

WE ARE BACK!

Environmental Law Program Rebounds after Katrina

Hurricanes Katrina and Rita treated Tulane more kindly than most of the rest of the city, and although the University took more than \$300 million in losses (we were flooded hip deep at Clairborne and to the knees at Freret), and the repairs were so touch-and-go that new carpets and paint jobs were going into the law school building the weekend before classes began, our damages in the larger scheme were more manageable than the individual losses suffered by tens of

thousands of South Louisianans who are still looking for electricity, water, housing and a way to return.

We are two cities now, the uptown one that at least appears normal and the rest which is still a disaster zone.

In this context, the University is not only surviving, it is thriving, enjoying more than an 80 percent return rate for its students, and it is the same for the law school and our environmental program.

We are back.

This issue of the newsletter, then, will present two stories. The first is the conventional one, what we are doing in our classes, conferences, publications and, most important, what our alums are doing with environmental law ... which is after all our reason to be here. The second story though is about Katrina, and what we are doing about it, which is still evolving, but which is an increasingly impressive effort with many players and real products.

Katrina is with New Orleans for the long haul, and we as a school and an environmental program will be onto Katrina in every useful way we can.

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This raccoon has also returned to New Orleans.

Law Students Respond

Let us give you the flavor of our law student response to Katrina. They have established and are largely running a new legal services corporation for Katrina victims called From the Lake to the River. They wrote, casted and performed an incredibly good play entitled "Katrina Stories." They are preparing an environmental law conference dedicated to Katrina issues (see elsewhere in this newsletter). They have welcomed a doubling of their pro bono community service requirements, almost exclusively dedicated to Katrina victims. Beyond these hours, they are

donating time on non-law projects around the city and beyond, from fixing up homes and schools to tutoring adults and children. They organized and hosted a work weekend for law students around the country, with special invitations to those schools who hosted them in their semester in exile; more than 100 students, professors and even the occasional dean came for community service, conferences, and a heartfelt thank you.

On the curriculum side, we have organized a series of Katrina lectures for all students, but with primarily envi

Continued on page 2

NOTE: Next year this newsletter will go electronic. To receive a copy, send email addresses to enlaw@law.tulane.edu



Law Students Respond to Katrina *continued from page 1*

ronmental themes.

We also offered the lectures on a or-credit basis for students willing to participate in research projects relating o Katrina and prepare reports with an analysis of their issues and recommendations for legal, legislative or policy ction.

We anticipated a for-credit enrollment of about 15 – 20; we have over 0. Each lecture has filled room 110, ome standing; that's about 160 people.

We are engaged.

Later in the Spring, we will offer a full Katrina course on the causes, consequences and remedies for the disaster, co-taught by environmental, criminal and constitutional law faculty.

On the public service side, our faculty have been deeply involved in both the city planning effort for rebuilding New Orleans, and the state and federal government's efforts (still quite inchoate) for restoring the Louisiana

coastal zone. The article, Can We Save New Orleans?, is featured in the latest edition of the Tulane Environmental Law Journal, and is we think a cogent analysis of how we got into this mess and how we might get out. The operative word is "might."

In the pages that follow you will find brief snapshots of this work, which we hope will give you a sense for the school right now. It should make you proud.

Where it all began:

Forecasting Disaster

"Here is the script for a New Orleans thriller: A lovely old city dozes in the sun along the lower Mississippi, safe behind its levees. Below it, to the south, the coastal plains stretch in a broad buffer 80 miles to the Gulf of Mexico.

A minor chord plays. Out there at the edge of the Gulf we hear a munching sound. We strain our eyes ... what's that? Over there! That chunk of marsh ... just disappeared! Good Lord, the ground is sinking! There goes a stand of cypress trees! My feet are under water! I'm up to my knees ... let's get out of here.

Back in New Orleans, the mummies and the daddies are sleeping innocently in their beds. The Mississippi River flows safely by, three feet below pillow level, 12 above the kitchen floor, behind the big levees ... while ... up from the marsh, munch, chomp, the Monster is coming. It is

taking bigger bites every year. Ten years ago, it ate 17 square miles of the coast. Last year it ate almost 50. It grows and grows. In the lifetimes of the younger daddies and mummies, it will eat up Plaquemines Parish. The

whole thing. The telephone poles will stick up out of the water, and the Gulf of Mexico will continue to come.

You can save the coastal marshes now or you can wait a few decades and build far more expensive seawalls much closer to New Orleans, and try to keep them in repair, and fight the Gulf of Mexico with concrete as it comes.

It is really just a question of when. And who will pay.

And all that you stand to lose in dollars and in people and in natural beauty in the meantime. Because in time, one way or the other, it will have to be done. Right now, the Gulf is winning and it is moving north."

-Oliver Houck, Professor

A Message from the Dean:

From: Larry Ponoroff [mailto:lponoroff@law.tulane.edu]
Sent: Saturday, August 27, 2005 11:58 AM
To: 1st year law students; 2nd year law students; 3rd year law students; LLM Students
Cc: Deans
Subject:

As you may have already heard, Tulane University will be closing at 5 p.m. today through Tuesday August 30. Classes, however, will not resume until Thursday, September 1. You should be making your evacuation plans now. It is likely that if the storm draws close, the University will shutdown all power. In that case, there will be no further e-mail connectivity, so you may want to establish an alternative account on Hotmail or Yahoo in order to stay in touch with family.

For the most up-to-date information, please continue to monitor the Alert Line 504.862-8080 or, toll-free, 1.877.862.8080 or the emergency web site: <http://emergency.tulane.edu>

We will be making a decision later in the week about how to handle make-up classes for the lost days, and will announce that as soon as more information is available. For now, worry about safety first.

Open and closing paragraphs from "The Silent War," reprinted with permission from the Gambit Weekly. Originally published in 1982.

Where We Are Now:

FROM THE LAKE TO THE RIVER

From the Lake to the River (FLTR) brings together resources from all parts of the legal community (law school faculty, students, and practicing lawyers), as well as non-lawyers, to facilitate the fair distribution of federal, state, and private disaster relief to New Orleanians (wherever they may be) in the wake of Hurricane Katrina. We also assist other groups that provide emergency legal services to those in need. Though it developed from the efforts of Tulane Law School faculty, students, and alumni, the organization is independently organized and open to anyone (especially lawyers and law students) who want to participate.

This fall, FLTR developed a policy report for the Mayor's Bring New Orleans Back Commission, and instituted a toll-free number to provide a legal referral service to hurricane victims. More recently, we have provided legal services to small businesses in the hurricane affected area, presented Congressional testimony on FEMA services, and sued FEMA for housing policies.

For more information about FLTR see: www.FromtheLaketoeRiver.org.

STUDENT HURRICANE NETWORK

The legal issues facing the individuals and communities throughout the Gulf Coast region are monumental, and will remain for years to come. In order to address this need, law students from across the country have formed the Student Hurricane Network (SHN), a national association dedicated to providing assistance to communities affected by Hurricanes Katrina and Rita.

In December and January 2005-06 over 240 law students from over fifty-seven law schools across the country converged on the Mississippi Gulf Coast and across Louisiana: New Orleans, Baton Rouge, Shreveport, Alexandria, and Covington. Volunteers worked with over eighteen public interest organizations to conduct massive intake, interviews, and research. Students assisted with projects involving criminal justice, housing, immigrant labor, FEMA claims, and more. In the coming weeks, SHN will expand to over 20 cities, including organizations in Texas, Florida, Alabama, and Tennessee. Over 650 law students from around the country will assist public interest organizations in the affected area.

SHN is also coordinating remote research projects and educational events on law school campuses around the country to draw attention to the issues surrounding relief to hurricane victims and rebuilding the area.

For more information about SHN see: www.StudentHurricaneNetwork.org.

PRO BONO PUBLICO: An Expression of Gratitude and Renewal

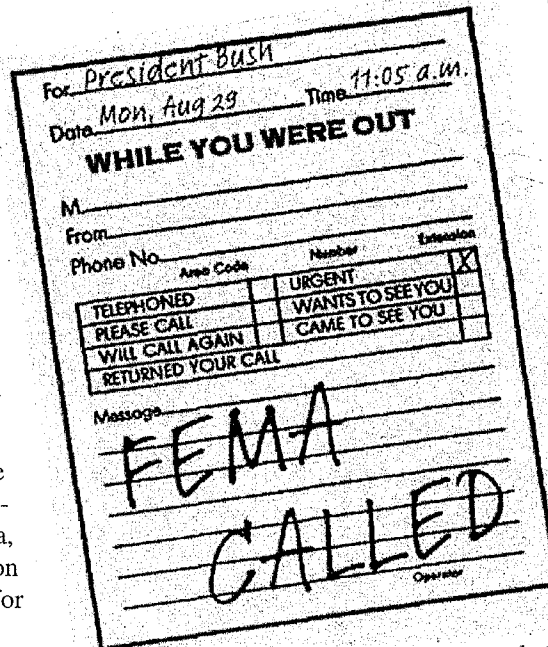
On the weekend of January 27-29, over 100 students from law schools around the country came to Tulane to participate in "Pro Bono Publico: An Expression of Gratitude and Renewal." Tulane Law School's Student Bar Association organized the event as a way to say "Thank You!" to over 100 law schools in 40 different states that embraced Tulane Law School

students and welcomed them into their programs for the fall semester with open arms.

The program included "A Night of Katrina Reflection," featuring professional leadership speaker, author and business consultant John Di Frances (www.difrances.com/GenMp.html) as well as a panel discussion with State Senator Walter Boasso, State Representative Emile "Peppi" Bruneau, Jefferson Parish Councilman Thomas Capella, State Representative Karen Carter, Judge Martin L.C. Feldman of the Federal Eastern District, and City Council President Oliver M. Thomas, Jr.

Attendees also participated in a bus tour of some of the city's worst-hit areas and a community service project called the "Paint Rally for New Orleans Schools." The weekend program concluded with "An Evening of Louisiana Revue," featuring local food and music down on Bourbon St. The weekend allowed Tulane Law Students to share their experiences with the students and law schools who graciously hosted them during the fall semester. Over 25 law schools from across the country participated.

"What has been most rewarding have been the emails in these days afterward to see what students are taking back to their schools around the country," said Ashley Hugunine, an organizer of the event.



Where We Go from Here: Studying the Issue

THE KATRINA LECTURES – a six-lecture series, hosted by Tulane Law School.

The Katrina Lecture Series was open to the community, but was also available for credit to Tulane students. Over 90 students registered for the one-hour seminar credit. The lecture course also included a research requirement.

Jan. 20 *A Setting for Tragedy: A Physical History of South Louisiana and New Orleans*

Dr. Sherwood Gagliano, President, Coastal Environments Inc.

Dr. Rod Emmer, Louisiana Floodplain Management Association

Jan. 27 *The Walls Come Down: August 28, 2005*

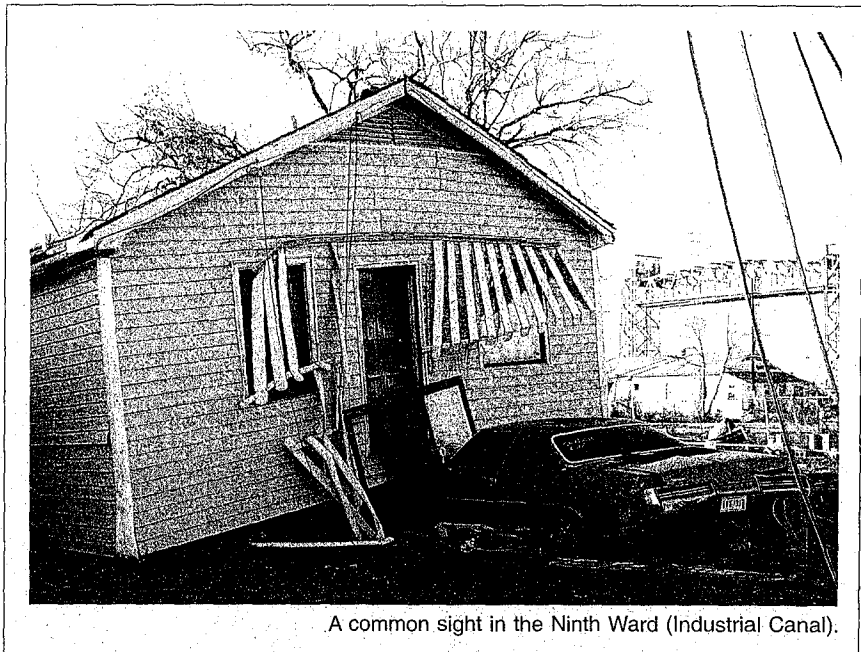
Dr. Ivor Van Heerdin, Hurricane Center, LSU

Lt. General (ret.) Thomas Sands, U.S. Army Corps of Engineers

Feb. 3 *New Orleans and Its People: Then, Now and Tomorrow?*

Dr. Lance Hill, Executive Director, Southern Institute for Education and Research, Tulane University

Dr. Beverly Wright, Director, Deep South Center for Environmental Justice, Xavier University (invited)



A common sight in the Ninth Ward (Industrial Canal).

Feb. 10 *Acadiana: The Louisiana Coast and Its Choices*

Dr. Kerry St. Pé, Program Director, Barataria Terrebonne National Estuary Program

Dr. Don Davis, Administrator, Oil Spill Program, Louisiana

Feb. 17 *Rebuilding New Orleans*

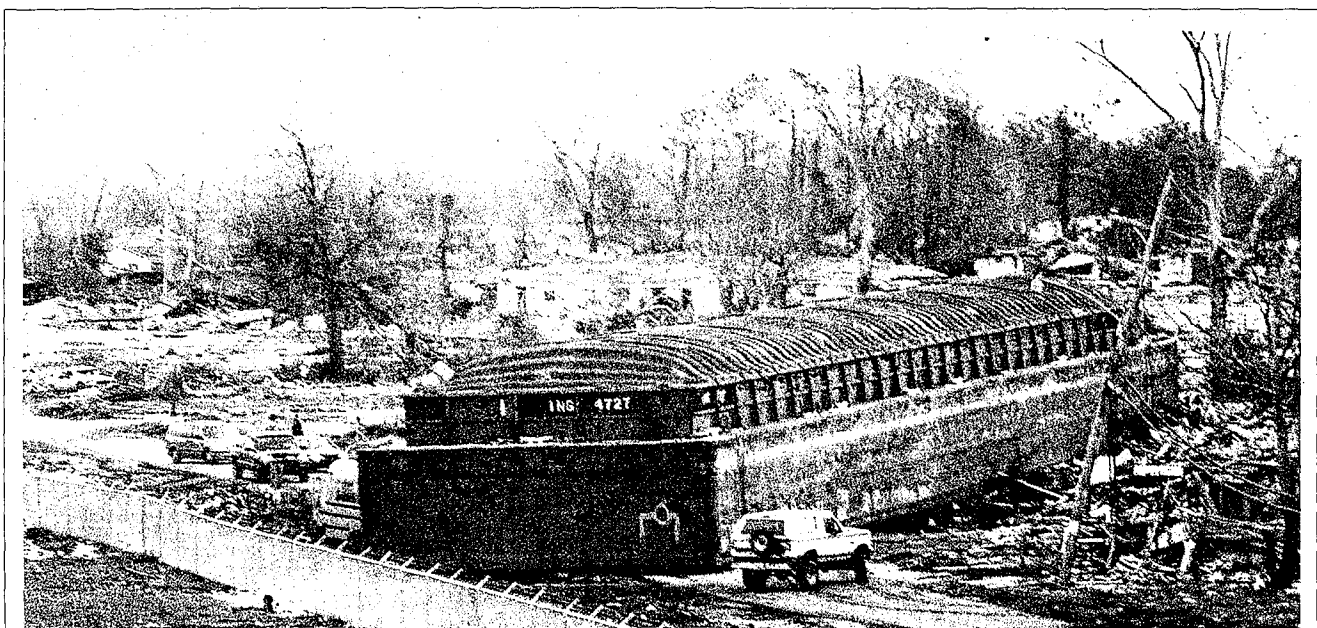
The Hon. Thomas Murphy, Urban Land Institute

Dr. Scott Cowen, President Tulane University

Feb. 24 *Rebuilding Coastal Louisiana*

Dr. John Day, Louisiana State University

Dr. Paul Kemp, Louisiana State University



Barge at the Industrial Canal levee breach.

The Katrina Agenda

COURSE RESEARCH TOPICS

MRGO: The history of legal and legislative/community challenges to the MRGO, present plans and attempts to close MRGO. (*Alison Roach, Emily Foster, Brandy Parker*)

Katrina's Four-legged Victims: Proliferation of stray and abandoned animals created by Hurricane Katrina, law and policy solutions. (*Susan Keller, Benton Komins, Stephanie Redmond, Kassi Richey Burns*)

Unfair Housing: The government's duty to provide public housing (including subsidized housing) in the aftermath of Katrina. (*Morgan W. Williams, Kara J. Bruce, Lois Kim, Matthew Almon*)

Eminent domain and Hurricane Katrina. Will New Orleans continue to be a chocolate city? Recent case law on eminent domain, just compensation, public land use and policy that has been recently adopted in New Orleans regarding these issues. (*Corey J. Thompson, Regina Duell, Shomari Wade, Hadiyah Thompson*)

Insurance: Address the larger insurance issues affecting local homeowners after Hurricane Katrina using a hypothetical client in different scenarios. (*Kayla Gilberti, Navin H. Jayaram, Max Tipton*)

Unprecedented Delay: Will the residents of New Orleans be disenfranchised without additional measures to provide absentee ballots and election polls? (*Alyssa Carducci, Angeliq̄ue Lehmann, Shelley Miller*)

April Elections: Focus on the April municipal elections, specifically, the proposals at the state legislature, and the lawsuit surrounding the election. (*Peter DeCamillis, Jamie L. Walters,*

Benjamin M. Castoriano, Elizabeth A. Chickering)

Post-Katrina Biotech Industry in NOLA:

Proposals to the City and the State for the emerging biotechnology industry centered around our research universities. (*Laureen Hernandez, Melissa LeGrand, Porter Nolan*)

Immunity and God: Government immunity and the Act of God defense

in the wake of Hurricane Katrina.

(*Kelly Jenkins, Maria R. Henderson, Kira Chung*)

Latin Americans: Latinos in New Orleans in the aftermath of Hurricane Katrina, employment rights, housing etc. (*Suzanne Dubon, Kidong Kim*)

Health Care: Recovery of the Health Care Centers in New Orleans; Inevitable Death or Wrongdoing? (*Rebecca J. Aledort, Julian Dufour, Sarah Schelling*)

FEMA's Emergency Response: Errors in eligibility, inefficient communication, excluding Theemail, etc. (In Ae Yang, Jie Hyeong Kim, Jiyeon Koh)

The Dutch and Venice solution for New Orleans: Dutch history in water management; the Delta works; the Venice solution (*Jeremy Epstein, Timothy Holliday, Seung-Shik Shin*)

Talkin' Trash: Green waste and debris, white goods, and hazardous waste. (*Fatimah Conley, Bridget Johnson, Jennifer Moore*)

Rebuilding: Constitutionality and effects of the Baker bill, LA Proposal, Bring New Orleans Back. (*Amanda McKnight, Drew Sprague, Matthew Marcellino*)

Historic Neighborhoods: Flood-proofing a historic city. How do we restore historic buildings and neighborhoods in areas like Holy Cross and Central City while preserving New Orleans's historic character? (*Machelle Lee, Alissa Hebert*)

Baker Bill: Taking the House: How Kelo, traditional concepts of property ownership and expanded government power combined to doom the Baker Bill. (*Mark Newberg, David DiMatteo*)

Another Perfect Storm



Course Research Topics *continued from page 5*

Music and Culture: Recovery of New Orleans' subsistence level musicians: unprotected and independent contractors. (*Robert Stein, Brian Wells*)

Mortgage and Insurance: Whether mortgage-holders are required to maintain flood insurance when losses exceeded limits of the previously-required policy. (*Tracy Morton DeGruy, Christie Burnett, Daniel Gibson*)

Redevelopment: The international development program, applied to New Orleans. (*John Gagnon, Aaron Zubler*)

Criminal Justice: 8,000 prisoners housed at Orleans Parish Prison as Hurricane Katrina hit the Gulf Coast.

(*Tamara Crepet, David Milling, Laura Rosenquest*)

Post-Katrina Zoning Regulations (*Elizabeth Thorowgood, Michael Harowsk, Samuel Brandt, Randall Gnat*)

Waste in Court: The Gentilly Landfill litigation. (*Corwith Davis, Jacob Robinson, James Ladas*)

New Orleans Redevelopment: The city's proposals. (*Joshua Katz, Brooke Albiston, Michael Passarella*)

Dude, where's my cab? Several thousand vehicles in exile. (*Daniel G. Smith, Gina Schimoeller, Norman Levedahl*)

Sharing Our Story

On January 13th sixteen students and two professors performed *Katrina Stories* at Tulane Law School. The play, written by LL Mary Nagle, was a compilation of more than fifty stories detailing how members of the Tulane Law School experienced Hurricane Katrina. Nagle interviewed students, professors, administrators, and staff following the hurricane, and wrote the play based on the interviews.

The play was a huge success, and it will be performed once again at Le Chat Noir on March 21st. For more information please contact Mary Nagle: mnagle@law.tulane.edu



Environment and Security at Critical Infrastructure

Jacobus Jourbert, LLM, 2002

It started by accident. Graduating with an LLM in Environmental law, I entered a summer internship with the National Environmental Trust in Washington DC, where I was put to work on chemical security issues. This was in the wake of failed attempts by Congress to pass a Chemical Security Bill to address risks posed to communities living in close proximity to chemical facilities. Heavy lobbying by the chemical industry had ensured that the bill remained in limbo, a situation that is unchanged some four years later. My task was to assess voluntary efforts by the paper and pulp industry to address their chemical security concerns. One of the findings was that while efforts by some chemical plants were laudable – switching to safer alternative chemicals, storing smaller amounts of toxic chemicals, and on-time delivery schemes – for the most not much had changed since 9/11.

My exposure to the world of chemical security landed

me a job with an environmental security-consulting firm focused on developing an integrated management system approach for security and environmental concerns commonly faced by the chemical industry sector.

Over the last four years, international security mandates have added complexity to the job of maintaining compliance at facilities considered a part of critical infrastruc-

ture. Before September 11, it was difficult enough for corporate managers and counsel to manage compliance with the broad array of requirements from an equally broad array of regulatory bodies. Advances in management systems in the last eight

years have helped firms cope and in some cases move beyond compliance to models of continuous improvement, pollution prevention and safety. ISO 14001, ISO 17799, BSI 18001, NFPA 1600, among others, marked important milestones as international standards. What these standards failed to do, however, was address risk in a comprehensive

“Perhaps the most hopeful news from our terrible new security imperatives is that environmental compliance issues are now a central part of the package, and will continue to be addressed in a proactive fashion.”

manner, and to incorporate risks of deliberate attack.

September 11 altered the risk calculus for the foreseeable future. No longer can an attack on a facility, its supply chain, or infrastructures be considered outside the scope of "reasonably foreseeable" events. Indeed, everyone is on notice of terrorist plans to use chemical or other facilities that manage hazardous materials as weapons of destruction. The better news is that these considerations are driving a more integrated approach to environmental and security assessment. Critical facilities which are required to conduct vulnerability assessments are beginning to combine them with a gap analysis of environmental, health, safety, information and security management systems.

One of the largest wastewater treatment systems in the world, for example, recently completed an environmental security audit, combining an internal investigation into acts of sabotage with an environmental compliance audit. It is now implementing a security management system, designed to incorporate the most significant aspects of several ISO management system standards towards achieving the overall security and environmental performance goals of the facility.

Significantly, this integrated approach allows identification of areas where resulting efficiencies may translate into cost, energy, and natural resource savings. In fact, substantial savings have been demonstrated at several military bases that have opted for security-focused environmental management systems.

Last August, in Tel Aviv, a group of experts from the United States and Israel convened to draft a new international standard for security management systems. Initiated by the United States/Israel Science and Technology Foundation (*see www.usistf.org*), the new draft incorporates standards for environmental, health, safety, information, emergency response, and disaster recovery management systems, as well as physical security guidance. Pilot projects at petrochemical plants, water treatment facilities, ports, aerospace facilities, and hospitals in the U.S. and Israel are to test the integrated approach, before the standard is finalized.

Perhaps the most hopeful news from our terrible new security imperatives is that environmental compliance issues are now a central part of the package, and will continue to be addressed in a proactive fashion.

Tulane Environmental Law Society

ELS Officers 2005-2006

President & Conference Coordinator: Lauren Hassler

Vice President: Wynn Cathcart

Secretary: Matt Fraser

Treasurer: Alex Pastern

Speaker Chairs: Jon Binder and Elizabeth Nagelin

Outings Chair: Alicia Smith

Conference Chairs: Kathy Harrison, Rina Eisenberg, Todd Campbell, Tina Hanson

Newsletter Chair: Brandy Parker



Heavy Paddling at Jean LaFitte.



Pictured from left to right: Kathy Harrison, Matt Fraser, Rina Eisenberg, Alicia Smith, Lauren Hassler, Elizabeth Nagelin, Todd Campbell

Spring Calendar

Jan. 16 – MLK Day get-together and semi-annual dessert-eating contest

Jan. 28 – Environmental Law Career Development Student Panel

Feb. 5 – Conference Planning Meeting

Feb. 12 – Canoeing at Jean LaFitte Nature Preserve

March 12 – Community Clean-up Project

April 1 – Spring Environmental Law Conference

April 15-16 – Annual camping trip to Horn Island

Oysters Rockefeller's: Billion Dollar Bivalves on the Bayou

Andrew Wilson, LLM 1993

For the past eleven years I have been defending the State in some highly unusual environmental litigation, Louisiana style. I have been hit with not one but two BILLION dollar judgments, the largest judgments ever handed down in an inverse condemnation matter in the United States, not to mention Louisiana. I have been placed under house arrest, kicked out of court, held in contempt, sanctioned and forced to plead the 5th amendment. I have had to file, or respond to, close to 50 writ applications and numerous appeals. In the end, with the assistance of several Tulane Law grads and faculty, as well as the press, the State prevailed.

It all began in early 1993 during my last semester at Tulane when Professor Houck introduced me to Dr. Len Bahr, the Governor's Advisor for Coastal Activities, who was visiting our Coastal Law class. Dr. Bahr asked for assistance in evaluating claims by oyster leaseholders who were complaining that coastal restoration projects, particularly freshwater diversions, were destroying the oysters on their leases. These projects were built by the U.S. Army Corps of Engineers but operated by the State.

"I have been placed under house arrest, kicked out of court, held in contempt, sanctioned and forced to plead the 5th amendment."

Eventually, in 1994, the oyster leaseholders filed a class action in Plaquemines Parish that would become known as *Avenal v. State*. My firm, Burke & Mayer, was appointed by the Louisiana Attorney General to defend the State. The plaintiffs also filed a separate action against the United States in the Court of Federal Claims in Washington, D.C. Both suits sought millions of dollars in damages for alleged oyster mortality caused by fresh water coming from the Caernarvon diversion structure.

The Federal Claims Court dismissed the case on summary judgment, ruling that the plaintiffs had no compensable property interest in the artificially elevated salinity conditions caused by the post-1927 Mississippi River levee system. The diversion project at Caernarvon was, indeed, designed to eliminate those elevated salinity conditions because they were

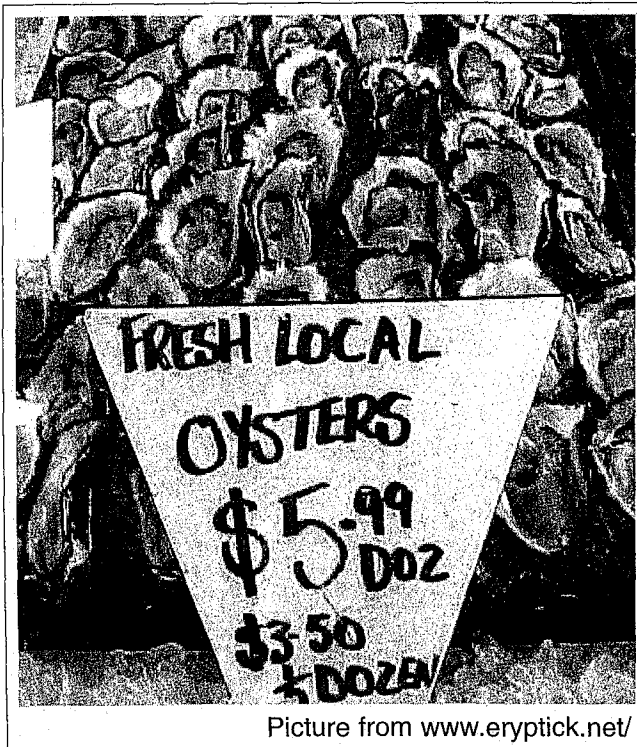
killing plant life and destroying land and wildlife habitat.

On appeal, the Fifth Circuit affirmed but on different grounds. It held that the plaintiffs could not recover since they lacked any reasonable investment-backed expectation in their leases. Not only had they known about the project ahead of time - they had lobbied for it for 30 years! They had done so because oysters need fresh water to ward off predators and disease that arrive with saline sea water.

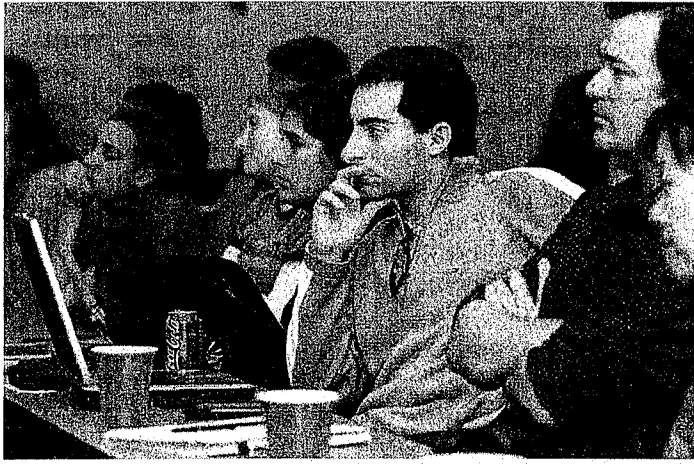
Once that federal judgment was issued, the State first attempted to assert the same reasoning in the state litigation using collateral estoppel. The case was initially dismissed on that basis, but reinstated a few months later when one appellate judge reversed his vote on rehearing. The case went to trial and the trial court (after denying the State access to the plaintiff's oyster production records) awarded the five representative plaintiffs \$48,000,000, based upon the cost of "paving" all of the plaintiffs' leases with 6 inches of "cultch" material on which the oysters grow. This condition was not present before Caernarvon became operational. The trial judge then extrapolated the award over the entire class action area, encompassing most of Breton Sound, resulting in an award of \$1,300,000,000!

On appeal, the court affirmed for the most part, but also awarded even more money to lead plaintiff Albert Avenal, who purchased his leases on the same day he filed suit and admitted that most, if not all of his leases, never produced oysters before Caernarvon was built.

At the Louisiana Supreme Court, the plaintiffs met with stiff opposition. The State was assisted by several amici, one brief from Prof. Houck and another from the City of New Orleans arranged by Tulane law grad, Yarrow Etheredge.



Picture from www.eryptick.net/



Students focus at the Katrina Lectures.

My firm was also assisted throughout the litigation by the Louisiana Department of Natural Resources, including Tulane law grad John Parker, who is assistant general counsel for the agency. Our efforts proved successful. Our oral argument was the first case heard in the newly-renovated Louisiana Supreme Court building, an impressive venue. The Court reversed and dismissed all claims based upon a hold-harmless clause in the lease forms, and prescription (laches). The plaintiffs then retained the Dershowitz firm to petition for certiorari before the U.S. Supreme Court. Writ was eventually denied.

But it was not over yet. Separate litigation had been

filed in St. Bernard Parish in 1996 by other oyster leaseholders as a result of the same Caernarvon project. There, it was eventually revealed that the lead plaintiff was a former client of the trial judge and that the judge was the very individual who had inserted the indemnity clause into the oyster lease form in 1989 while he was with the Governor's office. The judge then ruled that his own indemnity clause was invalid. He also cast the case as an "admiralty" case, thus circumventing prescription and eliminating the State's right to a jury trial. My unsuccessful motion to have the judge recused due to his personal involvement in the case apparently offended the court personally, and resulted in the punitive measures described above.

By the time of the trial, nearly all of the State's defenses and evidence had been barred. The judge eventually issued 3 separate judgments to various groups of plaintiffs amounting to over \$1 billion. The holding was eventually reversed on appeal, and later dismissed outright. In the end, the State had essentially dodged two billion dollar bullets. Expensive oysters, indeed.

At present, the combined effect of the two decisions as well as the legislative efforts to provide a rational compensation scheme should bring an end to the Louisiana oyster cases. The decisions appear to have re-opened the public trust doctrine in Louisiana, on which their holdings were based. All of this bodes well for coastal restoration.

11th Annual Environmental Law Conference Set for April 1, 2006

Despite delays in planning, the 11th Annual Tulane Environmental Law Conference: Law, Science and the Public Interest will go forward this year on Saturday, April 1. The conference is hosted this year by the Tulane Environmental Law Society in conjunction with The Sierra Club, Louisiana Environmental Action Network (LEAN), The Environmental Law Institute (ELI), Tulane Animal Law Society, Tulane Family Law Society, Tulane Federalists Society, Tulane Human Rights Law Society, Tulane International Law Society, and Tulane Law Women.

The conference draws over 300 participants annually from academia, law firms, business and advocacy groups and the general public from around the Gulf Coast Region. This year the conference will focus on environmental issues facing New Orleans and the Gulf Coast in the months following Hurricane Katrina.



The Kitchen Cabinet: Gunther Handl, Oliver Houck, Elizabeth Nagelin, Lauren Hassler.

For more information on this year's conference, please visit: <http://www.law.tulane.edu/enlaw/>

Environmental Law Clinic News

Through victories, setbacks, and a three-month evacuation, the Tulane Environmental Law Clinic soldiered on. For example:

In October 2005, a federal court granted our clients summary judgment that the ExxonMobil-operated Chalmette Refinery is liable for more than 2600 Clean Air Act violations. *St. Bernard Citizens for Environmental Quality, Inc. v. Chalmette Refining*, 399 F. Supp. 2d 726 (E.D. La. 2005). In November, the court issued a stipulated order enjoining further violations of the refinery's permit limits for benzene emissions from three refin-ery tanks.

On behalf of several clients, the Clinic began a project in April 2005 to reduce mercury emissions in Louisiana. The Clinic petitioned the Louisiana Department of Environmental Quality to reopen an air permit for the PPG Chlor-Alkali Plant in Lake Charles, Louisiana, to consider conversion to a mercury-free process.

On August 4, 2005, PPG responded by announcing it would move to a mercury-free system by mid-2007.

The Clinic, however, is working to ensure that the state incorporates PPG's plan into its permit, as an enforceable permit condition.

In February 2005, the Clinic's clients appealed a state decision to exempt Waste Management of Louisiana's landfill gas system at a Livingston Parish landfill from Clean Air Act regulations that require state-of-the-art technology to

prevent significant deterioration of air quality. The district court upheld the exemption, however, and the case is on appeal. An interesting aspect of this case is that it challenges Waste Management's status as the lawful operator of the landfill. In February 2005, the U.S. Department of Justice announced that a Livingston Parish councilman had pled guilty to accepting \$17,000 to cast the deciding vote in favor of transferring the landfill permit to Waste Management.

In another landfill case, the district court for St. Helena Parish awarded the Clinic's clients summary judgment

that a Parish contract to host a new landfill is null and void. The court set the contract aside because the Parish Police Jury had denied citizens their right to participate in the decision-making process by violating Louisiana's Open Meetings Act.

On behalf of a coalition of fishermen and environmentalists known as the "Gumbo Alliance," the Clinic petitioned the Fifth Circuit Court of Appeals to overturn a permit by the U.S. Department of Transportation for a

liquefied natural gas terminal in the Gulf of Mexico. This facility would destroy marine life in millions of gallons of seawater each day by using an "open loop" system for heating super-cooled, liquid gas to be piped onshore.

Since the Clinic filed this case, Louisiana Governor Blanco and her predecessor, Governor Foster, have announced their opposition to "open loop" technology. Oral argument was held March 7th.

Also in the Fifth Circuit, the Clinic presented its argument in November to preserve a district court's injunction against an Army Corps of Engineers permit for the destruction of 85 acres of St. Tammany Parish forest, 39.5 acres of which are wetlands. The district court rejected the Corps' decision for failing to demonstrate that "mitigation measures would remove or reduce the identified adverse impacts of the project" and failing "to give an in-depth analysis of the cumulative effects of the project."

In May 2005, the Environmental Law Institute awarded one of our clients on this case, Hazel Sinclair, its prestigious National Wetlands Award for "exemplary contributions in conserving or restoring the nation's wetlands."

-Professor Adam Babich, Clinic Director



Student attorneys Clay Garside and Kate Jensen, and staff attorney Corinne Van Dalen after the Chalmette hearing.

Tulane Environmental Law News

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Environmental Law and Policy

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Layout

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The Tulane Environmental Law Society and the Tulane Institute for Environmental Law & Policy would like to thank everyone who contributed to this issue.



Journal at Year 19

The Tulane Environmental Law Journal will publish two issues during the spring semester. The first issue features an essay from Tulane Professor Oliver Houck entitled "Can We Save New Orleans?". Other topics include: recent developments in eminent domain jurisprudence, the clash between solid waste management and the Commerce Clause, the role of the Social Function doctrine in Latin American land reform, and mechanisms for ensuring corporate accountability for international environmental harms.

Faculty Notes

Adam Babich

Publications:

"The Apolitical Law School Clinic," 11 *Clinical L. Rev.* 447 (2005); "A Reply to Wizner and Solomon's 'Law as Politics,'" 11 *Clinical L. Rev.* 481 (2005).

Presentation:

"Louisiana Environmental Justice," Young Leadership Council, *One Book One New Orleans*, Panel Discussion on Race and Civil Rights, New Orleans, March 2005.

Gunther Handl

Environment-Related Publications:

"International 'Lawmaking' by Conferences of the Parties and Other Politically Mandated Bodies," in R. Wolfrum & V. Röben, eds., *Developments of International Law in Treaty Making* 127 (2005).

Presentations and Other Related Activities:

"Marine Protected Areas on the High Seas and the Law of the Sea," Eighth International Wildlife Law Conference, Tulane Law School, November 19, 2004; "The United States and International Law – An Increasingly Troubled Relationship: The International Legal Regime on Global Warming," Chuo University, Faculty of Law, Tokyo, November 30, 2004; "The WTO and the Environment," University of Montreal, July 15, 2005. Visiting Professor, Chuo University, Faculty of Law, Tokyo, November 20 – December 14, 2004; Visiting Professor, University of Salzburg, Austria, Faculty of Law,

May 30 – June 17, 2005: "International Environmental Law."

Oliver Houck

Publications: "Can We Save New Orleans?" *Tulane Environmental Law Journal*, Spring 2006; "O Canada! Rafferty, Oldman and the Great Whale," *Boston College International Law Review*, Spring 2006; "Reflecciones sobre la EIA," *Revista Andaluza de Administracion Publica*, Spring 2006; "You Can't Have Your Wetlands and Eat 'em Too," in *After the Storm: Restoring America's Gulf Coast Wetlands*, Environmental Law Institute, Spring 2006; "Secretary in the Wilderness," Book Review: Bruce Babbitt, *Cities in the Wilderness*, *Environmental Forum*, Spring 2006; "Recovering from Katrina and Rita: Environmental Governance and Lessons Learned and Applied," *Environmental Law Reporter*, February 2006; "The US House of Representatives Task Force on NEPA: The Professors Speak," *Environmental Law Reporter*, December 2005; Environmental Protection and Sustainable Development, in *An Alternative Vision for Rebuilding, Redevelopment and Reconstruction, From the Lake to the River*, Winter 2005; "Things Fall Apart: A Constitutional Analysis of Legislative Exclusion," *Emory Law Review*, Winter 2005

Presentations and Related Activities: Submission of Professors of Environmental, Administrative and Natural Resources Law on the National Environmental Policy Act to the House Resources Committee, US Congress, Fall 2005; Presentations on Katrina, causes, consequences and remedies, Georgetown Law Center, American University and George Mason Law School, Fall 2005; Member, Subcommittee on Sustainability, Mayor's Bring Back New Orleans Commission, Fall 2005



Flooded refrigerators in the Ninth Ward become political message boards.

Faculty Notes

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Jonathan Nash

Publications:

Trading Species: A New Direction for Habitat Trading Programs, 31 Colum. J. Envtl. L. (forthcoming 2006).

Recent Lectures:

The Unknowing Race to Capture, Tulane Law School Faculty Brownbag Series, October 2004; *Packaging Property: The Effect of Paradigmatic Framing of Property Rights*, Tulane Law School Faculty Workshop, April 2005; *Packaging Property: The Effect of Paradigmatic Framing of Property Rights*, American Law and Economics Association Annual Meeting, May 2005; *The Law and Economics of New Source Review*, Cornell Law School Faculty Workshop, August 2005; *The Law and Economics of New Source Review*, Canadian Law and Economics Association Annual Meeting, September 2005; *Packaging Property: The Effect of Paradigmatic Framing of Property Rights*, Canadian Law and Economics Association Annual Meeting, September 2005; *The Unknowing Race to Capture*, Midwestern Law and Economics Association Annual Meeting, October 2005; *The Unknowing Race to Capture*, Columbia Law School Faculty Workshop, November 2005; Panelist, "Debt for Nature Trading; Economic Incentives for Environmental Protection?", Columbia Law School, New York, NY, November 2005.

The Tulane Environmental Law Program graduates 40-50 students a year with Certificates of Specialization in Environmental Law, and more than twice that number with at least one environmental law course in their upperclass years. They go on to diverse fields of practice, from the following notes recently received:

Nancy Abudu (1999) is a staff attorney with the ACLU's Voting Rights Project in Atlanta, GA. She also represents an ACLU client in an environmental whistleblower case. In December 2005, Nancy was named a fellow in the Environmental Leadership Program, which provides training for 20-25 talented and diverse individuals each year engaged in environmental and social change work.

Mark Albrecht (1993) Associate Attorney — Ivie, McNeill & Wyatt — Los Angeles, CA — Criminal and Civil Defense (little environmental). That's pretty much it work wise for the past year. Saddened, of course, to see the Karina devastation and glued to the TV/internet.

Environmental Law Internships Panel —

Saturday, January 28, 2006

Russa Kittredge from the Career Development Center and Jon Binder of the Environmental Law Society, hosted a Student Internship Panel to help the first year students in their quest for the perfect summer internship.

Jon Binder – Moderator – Jon lead the discussion and spoke about his 1L internship with the public interest law firm Terris, Pravlik, & Millian in Washington DC, and went on to discuss his 2L summer job search experience, ultimately choosing to work for Earthjustice in Denver.

Lauren Hassler – Lauren told about her 1L internship with the North Carolina DOJ, Environmental Division, in Raleigh, NC and landing a 2L internship in the Southern Environmental Law Center in Chapel Hill, NC for this summer.

Adam Dinnell – Adam discussed how his 2L internship with the US DOJ, Civil Division, Torts Branch, Environmental Torts Section ultimately led to an offer for a permanent position after graduation.

Seth Hennes – Seth spoke about his 2L internship with the Southern Environmental Law Center in Atlanta, Georgia.

Elizabeth Nagelin – Elizabeth shared information about her 1L internship with the non-profit organization Alliance for Affordable Energy, here in New Orleans.

Eric Ames (1990) Reports recent cases with New Mexico Department of Environmental Quality Electric Generation - \$200M settlement with PNM-San Juan Generating Station (May 2005), 1800 MW gross coal-fired EGU, west of Farmington, NM, installation of Low NO_x burners (NO_x), baghouses (PM), scrubber upgrades (SO_x), and activated carbon injection (Hg) on all four units. Crude Oil Refineries – Giant Industries Arizona and Navajo Refining Company (2003) settled state actions and coordinated federal actions against 3 refineries (entire refining capacity in NM), in addition to \$20-30M price tag for environmental projects (each company), Navajo paid \$750,000 and Giant paid \$850,000 (of which \$600,000 used for SEPs). Natural Gas Distribution – Settlement of dispute with El Paso Corporation regarding applicability of state ambient air quality standards under Title V (June 2005); El Paso will spend approx \$30M to reduce emissions and relinquish grandfathered status for state NSR program at 10 natural gas compressor stations. Natural Gas Processing – Developing Gas Plant initiative to address systemic excess emissions and flaring events at 13 sour gas plants in SE NM; in discussions with Duke Energy Field Services, joint venture of Duke Energy and Conoco Phillips, for 3 gas plants.

"On September 1, I will leave government and return to the Western Environmental Law Center to work on western water and local land use/natural resource issues. We have our share."

Adam Baron (2002) Office of Counsel, Region X, EPA. "Taking a group of 14 for a float through the Yakima canyon this weekend. Lot's of newbies to go canoeing – several have never slept outside. Maybe a little more about the beer and campfire than the float, but should be a lot of wildlife

Alumni Notes

(raptors etc.) around so maybe I can spark some imaginations..."

Clarissa Kay Bauer (1984) was named an adjunct professor at the University of Houston Law Center and began teaching a course on environmental enforcement. She works for the Harris County Attorney's Office (Houston, Texas) as a full-time environmental prosecutor and has lectured to prosecutors throughout Texas on environmental enforcement.

Michael Behan (2000) Senior Policy Advisor to U.S. Representative Bernard Sanders (I-VT) in Washington, DC, focusing primarily on environmental and healthcare policy.

Sarah Bittleman (1993) Works in the office of Senator Wyden (D Ore.) primarily on forestry and water issues. They are numerous, complex and politically sensitive.

Bryan Brody (2005) "I have been working as an attorney in Springfield, Missouri for the past several weeks. This firm has not previously taken environmental law cases, but I am free to pursue whatever cases I feel have merit. I plan to attend the Conference and look forward to seeing you there in March."

Jon Schuyler Brooks (1984) "I have been retained by a number of citizen groups opposing the efforts of the Suffolk County (Long Island) Water Authority to drill a supply well into - and thereby breach - the Lloyd Aquifer."

Theresa Duckett (formerly Lesh) (2002) has been practicing with Lord Bissell & Brook LLP in Chicago, Illinois since 2002. Her practice includes environmental law, where she has worked with clients on regulatory compliance and advising as well as litigation matters. Her article, "Sailing Beyond the Safe Harbor: Lender Risk Issues in Financing Brownfield Sites," will appear in the February 2006 issue of Real Estate Finance.

Theodore Haik (1998) Reports assisting in the settlement of a major EPA water treatment enforcement case in New Iberia, Louisiana, which reduces to a minimum fines against the city in return for accelerated construction and more rigorous maintenance of sewerage lines and treatment facilities.

Carson Hodges (2004) Started work as Counsel to the Tennessee Department of Environment last July. Presently litigating issues arising from state-issued environmental and

land-use permits. Prepared a motion for summary judgment on the City of Bristol's challenge to various provisions of its municipal wastewater discharge permit.

Ember S. Jandebour, (formerly Packer) (JD 1991, MA 1991) returned from a 14 month pro bono assignment with the American Bar Association's Central Europe and Eurasia



Residents vent their frustration at the pace of post-Katrina cleanup.

Law Initiative (CEELI) where she was posted to Banja Luka, Bosnia (the Serb portion of Bosnia). After returning to the States, she accepted an administrative law judge position with Pennsylvania Public Utility Commission. As a utility ALJ, Ember hears and renders decisions regarding electric, gas, water, sewer, telephone, rail and motor carrier utilities. A current concern in PA is

jurisdiction over quality of water issues (not health related, for example, quality of appearance, taste, the water's ability or lack thereof to clean laundry, etc).

Courtney Harrington LeBoeuf (2003) Recently joined the Law Office of John D. Edgcomb (1983) in San Francisco. The environmental law firm represents clients in complex, multi-PRP cost recovery actions, administrative enforcement matters and voluntary site cleanups before environmental regulatory agencies across the United States.

James H. Levine (1997) Has been elected a shareholder in the Chattanooga office of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC. He is a 1997 cum laude graduate of Tulane University Law School, where he served as Managing Editor of the Tulane Environmental Law Journal.

Bright Mando (2003) "I hope that Tulane has recovered from Hurricane Katrina. We were with you in our prayers... I am applying for the Yale World Fellows Program."

Benjamin Franklin Marshall, IV (1984) "My practice is centered in Monroe in North Louisiana which other than providing support to victims of Hurricane Katrina was unaffected by it. Over the years I have also been involved in politics. From 1992 to 2000, I served as a Ouachita Parish Police Juror. In that capacity we were called upon to address environmental issues on many fronts, from sewerage backups in subdivisions all the way to a federal court battle with EPA over the storage of imported lead contaminated soil."

Luis Martinez (2002) "I worked for the Puerto Rico Environmental Quality Board last year, preparing a new

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Environmental Law Code. The code did not move forward in the legislature, but we did rewrite the main environmental law in Puerto Rico. I am now working for the Natural Resources Defense Council in New York, with their energy group focusing on a project to stimulate a federal response to global warming. See www.stopglobalwarming.org website.”

Marian Mcpherson (1990) “I still lead the life of government bureaucrat by day (with NMFS), but, in my free time I’m serving as President of the Board of Smart Coast, a community group dedicated to planning for all the growth our area is experiencing and encouraging a healthy coastal community. We’ve been well positioned to assist communities in developing a coordinated plan for post-Katrina construction and rebuilding in Alabama. I’m so glad Tulane survived and is getting things back together. Let me know if there’s anyway to be helpful.”

Michele Merkel (1998) “I helped to start the Environmental Integrity Project four years ago. EIP is a non-profit in Washington, D.C. We work closely with local communities to protect the public’s health and resources by promoting better enforcement of federal environmental laws. Our litigation and policy work focuses primarily on power plant, refinery and industrial agriculture issues. Prior to EIP, I worked in the criminal section of King & Spalding, then as General Counsel for Upper Chattahoochee Riverkeeper, and as an attorney in EPA’s Water Enforcement division.”

Jackson Morrill (2001) “From January to early May of 2005 I lived and worked in Sydney Australia as a ‘visiting scholar’ for the Commonwealth Scientific and Industrial Research Organization (CSIRO). I was asked to analyze the impacts of recent, far-reaching reforms on water management in the state of New South Wales on local councils. Australia is aggressively trying to address its water crisis, and is a testing

ground for new approaches, most notably Integrated Water Cycle Management and Integrated Catchment Management.”

Courtney O’Hara/Taylor (2000) Attorney, Office of the Solicitor, US Department of Interior. She joined the Solicitor’s Office almost three years ago after two years in private practice. Her clients are the National Park Service and the Fish and Wildlife Service. For two years, she worked on Everglades Restoration handling issues that involved endangered species, water quantity, water quality, and NEPA.

John Wayne Pint (2004) “I am currently practicing patent prosecution at the Boston office of Proskauer Rose LLP in technologies ranging from telecommunications companies to welding and cutting torches. While I am not currently doing any work in the environmental field, in the past year I have written some patent applications relating to fuel cell technology, particularly solid-oxide fuel cells.”

Mireille Redmond (1995) Still working on those 46 high peaks [in the Continental US] - more slowly now as I did all of the easiest ones.”

Adam Reeves (1995) “I’m in the process of trying to convince our Division of Wildlife to use some of the new funds to purchase 20,000 acres north of Denver that a fast growing suburb bought just to secure the water rights. Under Colorado law, agricultural dry up requires that the former farms have natural vegetation in re-established in order to conserve the soil. Since the water is being pulled out it is unlikely that the property will ever be developed into suburban tract housing, but it is likely that it will end up as 35 acre rachettes with domestic wells exempt from administration if not purchased for conservation.”

Susan Richardson (1991) “I am a partner with the Environmental Group of Kilpatrick Stockton’s Atlanta, Georgia office. I just completed my tenure as Chair of the State Bar of Georgia’s Environmental Law Section. I am married to Craig Richardson (who is also in the environmental field — serving as Zonal VP of AIG’s Environmental Insurance division) and have one daughter, Molly, who is almost 6 years old.”

Elizabeth Barrett Ristroph (1994) “In Spring 2005 I published an article first drafted in a Comparative Environmental Law class at Tulane, entitled “Leave it to the Scientists! An Examination of Russian Environmental Policy-Making, 10 ALBANY L.E.O.J., 33 (2005).”

Martha Rodriguez (2000) “Today [July 25] was my first day at my new job with the United States Counsel General in New York City. I will not be a lawyer for the next three years and will instead be conducting vessel inspections and marine casualty investigations. I am excited about this, and know it will make me a better lawyer in the end.”



Impromptu FEMA help desk in Lakeview.

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Juan Manuel Sabogal (1996) "It's good to know you guys are OK and kicking!! As I live in Bogotá, Colombia, the only trouble the hurricane caused me, was the sorrow and suffering I felt knowing that N.O. and Tulane people were in such a situation. For the last 2 years I've been working for the National Parks Authority of Colombia, at first as a legal advisor, and from May 2005 as the director of the Legal Department of the Unidad de Parques Nacionales Naturales."

Meredith Sherman (2005) "I am working in environmental law at Fowler White Boggs Banker PA in Tampa, Florida. I work mostly with local governments on environmental permitting issues. In the Tampa Bay area, local governments seem to take development issues, especially impact to the environment, very seriously and require a lot of creativity from developers to avoid these impacts. It has been a great learning experience so far!"

Allison Sondak (2002) "I have been working pro bono on a case in Florida, challenging construction pursuant to a regional general permit the Corps issued for the Florida Panhandle." The permit provides blanket authorization for development in some 48,000 acres around Lake Powell, West Bay and Choctawhatchee Bay in Walton and Bay counties. The primary beneficiary is St. Joe Company, which owns more than 8 percent of the land in the area and is the largest private real estate holder in the state."

Hans Sperling (2000) "Though I spend my days doing international business law here in Tokyo, in my free time I am writing a law journal article about tradable carbon emissions permits under the United Nations Framework Convention on Climate Change and associated agreements."

Christina Sprecher (1996) "I live and practice law in New Orleans, focusing primarily on plaintiffs' toxic tort cases. In my spare time, I enjoy painting works inspired by current political and social events."

Roberta Stewart (1998) "I got married on October 1, 2005 to Seth Kaufman; we are both lawyers for the DOT in Washington D.C. Seth's office at DOT was also able to host a couple of Katrina-exiled law student interns last semester - one from Tulane. The students literally came here with the clothes on their backs and their laptops. It was good to be able to do something for New Orleans and Tulane."

Tyler Storms (1996) "We really enjoyed having Tulane sports at LA Tech, and we (along with the rest of the state) housed and fed a lot of folks. While the nation marveled at Houston taking in 20,000, most of the cities in this state had populations rise by at least ten or twenty percent. Thanksgiving had a whole new meaning for me in 2005. I was in law school back in the May 8th flood (1995, I think), which was a record flood for NOLA at that time. Exams had to be rescheduled, and business shut down for at least three

days. I distinctly remember how impressed, even surprised, I became at how FEMA stepped in and made so many people whole. It is amazing just how the way government treats people is influenced by who occupies the White House. Roll Wave!"

Mary Penny Thompson (1997) "I've become the General Counsel for the N.C.



High water lines.

Department of Environment and Natural Resources. I advise the Secretary and senior staff of the Department on various 'hot topics' that arise in the course of regulating development and enhancing natural resources. This year, our Department is assisting in developing a state-wide emergency response manual [a response to storms like Katrina]."

Jason Totoiu (2004) "I am glad to hear everyone is back on their feet. As for me, I am in Montgomery, Alabama where I work as a staff attorney for WildLaw. In the next couple of months I will be moving to Tallahassee to join our Florida office. I don't know where I would be if it wasn't for Tulane's environmental program. You prepared me well. Keep up the fantastic work!"

Duangrak Trongmethirat (2001) "I have been working for the Pollution Control Department in Bangkok, but working here does not support the research I expected. Therefore, I am applying to graduate programs at the University of Washington and University of Florida."

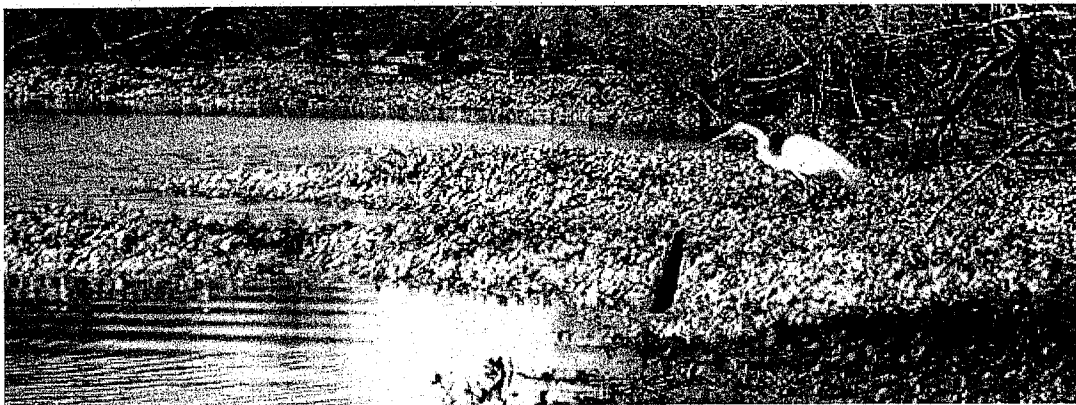
Tricia Weeks (1988) "I'm in an environmental practice here in New Orleans with my husband, John Gonzalez (1987). We represent private landowners and several School Boards in remediation claims against the oil and gas production industry. Several clients also have land loss claims related to production canals dredged and abandoned by the oil industry. Working to get Louisiana cleaned up, one acre at a time."

THE FOUR PILLARS:

TULANE'S ENVIRONMENTAL LAW PROGRAM

The Tulane Environmental Law Program is one of the largest and most diverse in the United States. Each year Tulane graduates more than forty Juris Doctor and a dozen Masters candidates with specialties in environmental law. What distinguishes Tulane's program in addition to the experience of its faculty is the scholarship of its journal, the strength of its clinic, the projects of its institute, and the momentum provided by an engaged group of students. These four 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 developmental policy. For more information, contact the Law School's admissions office at John Giffen Weinmann Hall, Tulane University, 6329 Freret Street. (504) 862-5930, or its web site at <http://www.law.tulane.edu>.



"Hope is the thing with feathers that perches in the soul." -Emily Dickinson (1830-1886)

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