil spill in Maracaibo Lake, for which he received a lot of publicity, which is "not always good," he remarked ruefully. In learning to deal with the contending sides that he encounters in his oil and gas cases, Ruiz credits Tulane's environmental law program for playing a substantial role. "It provided me with a uniquely 'open mind,' for my day-to-day practice," Ruiz says.

Attention Alumni!

If you completed a J.D. with certificate or an LL.M. with specialization in environmental law, ELS would love to hear from you!

We would like to build our alumni-student relationship. If you are interested in talking with current students, becoming a mentor, or just staying abreast of current activities and projects, please contact Kate McCormick, (504) 895-8392, or via e-mail at kMcCormi@law.tulane.edu, or send directly to ELS at the address on the cover. Thank you!

Journal News

By *Gautam Srinivasan*

The TULANE ENVIRONMENTAL LAW JOURNAL began the year by welcoming 22 new junior members from the summer and fall write-on competitions. The senior staff is looking forward to working with the new members on our upcoming issues as well as continuing what will no doubt become a Journal mainstay – the Thursday night bar review.

The Winter 1997 issue will feature several articles on comparative sustainable development issues throughout the Americas. The articles are based on an ABA-sponsored conference held in Buenos Aires earlier this year, and will cover a wide range of topics, including the consideration of indigenous populations in the development of natural resources, the role of public participation in formulating environmental policy, and the effect of NAFTA on future environmental policy.

The issue will also feature an article by Paul Barresi on inter-generational equity in the international environmental arena. The piece critiques the scholarship of Professor Edith Brown Weiss, a leading voice in the field. Professor Weiss will be writing a response to Mr. Barresi's article.

The Spring 1998 issue will feature a symposium on the new National Ambient Air Quality Standards promulgated by EPA earlier this year. The new air quality standards, which set forth more stringent levels of allowable ozone and particulate matter emissions, generated a great deal of interest and controversy. The symposium will present a variety of perspectives on the new standards—from the EPA, industry, academia and public interest groups. Furthermore, the issue will also consider the scientific basis for the standards as well as the response from legislators on Capitol Hill.

The members of the JOURNAL would like to thank our faculty advisor, Professor Kirsten Engel, without whose time and effort the upcoming issues would not be possible.

The TULANE ENVIRONMENTAL LAW JOURNAL welcomes your subscription at the rate of \$20.00 annually, \$10.00 for a single issue and \$12.00 for back issues. Please call (504) 865-5309 or send your request by mail to: Tulane Environmental Law Journal, 6329 Freret Street, New Orleans, LA 70118-6231.

Shintech (continued)

(Continued from page 6)

hearing on the issues that are addressed in the reopening. We believe it is essential that minority and low income communities not be disproportionately subjected to environmental hazards, and that the concerns of their residents be adequately addressed in the permitting process." The letter also warns that if LDEQ does not address these environmental justice issues, EPA will.

Early last spring, the Clinic also filed a Title VI claim under the Civil Rights Act of 1964. Title VI and its regulations prohibit a recipient of federal funding from choosing a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination on the grounds of race or color. The citizens' petition alleged that locating the Shintech facility in Convent will add to the toxic burden this disproportionately-impacted minority community already faces. Over eighty percent of the Convent area is African-American, and the median annual income of local residents is just over \$11,400 – that is approximately \$18,000 less than the national average.

Title VI also provides that no program that receives federal aid shall be administered with such criteria or methods that have the effect of subjecting individuals to discrimination based on race or color. The complaint further alleged that LDEQ did not provide a sufficient notice and comment period which resulted in the community having insufficient time to thoroughly address and analyze the issues. This complaint alleges, among other things, that LDEQ allowed Shintech supporters more speaking time at public hearings, that LDEQ showed bias towards Shintech and against the citizens, and that LDEQ is devoid of almost any written correspondence with Shintech concerning its permits, and instead relied on private meetings and phone conversations, many of which occurred after the close of the public comment period. The EPA Office

of Civil Rights has accepted the complaint for investigation, and a ruling is expected no later than February 1998.

The State Petitions

The order issued by the EPA under Title V of the Clean Air Act was unprecedented as it was the first time the EPA granted a citizen petition under this provision. But, this promising order by the EPA is just one step in a complicated case. In addition to the Title V and Title VI petitions, the Clinic also filed suit in state court, on behalf of its clients, challenging the adequacy of the state-issued air emissions, water discharge, and coastal use permits.

In May 1997, the state of Louisiana issued air emissions permits to the Shintech facility. These permits consisted of three Title V permits and one Prevention of Significant Deterioration (PSD) permit. The appeal filed by the Clinic in July 1997 alleged that LDEQ failed to consider alternate sites or cumulative impacts of the Shintech facility on the surrounding area, and also that LDEQ did not follow proper procedure in issuing the permits. Several technical problems in the permits were also noted in the appeal, as well as the violation of the community organizations' due process rights of participation in the permitting process. Although the air appeal is due to be briefed soon, the exact status of the appeal is currently unknown, since the air permits must be rewritten pursuant to EPA's Title V ruling.

In addition to state air permits, Louisiana has also issued water discharge permits. On May 30, 1997, LDEQ issued a water permit to Shintech, under the Louisiana Pollutant Discharge Elimination System (LPDES), that allows the facility to discharge directly into the Mississippi River. In July, the Clinic filed an appeal objecting to the issuance of the water discharge permits due to the threat of the health, property, and liberty interests of the community. The appeal alleged that LDEQ violated its duties to protect and preserve the environment as enumerated in Article IX, Section 1 of the Louisiana Constitution,

(Continued on page 14)

Shintech (continued)

(Continued from page 13)

and that the record does not support LDEQ's decision to issue the permit. Further, it stated that LDEQ failed to consider the impacts the facility would have on the surrounding minority community. This case is currently in briefing.

Coastal use permits are required by the state for any operations conducted in the coastal zone. The authority for a state to issue such permits is derived from the Coastal Zone Management Act, and Louisiana has further delegated such permitting processes to the individual parishes. The suit seeks to revoke the coastal use permit, alleging that St. James Parish followed neither its own procedures nor that required by the state, when issuing the Shintech permits. In September, Judge Alvin Turner, Jr. agreed to hear the merits of the case, and a trial date is expected for early spring 1998.

The Political Backlash

The Clinic's representation of community organizations opposed to the Shintech facility has raised the ire of Louisiana Governor Mike Foster, his administration, and some of the most powerful business executives in Louisiana. The governor has been quite outspoken against the Clinic and the Shintech opposition since the first petition was filed. Foster has threatened the status of Tulane University's tax exemptions and has asked donors to reconsider any future financial contributions to Tulane. Louisiana Economic Development Secretary Kevin Reilly has repeatedly accused the Clinic of obstructing economic development in Louisiana and demanded investigation into Clinic operations. During the past few months, three business associations have written letters to the Louisiana Supreme Court demanding such an investigation in light of the Shintech controversy. In response, the Louisiana Supreme Court has authorized judicial administrators to procure information on all of the legal

clinics at Tulane, Southern, and Loyola Universities, and that investigation is ongoing.

Undaunted, the students trudge on. With several important legal dates looming in the near future, the never-ending work continues. Currently, the Shintech case has four student attorneys assigned to it, having assumed the case from the three students who worked on it last year. The students are not only responsible for the Shintech case, but for all of their other course work as well. Each student attorney's class schedule ranges from fifteen to eighteen semester credit hours, in addition to extracurricular activities and family. Although this is an enormous task, the student attorneys are dedicated and cannot think of any other case they would rather be working on. With strong legal issues to pursue and a client group they swore to zealously represent, the students are getting a real world education in the practice of environmental law and are breaking new ground in the area of environmental justice.

The eighteen community organizations are: St. James Citizens for Jobs & the Environment, Louisiana Environmental Action Network, St. John Citizens for Environmental Justice, St. Charles Environmental Coalition, Gulf Coast Tenants Organization, Southern Christian Leadership Conference, Louisiana Citizen Action, Concerned Citizens of Iberville Parish, Action Against Waste and to Restore the Environment, Ascension Parish Residents Against Toxic Pollution, River Area Planning Group, Save Our Selves, North Baton Rouge Environmental Association, Neighbors Assisting Neighbors, Delta Greens, Louisiana Coalition for Tax Justice, League of Women Voters of Louisiana, and the Sierra Club.

Leigh Lowry is a third year student at Tulane Law School who is currently participating in the Environmental Law Clinic, and is one of the students assigned to the Shintech case.

Tulane's Environmental Law Curriculum

Tulane Law School prides itself on the diverse and comprehensive array of courses it offers in environmental law. This year, Tulane boasts many courses focused on environmental topics.

At the J.D. level, students may earn a certificate of specialization in environmental law. In addition to the requirements for the J.D., students pursuing this certificate must earn a minimum of fifteen credits in environmental law courses, including the core courses of Pollution Control Law, Natural Resources Law, and Administrative Law.

Tulane also offers L.L.M. opportunities in environmental law. The Master of Laws in Energy & Environment has been awarded since 1984, and currently enrolls about 25 students per year.

On an annual basis, Tulane offers the following courses:

- Pollution Control Law
- Natural Resources Law
- Administrative Law
- International Environmental Law
- Energy Law
- Land Use
- Environmental Advocacy Seminar
- Louisiana Environmental Law
- Environmental Law Clinic
- Hazardous and Solid Waste Law
- Historic Preservation
- Toxic Tort Litigation
- Directed Research in Environmental Law

In addition, the following courses are offered on an alternate-year basis:

- Coastal and Wetland Law
- Environmental Enforcement
- Environmental Law and Equity
- Marine Pollution Law
- Toxic Substances Law
- Wildlife and Endangered Species Law

There are also a number of courses offered on an occasional basis. The curriculum is designed to expose every student to the greatest variety of coursework possible during his or her career at Tulane.

For more information, please contact the Admissions Office, (504)865-5930, Suite 203 Weinmann Hall, or explore our website, <http://www.law.tulane.edu>.

Bootcamp on the Bayou: A Personal Approach to Coastal Law

By Roberta Stewart

In the spring of 1997, I was one of twenty-four JD and LLM students who opted to take Professor Houck's intensive seminar on Coastal and Wetlands Law. The course began with an examination of legal tools for coastal conservation, including the Coastal Zone Management Act, the "takings" clause of the United States Constitution and Section 404 of the Clean Water Act. In the early weeks of the class, we struggled our way through these and other laws, applying them to real life situations and gathering a dim understanding of the myriad pieces that play a role in coastal zone management. All of which was a prelude to . . . The Trip to LUMCON.

The Louisiana Universities Marine Consortium, better known as LUMCON, is a marine research and education facility (see their Web page at <http://www.lumcon.edu>), about 85 miles southwest of New Orleans in Cocodrie, Louisiana. At the end of the earth. The community, located along an old distributary off the Mississippi River has been traditionally sustained by fishing activities, and later, the oil boom. Driving to Cocodrie from New Orleans, the land



narrows, shrinks, and then simply disappears. The houses are perched on high stilts, adapted to the ebb and flow of the tidal marshes and the inevitable storm surges from the Gulf. Behind each house, testaments to their heritage, fishing and shrimping boats line the bayou.

Our LUMCON experience began and ended with field exercises, par for the course for coastal zone biologists. For three chilly, drizzly days, under the guidance of LUMCON and LSU wetland scientists, we became fishers and researchers. We dredged for oysters, caught, counted and measured flopping minnows, redfish and catfish, dragged hand seines, threw cast nets, hauled trawls, and waded chest-deep through marsh water, taking soil, water and vegetation samples, all of which make up the life of the Louisiana coastal ecosystem the most productive coastline in America.

In the evenings, around the dinner table, experts on fisheries, wetlands and oil pollution from Louisiana universities and state fish and wildlife departments provided stimulating lectures. Perhaps the most memorable guests of the weekend were Robert Fritchey, fisherman and author of *Wetland Riders*, and his first mate, Terry Labeaux. Aided by several

supporting beers, Fritchey and Labeaux gave vivid accounts of their struggle to survive as Louisiana fishermen, made more difficult, they feel, by the powerful sport fishing lobby and the ban on commercial take of redfish and speckled trout.

We returned to New Orleans on Sunday evening, exhausted. I don't know that any one of us will be renouncing our desire to become an attorney and choosing instead life as a shrimper or field biologist. I do know though, that each of us retains a vivid impression of what we say and did. News of the commercial/sport fishing battle brings to mind the weathered faces of Fritchey and Labeaux; we've used a banned gill net and handled a butterfly rig; we have gathered data documenting the effects of oil canal dredging on the Louisiana marshes, and have gotten unbelievably muddy in the process; we have strained our muscles and blistered our hands gathering oysters, and wondered how it is possible to make such a hard living. At semester's end, as each of us made our presentations and wrote our final research papers for the seminar, one thing became clear: for us, the issues of the coastal zone were no longer abstract. Both the life and the law were real.



The Path to the 21st Century In Environmental Law



Begins At Tulane Law School

Tulane Environmental Law News

Environmental Law Society
Tulane Law School
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New Orleans, LA 70118-6231

