

## From Harlem to Havana:

### *Environmental Law after the "Special Period"*

Professor Sheila Foster of Fordham University School of Law in New York is accustomed to analyzing environmental regimes in the sometimes-mean streets of United States' urban neighborhoods. A specialist in urban environmental law and the unique legal issues that US cities face, Professor Foster opened her eyes this past August to a cityscape that at times looks more like Beirut than Brooklyn.

The Malecón, or seawall, of Havana, is also the name given to a broad avenue that traces the shoreline for

miles between the outskirts of Havana and the old city. It presents an almost unbroken row of late 19th Century architecture that sits battered by the elements and by overdue repair. As the Malecón rolls into Havana, the scene appears little changed since the 1950's – save for the



Havana's malecón winds into the city along a boulevard that draws more pedestrians than cars today . . . and tomorrow?

presence of less affluent residents, fledgling street merchants, and an occasional tree sprouting from an upper-story window – new modes of life in century-old edifices.

Professor Foster joined a research

### **Jonathan Nash Joins Environment Faculty**

Tulane extends a warm welcome to Professor Jonathan Nash as he joins our faculty this fall. He comes to Tulane from the University of Chicago Law School, where he has been on faculty for the past two years. A graduate of NYU School of Law, Nash has clerked for the U.S. District Court for the Southern District of New York and for the U.S. Court of Appeals for the Fourth Circuit. He has experience in both civil and criminal litigation in New York City, including white collar defense work, tax litigation, and transactional practice. After receiving his LL.M. from Harvard Law School, he went on to do postdoctoral research at the New York University Center on Environmental and Land Use Law, where he began researching tradable air emissions permits.

Professor Nash brings new perspectives to Tulane, in particular on the interplay of markets and environmental protection. In these he includes "po-

litical markets," a nod toward pragmatism in environmental law. His works in progress include an analysis of the extent to which tradable permits create property rights, and of tradable endangered species permits.



Jonathan Nash

In the Fall 2002 semester, Nash will teach Pollution Control; in the spring, he will teach Law & Economics (with an environmental policy bent) and Common Law Property. He says he is eager to be in a city with "such rich culture, great restaurants, and weather warmer than Chicago." On the other hand, Professor Nash, there is August in New Orleans...

—Clare Bienvenu, 2L

project that Tulane's Institute for Environmental Law and Policy sponsored in Cuba this summer as part of the urban research team; her tentative thesis on the experience: "From Harlem to Havana: Sustainable Urban Development." Other teams focused on rural and on coastal concerns. Under a long-term grant from the John D. and Catherine T. MacArthur Foundation, and with support from the General Service Foundation, the Institute took fifteen academics and experts in environmental law and policy to points in and around Havana. Professors from Law Schools in Florida, Texas, California and Washington –

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## Green Advocates in Liberia

*This article is brought to you not only for its information on environmental law in Africa, but also to underline the great commonality in these struggles, their challenges and their solutions, be they in Liberia, Louisiana or any other part of the world.*

Liberia is a small nation on the west coast of Africa with rich natural resources and a special relationship to the United States. In 1822, an American Quaker society started a colony of repatriated slaves in West Africa; twenty-five years later, the colony was recognized as the new nation of Liberia. Because of its American origins, the culture, governance and law of Liberia would follow that of the United States.

Today, Liberia is a country under siege. Fifty percent of the country's surface is covered by forest, but civil wars and unrestrained mining and logging have wasted much of the landscape. Shifting cultivation, livestock, fuel wood harvesting, charcoal production, human settlements, fishing and

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## Political Controversy and Citizen Enforcement at the Tulane Environmental Law Clinic

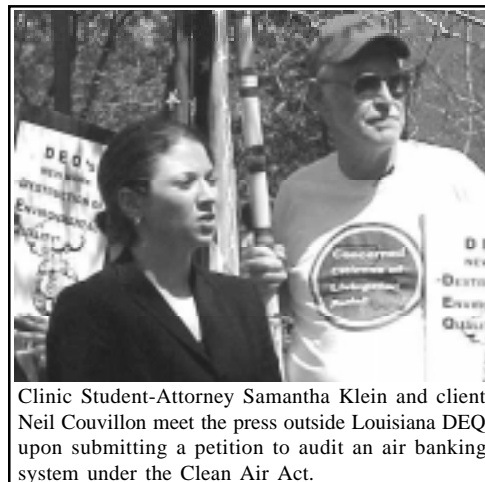
Last December saw the premiere of Lifetime Television's "Taking Back Our Town" - a film about *St. James Citizens for Jobs and the Environment's* successful challenge to Louisiana's decision to allow Shintech, Inc. to build a huge new polyvinyl chloride plant in an already overburdened community. Students from Tulane's Environmental Law Clinic represented St. James Citizens in the case and the clinic features prominently in the film.

After the St. James Citizens' success in the Shintech case, the Louisiana Supreme Court revised Rule XX, which allows Tulane's student attorneys to appear in court before completing law school or passing the bar exam. As it has turned out, however, the practical effect of the revisions has not been to deny legal representation to the clinic's clients or to diminish the role of

the clinic's student attorneys. Instead, as explained in an article posted on the clinic's web page (<http://www.tulane.edu/~telc>), the clinic remains a vital part of the Louisiana legal community and a place where Tulane law students represent real clients on the cutting-edge of environmental law.

Perhaps inevitably, given the state of environmental regulation in Louisiana, the clinic's docket is focused largely on the related issues of (1) the rule of law and (2) environmental protection and justice. For years, many of the clinic's clients have maintained that Louisiana's Department of Environmental Quality (LDEQ) - despite the best efforts of some individual LDEQ staff members - has failed to competently or evenhand-

edly administer the anti-pollution programs that the Louisiana legislature and



Clinic Student-Attorney Samantha Klein and client Neil Couvillon meet the press outside Louisiana DEQ upon submitting a petition to audit an air banking system under the Clean Air Act.

the U.S. Environmental Protection Agency have entrusted to it. Many of these concerns were confirmed and am-

*Continued on page 13*

### Columbia Law Students Take Spring Break at Clinic

Think about your favorite Spring Break. For some of us that would be Cancun, or Fort Lauderdale, or perhaps something you remember as terrific but can only hazily recall. For a group of Columbia law students, the annual ritual this last Spring involved helping people for whom Spring Break is something that other people do, people from a different world. Instead of foam parties or mechanical bulls, the New Yorkers chose public interest work in New Orleans.

In March, twelve Columbia students piled into two vans and drove the 24 hours from the Big Apple to the Big Easy to assist the Tulane Environmental Law Clinic. Jobs varied, but they involved experiences rarely obtained in your standard law firm. They hauled a clinic copier to the Louisiana Department of Environmental Quality to make copies of water discharge permits and violations records; they interviewed clients in low-income communities; they helped prepare for trials and started files for new enforcement actions.

Columbia 2L Tabber Benedict commented, "I was personally touched by visiting and listening to a resident who has been living next to an oil refinery known to be in continuous violation of its emissions limits." Jacob Kaplan said, "it opened my eyes to a problem that I had not seriously thought about."

Of course, no trip to New Orleans is complete without local food and music. During one trip to Baton Rouge, the students were treated to genuine Louisiana po' boys by members of Louisiana Environmental Action Network. They also managed to sneak away to catch local bands. Food favorite: Redfish. Music favorite: the Rebirth Brass Band.

While this was only the first year of the program, it could become an annual event. Michael Walsh says that he "recommended it highly to the first and second years who asked me about it." With support like that, Columbia students may well be back for Spring Break in New Orleans next year. We'll be ready. And we'll thank them for coming.

—John Wayne Pint, 2L

#### Tulane Environmental Law News

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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.*

**TULANE ENVIRONMENTAL LAW SOCIETY – CALENDAR OF EVENTS**

TELJ got the year off to a great start with 50 new members and a calendar that promises a semester full of adventure and camaraderie. The Fall schedule follows:

- Sept. 2 – Bike trip (Lake Ponchartrain)
- Sept. 12 – Brown bag
- Sept. 12 – Welcome Party
- Sept. 18 – General meeting
- Sept. 21 – Canoe trip (Red Creek)
- Sept. 23 – Dues deadline
- Sept. 26 – Get together
- Sept. 28 – Community service
- Oct. 5 – Outing (LUMCON)
- Oct. 10 – Brown Bag



The New ELS Board

- Oct. 16 – General Meeting
- Oct. 19 – Overnight Outing (Wolf Creek)
- Oct. 22 – Careers Panel
- Oct. 24 – Get Together
- Oct. 26 – Community Service
- Nov. 2 – Outing (Bike or Paddle)
- Nov. 6 – General Meeting
- Nov. 14 – Brown Bag
- Nov. 21 – Get Together
- Nov. 23 – Community Service

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**ELS and Institute Plan for 2003 Spring Conference**

Planning began in earnest in September for the 8th Annual Tulane Environmental Law Conference: **Law, Science and the Public Interest** – set for



Tulane Grads Aldo Spicacci (LLM'01) & Victor Valdovinos (LLM'99) catch up at the 2002 Spring Conference. Both are involved in toxic tort litigation in Latin America.

March 28 - 29, 2003, in New Orleans. The event, co-hosted by the Environmental Law Society and Tulane's Institute for Environmental Law and Policy, traditionally draws 300 plus participants from academia, law firms, business and advocacy groups, and the general public

from around the Gulf Coast. Participants from conferences past have praised the format that commingles legal analysis with scientific discussion in plain English, and provides explanations and practical advice in an accessible atmosphere. As one of the conference co-founders has said, "It's a jazz fest of sorts. So many choices, so little time."

Plans for 2003 include panels on international development equity and human rights, agriculture policy, sustainable cities, and gulf coast management, among others. The conference will also include the usual mix of good music, hot food, and Sunday field trips. Plan to come and "pass a good time."

Last year's conference included panels on human rights and the environment, environmental crimes, and wa-



Professor Houck moderates last year's point-counterpoint between the President of Friends of the Earth and the Chief Counsel to the U.S. Army Corps of Engineers'

ter quality. The meeting also featured a special point-counterpoint on the role of the US Army Corps of Engineers in the 21<sup>st</sup> Century. The keynote address was delivered by Brent Blackwelder, President of Friends of the Earth, who argued for strengthened alternate energy policies.

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## Environmental Justice: Is There Life After Sandoval?

*Environmental justice claims, although few in number, have filled an important gap in environmental regulatory programs which, even when conscientiously applied, provide few protections against the cumulative effects of polluting activities in minority communities. It was exactly these claims that the Tulane Environmental Law Clinic raised in the now-infamous Shintech permit proceedings, and that produced such a strong political reaction from the Louisiana Governor and industry associates. At bottom, and at stake, is the future legal basis for such claims. – Ed.*

The United States Supreme Court's 2001 decision in *Alexander v. Sandoval* presented a substantial barrier to environmental justice claims, but initially, the height of that barrier was not entirely clear. In December 2001, however, the Third Circuit Court of Appeals resolved one of the questions that Sandoval left open against the environmental justice claimants. In the wake of *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*, there appears to be little room for judicial review of environmental justice claims. Indeed, the more pertinent question is whether these decisions prefigure a roll-up of the disparate impact regulations which form the basis for these claims.

### Background

Environmental justice claims are based on disparate impact regulations and guidance promulgated by federal agencies, principally the Environmental Protection Agency (EPA), under the authority granted by Congress in Section 602 of the Civil Rights Act of 1964. In Section 601, codified at 42 U.S.C. 2000d, Congress provided:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The Supreme Court has held that Section 601 proscribes only intentional discrimination. Section 602, however, empowers federal agencies "to effectuate the provisions of section 2000d . . . by issuing rules . . . which shall be consistent with achievement of the objectives of the statute."

The disparate impact theory originated in the employment law arena, but has been used in other contexts with increasing frequency in recent years. In *Washington v. Davis*, the Supreme Court warned that the broad application of the disparate impact theory "would be far-reaching and would raise serious questions about, and perhaps invalidate, a whole

range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white." The Court suggested, "extension of the rule beyond those areas where it is already applicable by reason of statute, such as in the field of public employment, should await legislative prescription." Legislative prescription came to the area of employment law in 1991, but that is as far as Congress went.

Notwithstanding the Court's warning, the Clinton Administration aggressively pursued disparate impact claims outside the employment context. In the environmental context, EPA's Office of Civil Rights issued guidance requiring federal programs to avoid disparate impacts on racial minorities. Constitutional authority to condition financial assistance was supported by the Court in *South Dakota v. Dole*.



Residents of this neighborhood share a fence line with a major petroleum refinery. Environmental justice claims often arise in communities such as this that are proximate to industrial facilities and disproportionately affected by their industrial neighbors.

Whether the EPA would do so on its own initiative was another matter.

### *Alexander v. Sandoval*

In *Alexander v. Sandoval*, the Court took the opportunity to review an application of the disparate impact regulations. Martha Sandoval sued the Alabama Department of

Public Safety seeking to compel it to administer its written examinations for standard driver's licenses in languages other than English. She relied on the disparate impact regulations that were incorporated in grants from the United States Departments of Justice and Transportation. None of those grants funded driver licensing activity, instead funding activities like marijuana eradication, speed limit enforcement, participation in a national problem driver's registry, and hostage negotiation training. That made no difference because, as noted above, Congress has defined "program or agency" to cover an entire agency when any grant funds are received. The district court ruled in Sandoval's favor, and the Eleventh Circuit affirmed, both courts holding that the agency disparate impact regulations could be enforced in a private action.

In reversing the Eleventh Circuit's decision, the Supreme Court returned the analysis to its core. It observed that Section 602 does not contain any "rights-creating" language. Instead, "[f]ar from displaying congressional intent to create new rights, § 602 limits agencies to 'effectuat[ing] rights already created by § 601.'" The Court concluded, "Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce regulations promulgated under § 602."

Significant as the Court's decision was, it did not resolve every important issue. First, the Court did not reach the question of whether 42 U.S.C. § 1983 provided a means

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Tulane Environmental Law News



## Tulane's Environmental Journal - *Year Features Special Third Edition*

The Tulane Environmental Law Journal closed its 15<sup>th</sup> year with the Spring '02 issue, which featured the results of a panel on water management sponsored by the Journal at the Environmental Law Conference in March 2002. The academic year 2001-02 also saw a new rise in subscribers - a testament to the quality of the Journal's articles.

Volume 16 will follow the traditional format of an eclectic, generalist Fall issue and a symposium feature for the Spring. The symposium will focus on the Endangered Species Act, which endures as one of the most controversial laws in America and one of its most successful in protecting the environment. The symposium will treat several of the Act's recent "hot-button" issues, including water rights, incentive strategies and pending legislation.

New for 2002-03, and new for the Journal itself, will be a special, third edition on the emerging environmental law and policy of Cuba and the Caribbean. This symposium issue will build on research conducted by more than a dozen U.S. and Latin American law professors and practitioners, in cooperation with Cuban institutions under the auspices of the Tulane Institute for Environmental Law and Policy (*see* related article at page 10).

Tulane alumnae and practitioners are encouraged to submit articles on any aspect of environmental law to the Journal. For Journal-related information, please contact the Senior Articles Editor, Leslie Kieg at [lkieg@law.tulane.edu](mailto:lkieg@law.tulane.edu).

—**Douglas McLand**, 3L and Editor in Chief of Volume 16

### **Sandoval** - Continued from previous page

for private enforcement. Second, the Court "assume[d] . . . that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601." In sum, Sandoval foreclosed civil actions directly premised on the regulations, but left open the possibility that the regulations might be enforced in another way.

#### **South Camden Citizens**

In *South Camden Citizens*, the Third Circuit considered whether 42 U.S.C. § 1983 provides a vehicle for pursuing claims based on the regulations. The Court's negative response shuts the door to the most obvious alternative avenue for review.

The New Jersey Department of Environmental Protection had issued an air permit to St. Lawrence Cement Company for a blast furnace slag grinding facility in an industrial area in Camden. The area, already home to a number of industrial facilities, as well as two Superfund sites, was 63% African-American and 28.3% Hispanic. St. Lawrence selected the site due to its location: Camden is a port city which allowed the company good access to Europe and the Philadelphia-New Jersey-Delaware market; the necessary skilled labor was also available. Thus, the company showed no intent to discriminate, but a clearly disproportionate impact. South Camden Citizens filed suit alleging, *inter alia*, that the facility would have a disparate impact in violation of the § 602 regulations.

After Sandoval was decided, the district court allowed the plaintiffs to amend their complaint to state a claim under 42 U.S.C. § 1983 and then ruled in their favor. On appeal, the Third Circuit reversed, finding that the disparate impact regulations prohibited conduct that Congress had not prohibited. As the court explained, the case presented "the ques-

tion whether a regulation can create a right enforceable through section 1983 where the alleged right does not appear explicitly in the statute but only appears in the regulation." The court concluded that Congress, not an administrative agency, must create the right for redress.

#### **The Future of Environmental Justice Claims**

With the rulings in Sandoval and South Camden Citizens, the future of private environmental justice claims in the courts does not look bright. Sandoval clearly forecloses direct reliance on the regulations by private plaintiffs, and South Camden Citizens forecloses reliance on § 1983. Obviously, the impact of South Camden Citizens is more limited at this time because it is binding only in the Third Circuit. Although another circuit may rule in the opposite way, creating the potential for a circuit split and Supreme Court review, the Court seems little inclined to reverse.

In future environmental justice claims, the validity of the federal regulations is likely to be challenged, and unless an alternative basis is found to Section 601, the challenge is likely to succeed. Even if this hurdle is cleared, the degree of proof required to show disparate impact remains in doubt. In *South Bronx Coalition for Clean Air v. Conway*, for example, a federal district court dismissed an action against a solid waste transfer facility, citing *New York Urban League, Inc. v. State of New York*, in which the Second Circuit held that a proper disparate impact showing requires both "a reliable indicator of disparate impact" and "an appropriate statistical measure." These are substantive concerns that will not be easy to resolve, even in a more favorable legislative climate.

- **John J. Park, Jr.**, Office of the Attorney General, Alabama.

# Reforming the Corps of Engineers

## Report From Washington

*Any conversation about the U.S. Army of Corps of Engineers civil works program produces both heat and light. Easily the most important public works projects in Louisiana (without them, the City of New Orleans would not exist) ... and no small potatoes in any region of the country ... they have also been the most harmful to anadromous fisheries, migratory waterfowl, freshwater mussels (the most endangered family of species in America), wetlands, bottomland hardwoods and a steady host of scientists, fishers, hunters, recreational paddlers and others who simply like their water and wildlife the way nature made them.*

*No surprise, then, that a Point/Counterpoint debate between Brent Blackwelder, President of Friends of the Earth, and Robert Andersen, Chief Counsel in the Army Corps of Engineers, drew a crowd at the 2002 Environmental Law Conference to ask their own questions about the hottest topic in water resources development for many years, The Future of the Corps. For most environmentalists and their lawyers, dealing with the Corps on individual projects has been like tinkering with the donuts without fixing the machine. Over the past two years, however, a series of news articles and congressional inquiries surfaced more systematic problems within the Corps, most particularly with the justifications and funding of its projects. For the first time in decades, there could be serious, legislative movement on Corps Reform.*

When Congress returns from its August recess, both chambers may take up the biannual Water Resources Development Act (WRDA), which authorizes new projects for the Army Corps of Engineers. Members like to insert their pet projects and get a bill approved so that they can boast to their constituents about bringing home the bacon.

A big surprise may be in store this year because four senators are waiting to enact major reforms of the Corps. Senators Smith (R-NH), Feingold (D-WI), Daschle (D-SD), and McCain (R-AZ) have introduced a bill (S. 646), requiring independent peer review of major projects, serious mitigation

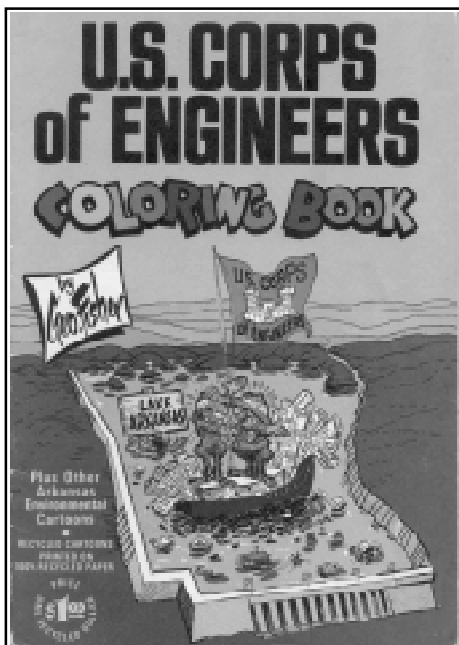
of fish and wildlife damage caused by projects, and more equitable cost sharing requirements. Supporting these efforts is a large coalition of national, state and local environmental groups along with fiscal conservatives and taxpayer organizations.

tee and because the Chairman Jim Jeffords (I-VT) is also a supporter of reform, the chances for a major Corps overhaul to be approved in Committee are good. However, as scrutiny of the Corps has grown this summer, supporters of the current pork barrel authorization process (you-vote-for-my-project, I'll-vote-for-yours) have organized an effort to defeat these reforms. Senators Bond and Carnahan of Missouri sent a letter to the Environment and Public Works Committee vowing to block on the Senate floor any Corps authorization bill that includes reforms.

The situation in the House is quite different because the authorizing committee, the Transportation and Infrastructure Committee, is generally hostile toward making fundamental changes in the Corps. Thus, amendments will be needed on the House floor if there is to be any reform from that body. Rep. Kind (D-WI) who introduced the companion reform bill H.R. 1310 in the House is the logical leader of this effort.

Two significant reports by independent institutions may lend momentum to the reform effort. In July, the General Accounting Office (GAO), which is an auditing arm of Congress, released a report detailing numerous accounting errors made by the Corps in its justification for a big dredging project on the Delaware River. The GAO concluded that the Corps had substantially overstated the financial benefits of the project, and the ensuing publicity led the Corps to suspend work on the project. The prestigious National Academy of Sciences (NAS) took a look at Corps practices and issued a report calling for independent peer review for costly and controversial Corps projects.

Another factor that could weigh heavily in the debate is the volume of scandal associated with major companies and accounting firms. The fact that Enron, Arthur Anderson, and World Com, to name a few, have been caught fudging the numbers and deceiving shareholders, investors, and the public could have a spillover effect on the Corps. There is growing evidence from independent bodies, such as those just mentioned, that the Corps, too, has been cooking the books. In today's climate, fewer politicians may want to be seen



A Corps Coloring Book questions long-term plans for our 25th state (above) and challenges the Corps' alleged motto, "keep busy" (see enlargement at right). © 2002 Arkansas Democrat-Gazette, used with permission.

and Public Works Committee for approval. Because one of the reformers, Senator Smith, is the ranking Republican on the Commit-

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## Reforming the Corps Continued from previous page

supporting an agency that is fooling taxpayers or investors.

Current legislative proposals for Corps reform include:

**Independent Peer Review of Costly or Controversial Corps Projects:** Large controversial projects would be subjected to review by an independent panel of biologists, economists, and engineers to ensure that the Corps' technical analyses are sound and unbiased, and that nonstructural measures resulting in better outcomes are fully evaluated.

**Full, Timely, and Ecologically Sound Mitigation:** The Corps would be required to fully mitigate for the environmental harm caused by its projects, restoring at least one acre of similar habitat for each harmed, and to monitor its mitigation efforts to ensure that they are successful. Strict deadlines would ensure that mitigation is completed in a timely manner, and the Corps would not be able to construct any new projects in a watershed until it has completed all planned mitigation within that watershed. In its Vicksburg District, alone, the Corps has yet to replace about 30,000 acres of floodplain forest and wetlands destroyed by flood control projects.

**New Environmental Protection Requirements:** The Corps would be prohibited from recommending projects unless the Secretary of the Army certifies that the project will minimize, to the maximum extent practicable, the adverse impacts on the natural hydrologic patterns of aquatic ecosystems, and the adverse impacts on the value of native diversity of aquatic ecosystems. The Corps also would be prohibited from using the value of private benefits derived from draining wetlands to help justify construction of a water resources project. Currently, the Corps claims benefits for draining wetlands, an activity that is directly contrary to the longstanding, bipartisan national policy of no net loss.

**New Environmental Protection Goal:** The Corps would be required to design and manage projects to maximize both environmental protection and economic development. Currently the Corps designs projects to maximize economic development only; environmental protection is only a project goal to the extent it produces dollar benefits.

**Public Access to Information:** The Corps would be required to set up a publicly accessible system to track promised and implemented mitigation, both for its Civil Works and Clean Water Act § 404 regulatory programs. The Corps also should make all data and information considered in the plan-

ning of civil works projects available to the public. Because the Corps doesn't track the results of mitigation efforts, it has no basis for making sound decisions regarding the effectiveness of mitigation or the impact of its projects or permits.

This fall could also see an effort to short circuit the reform proposals as the annual Energy and Water Appropriations bill is considered. This appropriations bill provides money for ongoing, already authorized Corps projects and is a major vehicle typically sought by those who want to add a pet project or block reforms. For example, some legislators want to weaken the cost-sharing requirements on harbor dredging. Others will want to give the Corps the green light to do single-purpose water supply projects. In particular, we

expect a rider from Senator Bond (R-Mo) that would be environmentally-beneficial by preventing changes in the operation of upstream dams on the Missouri River. Because Senate Majority Leader Tom Daschle of South Dakota wants these changes, which have been recommended by the Fish and Wildlife Service, a fight is in the offing.



So there could be action in both the authorization and the appropriation bills for the Corps. As the debate approaches, it is good to put this reform effort in historical perspective. A number of important changes have been made in the Corps programs in the past 30 years and over 100 unsound projects were defeated by well-organized citizens and effective environmental lawyers. One key achievement was to block the Corps authorization bill for ten straight years from 1976 until 1986, at which time the Congressional pork-barrelers threw in the towel and accepted the proposition that private beneficiaries from Corps projects should pay at least part of their costs. These successes demonstrate that entrenched bureaucracies like the Corps can change.

Notwithstanding these successes, more reforms are needed; the fundamental flaws in project development remain unchanged. As we speak, the Corps is poised to embark on a new set of highly questionable harbor dredging and wetland drainage projects. The question is, under what rules for the 21st century?

The legislative schedule is tight for the fall, but there could be some real fireworks over water projects and the future of the Corps.

—**Brent Blackwelder**, President, Friends of the Earth

industrial processes have also contributed to a downward spiral in protection that is accelerating each year.

Green Advocates is a newly-formed association of Liberian lawyers dedicated to reversing this trend through education, legislation and the rule of law. The organization is modeled in large part on the strategies of European non-governmental organizations (NGOs) and United States public interest environmental law firms. Since most of the victims of environmental degradation and pollution in Liberia are poor and indigenous peoples without access to any form of legal representation, one objective of Green Advocates is to provide free legal services to all clients upon request.

### Education

Liberia suffers a dearth of information and education on environmental issues. Green Advocates' first initiative was a massive public awareness campaign throughout Liberia on sustainable resource use and the benefits of environmental protection. The program featured environmental posters, bumper stickers, greeting cards, billboards and audio-visuals with messages targeted at both local communities and decisionmakers. It was also transmitted through tribal languages, exhibits, and cultural performances. In 2001, Green Advocates established two nature clubs on the campus of the University of Liberia, and a community-based nature club called Community Environmental Care, in Monrovia, which has launched several outreach programs.

### Policy and Legislation

From 1998 to 2000, Green Advocates and other groups led a successful campaign for Liberia's ratification of the Convention on Biodiversity. A similar campaign is now underway by the Green Advocates for the ratification of the Framework Convention on Climate Change, now before the Liberian Legislature for consideration.

Between 1999 and 2001, Green Advocates assisted the Liberian government in drafting a comprehensive environmental policy on the sustainable management of Liberia's natural resources. It is currently engaged in a public awareness campaign to ensure that the document remains as drafted, and is not adulterated and diluted in the approval process. Green Advocates volunteers are traveling the country to educate the population about the content and importance of the law.

### The Upper Guinea Forest Campaign

Liberia is the custodian of the largest remaining portion of the Upper Guinea Forest, one of the richest and most biologically-diverse on the African continent. In 1999, Green Advocates adopted the Forest as a National Flagship Symbol, advocating the enactment and enforcement of biodiversity and land management policies and reversing the trend of habitat fragmentation and species depletion. The ultimate objective is to create several national parks and protected areas in Liberia, and a biological corridor connecting them. The campaign also seeks to strengthen protections for the existing parks of Sapo, Cestos Sanquin, Lake Piso, Lorma Gola and Khran Bassa, all declared natural areas but lacking laws and even basic management strategies.

Early this year Green Advocates worked with several international environmental NGOs and the government to launch the Reassessment of the Liberian Forest. The goal is to set aside a fixed percentage of each forest as completely protected areas.

### Law Compilation

Liberia has few environmental laws. Those that exist are confusing, conflicting, economically-driven, and a recipe for more environmental degradation. The institutional arrangements are not much different. The country's continuing civil war destroyed both governing systems



TLS Graduate Alfred Brownell working with constituents in Liberia

and records. With the absence of records, most government agencies make decisions on the environment relying on the experience and knowledge of their elderly employees. Green Advocates volunteers have been involved in the collection and compilation of existing legislation and regulations on the environment from private sources. Several government institutions have also called on the Green Advocates to assist them in reviewing and drafting their laws and regulations; examples include the City Corporation of Monrovia, the Ministry of Agriculture and the National Oil Company.

### Legal Action

Green Advocates will be involved in challenging governmental administrative decisions and actions that are arbitrary and capricious, seeking declaratory orders, injunctions, prohibitions and mandamus, all available remedies in the Liberian judicial system. Relatedly, Green Advocates is collecting evidence on several corporate entities in Liberia with a view of pursuing civil damage actions. Taken together,

[Continued next page](#)



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## Stretching our Minds: Visiting Professor Wil Burns

Professor William C.G. Burns brought over twenty years of non-profit experience in wildlife law to Tulane this past Spring, adding a practical edge to the classroom. In his work with the Pacific Institute for Studies in Development, Environment and Security, Prof. Burns and his colleagues assist small island nations involved in conflicts in protecting their natural resources. One such conflict is the threat to the existence of these islands caused by sea level rise from global warming. The Institute is exploring the potential for a small island nation to litigate against a larger island nation that contributes significantly to adverse climate change.

Prof. Burns believes that useful scholarship affects policy. Professor Burns' Tulane seminar, "Environmental Law: The Emerging International Climate Regime," asked the policy question with respect to global climate change. Students

wrestled with the United Nations Framework Convention on Climate Change, and the 1997 Kyoto Protocol. They went further – and those with science backgrounds went much further – to explore why climate change is occurring, and its impact on the global environment. Conclusion: It is happening, the impact is already large, and the policy question is apparent to everyone but current occupants of the White House.

—Jennifer Liu, 2L



Visiting Professor Burns

### Tulane to Host 2003 International Wildlife Law Conference

Organizers of the 8th Annual International Wildlife Law Conference, which gives rise to the annual Journal of International Wildlife Law, have decided to move the event to Tulane in 2003 -- to be co-hosted by the Institute for Environmental Law and Policy. The event began at Georgetown, and has been held in Washington, DC since its inception. Wil Burns, who is the Chair of the Society's Wildlife Interest Group, says he is enthusiastic about bringing the Conference here. Burns says that Tulane has a "number of excellent tools in the toolbox" for future environmental lawyers. We look forward with equal enthusiasm to seeing him again.

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### Green Advocates Continued from previous page

administrative and civil actions are contemplated against:

- three government entities with statutory responsibilities for managing solid waste in Liberia, to clean up hazardous waste dumps scattered all over Monrovia and within overpopulated communities;
- the Liberian Water and Sewer Corporation to repair and maintain the constant overflow and leakage of its sewer system, as well as to provide treatment before the effluents are discharged into rivers and coastal waters used for washing, bathing, and recreation;
- the Forestry Development Authority (FDA) and the Ministry of Public Works to implement existing forestry regulations on selective logging and to prohibit permits for road construction through protected areas;
- the Oriental Timber Company and other logging companies, for violating existing forestry laws as well as for human right abuses in communities living in those areas;
- the Firestone Rubber Plantation Company for using tons of toxic chemicals in its operations that have probably migrated untreated into the water systems. Firestone is the oldest multinational corporation in the country, in operation since 1923. There have been reports of massive fish kills in the areas, but no investigation has been conducted on the effect of this long-term use of the chemicals on the local inhabitants or on rubber workers on the plantation;
- CEMENCO, a cement manufacturing plant situated in the middle of an extremely poor community in Monrovia. On any given day, particulate matters from this operation (transport and manufacturing process) virtually cover the community and its inhabitants;
- Freedom Gold, a multinational corporation owned by American televangelist Pat Robertson. There are reports that Freedom Gold is using mercury in its mining operation, as well as employing child labor. Green Advocates did send in a volunteer to investigate but was barred from entering the area of operation by private militia employed by Freedom Gold.

We at Green Advocates hope that this is only the beginning – and that by this beginning, we can bring environmental law and justice to our country.

— Alfred Brownell, *TLS LLM 2002*. Mr. Brownell received his LLM in Energy and Environment Law at Tulane in 2002, and is a founding member of Green Advocates.

## CUBA BY BUS CONTINUED FROM PAGE 1

along with practitioners from elsewhere in the United States, Mexico and Chile – took a hard look at Cuba’s evolving system of environmental law. The researchers asked how the system is meeting development challenges that most believe are only beginning.

Foster was joined on the urban environmental working group by colleagues from other schools and Professor Houck



Cuba’s unique political and economic circumstances - compounded by the “special economic period” that followed the fall of the Soviet Union - have left much of the country, including Havana, in a sort of suspended animation.

of Tulane. This team considered how Cuba meets the task of urban renewal, historic preservation and the delivery of environmental services in light of its unique political and economic circumstances. Two

other working groups set off in different directions. A coastal group, joined by colleagues from the US NGO Environmental Defense and Tulane’s Environmental Institute Director Eric Dannenmaier, met with officials responsible for managing marine resources and overseeing coastal development. A third group examined Cuba’s rural development and agricultural policies – looking, for example, at innovations in organic agriculture that have grown in part from constrained access to modern agrochemical products. In each case, the groups must sort through the policy impacts of Cuba’s unique political and economic circumstances, and the lingering effects of the so-called “special economic period” that followed the collapse of the Soviet Union and Cuba’s consequent loss of important trading partners and revenue sources.

The results of all three groups’ work will be published in

a special edition of the Tulane Environmental Law Journal in early 2003 – the first effort of its kind to present a range of outside academic views on the environmental and development policies and practices of Cuba.

In the background, debates continue in the US Congress about rethinking a forty year old policy of blockading and isolating Cuba economically. While the research trip was academic in nature – focused on environmental policy rather than economic politics – there is little doubt that the economic and political circumstances in Cuba, and its long-strained relations with the US, have combined to create a legal laboratory into which few have ventured. The profiles and comparative research that emerge from this colloquium



The community of Rosario, south of Havana, has faced relocation and hurricanes (a road ran to the left of the tree before the storms, and now even a small storm surge floods homes). A study of how the Cuban government developed a negotiated approach to relocating residents is one of the cases examined by participants in Tulane’s August 2002 research colloquium.

should prove of interest to those already active in environmental policy in the Americas – as well as those who wish to peek behind what’s left of the “curtain.”

–**Eric Dannenmaier**, Director, Tulane Institute for Environmental Law and Policy.

### TELJ Special Edition to Publish Results of Cuba Research

A special 2002-2003 issue of the Tulane Environmental Law Journal will feature research conducted by U.S. and Latin American experts during Tulane’s August 2002 research colloquium in Havana. Authors and topics include the following:

- |                  |   |
|------------------|---|
| Tom Ankersen     | “Learning to Speak Environmental Law Creole: Comparative Environmental Law Jurisprudence in Latin America and the Caribbean”        |
| Colin Crawford   | “The Frog Jumps Because it Must: An Evaluation of Cuba’s Urban Agriculture and its Implications for Land Use Planning”              |
| Eric Dannenmaier | “A Beachhead in Havana: The Community Voice in Cuban Coastal Development”   |
| Sheila Foster    | “From Harlem to Havana: Sustainable Urban Development”  |
| Carmen Gonzalez  | “Seasons of Resistance: Organic Agriculture and the Cuban Farmer”   |
| Oliver Houck     | “Thinking About Tomorrow: Cuba and Sustainable Development”   |
| Ricardo Katz     | “Pollution Control Strategies in a developing country. The possibilities of Cuba”   |
| Ken Lindeman     | “Managing Coastal Tourism and Marine Parks in Cuba: The Roles of Impact Assessments, Management Plans, and Certification Standards” |
| Daniel Suman     | “Management of Mangrove Ecosystems in Cuba: Evolution of the Legal Framework”   |
| Luis Vera        | “Studies in Enforcement: Cuba and Mexico”   |
| Daniel Whittle   | “Protecting Cuba’s Coastal Environments: Challenges, Opportunities, Solutions”  |
| Edward Yates     | “Environmental Planning in Cuba: Central Planning Meets the Neighborhood”   |

## INSTITUTE AGENDA: 2002-2003

*Tulane's Environmental Law and Policy Institute will be active over the coming year on projects including:*

### **Legislative and Regulatory Reform**

Assistance to governments in designing environmental laws and regulations. Projects range from basic water and air regulations to design of instruments that provide incentives to meet and exceed baseline requirements.

### **Public Participation**

Promote legal frameworks that provide a voice for citizens in designing and implementing environmental policies and programs.

### **International Trade and Environment**

In partnership with the OAS, World Resources Institute and The University of Miami's North-South Center, the Institute will conduct an environmental impact assessment of the Free Trade Agreement of the Americas. The Institute is also working within Tulane on an interdisciplinary assessment of economic and political integration in the Western Hemisphere.



One Institute priority is the design of legal tools for citizen participation in development decision-making, including the participation of communities traditionally on the margins of environmental policy, such as indigenous populations in countries like Bolivia. Here, indigenous women wait on the steps outside the Ministry of Justice in La Paz.

### **Environmental Technology & Efficiency**

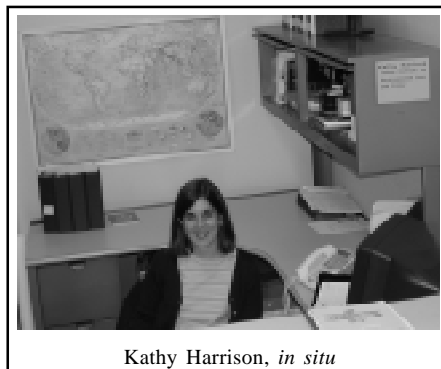
Design and implementation of regulatory policies that promote new investments in energy efficiency and industrial clean production in Southeast Asia as well as Latin America and the Caribbean. This support includes an Internet-based "virtual dialogue" on industrial incentive policies among government officials and experts in Andean countries.

### **Climate Change Policy**

Explore policy challenges associated with Climate Change in the US Gulf Coast and other low-lying coastal areas. The Institute is committed to the design of national and local policy alternatives to implement international commitments.

### **Environmental Security**

Explore linkages between environmental governance models and international security.



Kathy Harrison, *in situ*

## Kathy Harrison Joins Institute

Kathy Harrison joined Tulane's Institute for Environmental Law and Policy in April as Program Coordinator. Kathy is a 1999 Tulane Graduate with a Masters in Latin American Studies and had been working with immigrant and refugee populations through Catholic Charities in New Orleans prior to joining the Institute. She is a native of Virginia, and her studies have taken her to field work in Mexico, Honduras and Cuba. Kathy's baptism by fire was planning a 20-person academic visit to Cuba for professors and experts from across the United States, among others. She safely navigated licenses, restrictions, visas, and academic egos on both sides of the border to help assure the success of the program.

## Joint Degrees: Joined Stars

Tulane Law School maintains joint degree offerings in Law and Business, Law and Latin American Studies, and Law and Public Health. In Spring 2002, Law and Public Health degrees were conferred upon two of the law school's top environmental program students: Jeffrey Becker, who had been Editor-in-Chief of the Tulane Environmental Law Journal, and Elizabeth Alderman, an active member of both the Journal and the Clinic.

The School of Public Health and Tropical Medicine's curriculum for law students is titled "Environmental Assessment and Management" and features core classes in Biostatistics, Epidemiology, Health Systems Management, and Infectious Diseases. Upper-level classes include Risk Assessment, Toxic and Hazardous Wastes, Water Quality, Air Pollution, and various electives. The program culminates in a "Capstone," which may be either a master's thesis or a practicum/internship, the product of which is defended orally before the faculty.

Becker describes the Public Health School faculty as "incredibly knowledgeable," and more than willing to "spend extra time to bring us up to speed on scientific concepts." He also stated that while he cannot say if the dual degree helped him to obtain his job in the environment and energy department of a large law firm, almost all of his new peers have an advanced science degrees. Alderman agrees that her Environmental Health classes were "challenging," and helpful in understanding "how scientific analysis plays into environmental law and policy."

P.S. -- Becker and Alderman will be married this fall.



Jeffrey Becker and Elizabeth Alderman with Chloe (not a TLS grad)

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## Summer Clerkships: When It All Comes to Life

*Tulane students take some amazing journeys into environmental law practice as summer interns, often supported by grants from the Tulane Public Interest Law Foundation. Over this past summer, and in their own words:*

**Batya Stepelman**, 3L, Conservation Intern, Audubon Society, Portland, OR

“My summer experience was the perfect foray into public interest work. For my first assignment I analyzed the implementation of Goal 19 (a statewide planning goal that protects marine biodiversity and renewable ocean resources) by state agencies, interviewing policymakers, user groups and marine scientists. After six weeks of research, I recommended legislation creating a network of ‘no-take’ marine reserves as a means of complying with Goal 19. This will be used to shape Audubon’s presentation to the Governor’s Office later this fall. My second assignment put me back on dry land. I researched state forestry practices that govern the management of the Tillamook Forest - a beautiful coastal rainforest - deeded to the state for management by local counties around the time of the Great Depression. I analyzed the conflict between counties that want the State to maximize timber revenues pursuant to its ‘trust’ mandate and conservationists who call for other uses under the same doctrine.”

**Alison Kirshner**, 3L, Appellate Section, Environmental and Natural Resources Division, U.S. Dept. of Justice.

“For me, it was more of the environment at the DOJ and big picture of the job and what the DOJ accomplished that I most enjoyed. My most complex brief involved a condemnation proceeding going back to 1979. After 20 years of litigation, one party to the condemnation wanted to intervene in a settlement that had been reached between the United States and other par-

ties. I drafted the appellate brief for the government, arguing that the appellant lacked standing to intervene in the first place and did not satisfy the requirements for intervention. I was given complete responsibility to do my research, decide the arguments I would include, and write them. I also got to attend the Attorney General’s Weekly Lecture Series which gave the interns the opportunity to hear many government employees speak to us, including John Ashcroft, Condoleza Rice, and Robert Mueller of the FBI. I loved working at the DOJ and hope to go back there to work in the future.”

**Jennifer Mogy**, 3L, Law Clerk, Natural Resources Defense Council, Washington, DC

“My litigation assignments included analysis of EPA regulations under the Data Quality Act, and whether action taken in response to the regulations was ‘final agency action;’ a memorandum discussing the ‘law of the case doctrine’ for a suit against the Department of Energy, and a memorandum discussing the actions a domestic corporation can take against a foreign government regarding oil exploration concessions. The best part was reading the opinion of the district court judge to not dismiss the DOE case on summary motion, and having my work cited in the opinion. The next best part was coming to the realization that I don’t love policy work. I definitely prefer litigation.”

**Tara McBrien**, 2L, Office of Regulatory Enforcement, EPA, Washington, DC

“I clerked in the Multi-Media Enforcement Division (MED). Unlike the other EPA divisions that deal with a single issue (i.e. air, water, toxics), MED focuses on facilities that have violated multiple statutes. Much of my work centered around the “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,” commonly referred to as the Audit Policy. The

Policy is a unique, and often controversial, tool used by the EPA to bring facilities into compliance. It provides incentives for entities that voluntarily discover, promptly disclose and expeditiously correct noncompliance, making formal investigations and enforcement actions unnecessary. Using a set of guidelines, the EPA then assesses the amount of damage to be paid by the violators. This assessment usually includes a total waiver of “gravity” damages leaving the polluter to pay only economic benefit. I also spent a portion of my time on Supplemental Environmental Projects (SEP) decisions. A SEP is an environmental project that a violator voluntarily agrees to perform as part of the settlement of an enforcement action. Another controversial tradeoff. I learned a lot. I’d do it again.”

**Leslie Keig**, 3L, Environmental Enforcement Division, CA Office of the Attorney General, Sacramento, CA

“I was involved in three separate cases: two involving hazardous waste facilities operating outside the bounds of their permits, and the third involving liability for a hazardous waste site cleanup. I researched hearsay admissibility rules in an administrative hearing; equitable estoppel as a viable defense in a CERCLA action; theories of admissibility of prior bad acts in a California State court; elements of a public nuisance claim under California law; grounds for the State to collect attorney’s fees when it prevails in an appeal. I also prepared interrogatories, attended an administrative hearing, heard arguments in the California Supreme Court, and participated in a mediation. There is a great deal of satisfaction in knowing that you are working with the state behind you. The client is the people of California. The environmental injuries are real. It was a job I felt good about doing.”

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## Tulane Environmental Law Alumni: The Beat Goes On

*Tulane environmental law alumni have diverse practices across the country ... putting environmental law to work.*

**Justin Bloom** 1996 – Riverkeeper, New York City, NY

The Hudson Riverkeeper is the nation's first and most famous water watchdog, and a model for riverkeepers around the country. As staff attorney at Riverkeeper, Justin works on any and all problems that affect the Hudson River and New York City's drinking water supply. The majority of his cases involve citizen suit litigation under the Clean Water Act, SEQRA (New York NEPA), and support for restoration/redevelopment and public access projects on the Hudson. He loves his job.

**Matt Mathews** (1993) – McGuire Woods, Richmond, VA

Matt is keeping busy with a wide array of environmental litigation. He has been involved in the numerous cases with the Riverkeeper Alliance/RFK, Jr. and a group of national trial lawyers v. Smithfield Foods and its subsidiaries. He writes, "I never imagined while struggling through...criminal law and environmental law classes [at Tulane] that the two would meet together in my career a decade later."

Continued next page

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### Law Clinic Continued from page 2

plified in March 2002, when the Louisiana Legislative Auditor issued an independent report concluding that "LDEQ enforcement" and "LDEQ's permitting activities . . . may not ensure that the state's health and environmental resources are protected" (report available at <http://www.lia.state.la.us/perform.htm>).

Various citizen groups, represented by the clinic, are attempting to fill the gap. For example, the *Concerned Citizens of New Sarpy* have launched a major Clean Air Act enforcement action against Orion Refining Corp., located in St. Charles Parish. Clinic student attorneys Christopher Ott and Robert Sidman based allegations in the Concerned Citizens' complaint on Orion's admissions found in LDEQ's files, but upon which LDEQ had failed to act. A group of Columbia Law School students - who came to work in the clinic during their spring break - quickly identified a number of Clean Water Act violations upon which LDEQ had taken no action.

The Louisiana Environmental Action Network (LEAN) and other groups are pushing EPA to withdraw its authorization for Louisiana to administer the federal clean air and water act programs, based on specific illegalities that the clinic's student attorneys cited in a petition for withdrawal of the water program and in administrative comments on deficiencies in Louisiana's air quality program. On behalf of LEAN, the clinic's student attorneys have petitioned EPA to overturn five LDEQ-issued permits. On behalf of LEAN and others, the clinic has challenged other permits in state court.

The Oakville Community Action Group brought a citizen enforcement case in April 2002 - represented by student attorney Zahirah Washington - after LDEQ and EPA ignored the group's formal notices of illegal operations at a solid waste landfill. Also in April, on behalf of a local musician, student attorney James Johnston obtained a state court order vacating LDEQ's issuance of a water quality certification that would have allowed dredging and disposal of mercury contaminated sediments in and around Little Lake, at the mouth of the East Pearl River in St. Tammany Parish. These and other cases on Clinic's docket are summarized at <http://www.tulane.edu/~telc/Docket.html>.

The clinic's representation of individuals and community organizations whose voices would otherwise go unheard in the legal process has been a subject of continuing controversy. What often goes unsaid when the clinic's role is discussed, however, is that even aside from its role in training competent and ethical young attorneys, the clinic performs an important service for the Louisiana bar as a whole.

The bar is responsible for ensuring that competent legal services are available for all persons, including those unable to pay for services and those whose causes are controversial. But as a practical matter, few law firms offer significant pro bono services on environmental issues. This is because environmental cases tend to have broad ramifications that could compromise a firm's potentially lucrative relationships with business clients.



TLS Dean Lawrence Ponoroff (from left) with Lisa Lavie Jordan, Clinic director Adam Babich, Pat Melancon and Lifetime's Mary Dixon

Because the clinic offers competent environmental assistance to indigent clients, it takes some of the pressure off the rest of the Louisiana bar to see to it that an inability to pay does not deny people the opportunity to enforce their rights under environmental laws and the Louisiana Constitution. After all, legal rights are not worth the paper they are written on if they cannot be enforced. And few if any of us would wish to envision a Louisiana where only the wealthy had the right to a healthful environment, which the Louisiana Constitution provides for us all.

– Adam Babich, Clinic Director

**Deborah Clarke Trejo**, 1998 – Kemp & Smith, Austin, TX

Deborah is an associate in the environmental, administrative and public law section of her firm. Her primary client is the Edwards Aquifer Authority, a groundwater conservation district managing the unique natural resources of the Edwards Aquifer for many communities in South Central Texas. Several federally-listed threatened and endangered species depend upon the Aquifer, which has inspired some celebrated Endangered Species Act litigation. Deborah is involved in the rulemaking process of the Authority, prosecuting enforcement cases in district court for violations of the Authority's rules, and defending the agency from lawsuits.

**Greg Young**, 2001 - Bass, Berry & Sims, Nashville, TN

Greg's firm represents clients on air and water pollution, hazardous and solid waste, toxic materials, underground storage tanks, Superfund, right-to-know laws and NEPA. One client was the only county seat in Tennessee without a wastewater treatment plant. Many of the public facilities (nursing home, school, jail) had failing septic systems; raw sewage was seeping into yards and basements. After the firm obtained the proper permits for a new treatment facility, several groups challenged the proposed discharge point for the plant on the basis that it would degrade the receiving stream, irreparably harming a newly-discovered cave ecosystem. The firm won on the administrative level, but a state court judge issued a stay and ordered a settlement conference. The conference yielded an agreement with the challenging groups to re-locate the discharge to a larger and less-sensitive body of water. A win-win, in the real world.

**Douglas Frankenthaler** 1999 – Montgomery, McCracken, Walker & Rhoads, Philadelphia, PA

Following a stint with Region III of the United States Environmental Protection Agency, Doug now practices environmental law in Philadelphia representing a wide array of clients. In addition to advising regulated industry on permits and compliance, he represents a citizen group opposing expansion of local rural road into a major expressway, fostering sprawl and the conversion of the area from farmland to strip mall: NEPA writ large. He also represents a state agency trying to get former service station operators to remediate contamination, and a local township trying to preserve open space in the face of a constitutional (takings) challenge.

**Lisa K. Rushton**, 1994 – Paul Hastings Janofsky & Walker, Washington, DC

Lisa's practice involves regulatory counseling on pollution and toxics issues. She also represents businesses engaged in acquisitions and divestitures of real property. She oversees the investigation of site conditions, helps quantify potential risk, and drafts and negotiates contract terms relating to contaminated properties. Her Superfund work includes

consent decree, settlement negotiations, third-party claims; and service on PRP committees - a law school exam on hazardous wastes.

**Punam Parikh**, 2001, Research Associate, National Risk Management Research Laboratory, U.S.EPA, Cincinnati, OH

Punam writes: "I started working this week (September, 2002) and already I have a ton to do. My first project is working on a legal framework for a potential tradable credits system for storm water. Not sure if this is possible, but that's why I'm here."

**Felipe Leiva**, LLM 2002, private practice, Santiago, Chile

Felipe writes: "I'm working for an UNEP project called "Development of a National Implementation Plan on Management of Persistent Organics Pollutants." The framework of this project is the Stockholm Convention and my work involves coordinating the different stakeholders on POPs and proposing to the Chilean Government a plan for management of such toxic substances (PCB's, Pesticides, Dioxins, etc). The project is already interesting, and I'm excited."

**Ashley Wadick**, (1991) TX General Land Office, Austin, TX

Ashley writes: "Part of my work involves Gulf beaches. Texas' "Open Beaches Act" (OBA) was enacted in 1959 to codify the common law rights of the public to use and have access to Gulf beaches used since "time immemorial" by the public and as public roads for pleasure and commerce (merchants, mail carriers, etc.). The easement is a "rolling" easement; it rolls with the shoreline. No one focuses on it much in an accreting or undeveloped area or along fed/state/local government property. It is most contentious in highly developed areas landward of highly eroding beaches. In those areas, when the easement rolls landward, private structures can end up on the public beach. The OBA prohibits a private person from erecting, maintaining or repairing a structure on the Gulf beach, even though the structure may have originally been built far landward of the beach. Texas has been sued for takings (won each time) and is in litigation now regarding properties in Brazoria and Galveston counties.

**Courtney O'Hara Taylor**, 2000 – Solicitor's Office, Parks and Wildlife Division, Washington, D.C.

Courtney just recently left private firm life for the U.S. Department of Interior, where she is getting back to her passion -- wetlands and endangered species. Her work there will primarily focus on the Florida Everglades and implementing the Comprehensive Everglades Restoration Plan.

**Trilby Dorn**, 1997 – Tousley, Brain and Stephens, PLLC, Seattle, WA

Trilby writes: "Things are great for me – still getting to do salmon restoration work in the North Cascades, in addition to complex litigation (mostly plaintiff's class actions. My fiancée, Michael Robinson, is head of the environmental division of the Seattle City Attorney's Office."

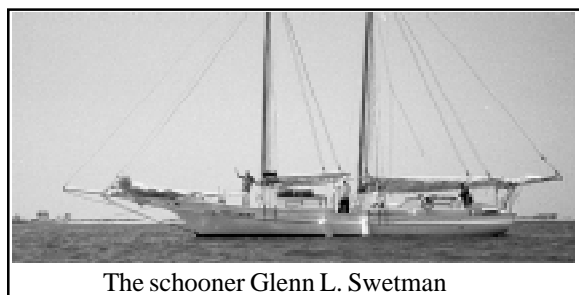
## ELS Horn Island Trip Memoirs

“The first poetry was written by sailors who sang with the wind in their teeth...” - Walter Anderson

*Explorer and artist Walter Anderson is best remembered for his love of Horn Island, and is primarily responsible for the preservation of Horn and its sister barrier islands as part of the National Park Service.* - Ed.

From Texas to Florida, along the Gulf of Mexico, a string of barrier islands protects inland areas from storms and provides refuge for wildlife. Each spring, migratory birds come to these islands by the thousands after the long Gulf crossing. One weekend last April, the wildlife included some 30 Tulane law students who camped on Horn Island, off the coast of Mississippi.

Finding the way out to Horn Island, 15 miles off the coast of the casino town of Biloxi, Mississippi isn't easy, but it can be half the fun. The Tulane Environmental Law Society chartered a 48-foot schooner, the “Glenn L. Swetman,”



The schooner Glenn L. Swetman

for the 2-hour trip. Breaking out a few cans of beer and lots of suntan lotion, the crew left the neon sprawl of the Mis-

issippi coast for Biloxi Bay. Most ELS trips require students to provide the horsepower: paddling, pedaling, or hiking. This time the future lawyers sat back and let our ship's Captain Carroll run the show.

Horn Island's history belies its small size. Now part of the Gulf Islands National Seashore and a popular destination for kayakers and fisherman, the island has seen it all: from a small farming community in the 1800s, to chemical warfare laboratory during the Second World War, to outpost for Mississippi artist and legend, Walt Anderson. Rowing out to the island in a dory, alone, Anderson made the island his home for long stretches of time, once riding out a hurricane under his overturned boat. On the island he would pass weeks painting and writing in isolation.

Rather than camp with a view of the Biloxi skyline, we braved a half-mile trudge across soft sand to the quieter Gulf side. There we found clear water and a wide, white beach, not another person in sight, and just enough breeze to keep the mosquitoes at bay. Dinner was a communal meal of red beans and

rice. Then a few drinks, a few songs, and we retired to our tents, leaving a few souls up next to the fire and swapping stories until dawn.

Breakfast on an ELS outing is not for the faint-hearted. For those who are



Quest for Fire

non-vegetarian, “grease biscuits” (pat. pending) are the breakfast of choice – (1) fry up all the sausage (2) remove sausage to a dog-free environment, (3) split English muffins, place face down in the grease and bring to a rolling boil, then (4) remove muffins and insert the sausage as a sandwich. Yield: Enough energy to power an ocean-going tanker. Louisiana Pematican, say its defenders.

The trip home came too soon. For many of the graduating seniors – including me – the weekend away took on a special importance as our last time together. Whether an overnight canoe paddle, a swamp trip, or those infamous all-day bike-a-thons, the TELS trips brought us together. We went, survived, laughed, and left as friends.

– James Johnston '02

## Return of the Prodigal: John Suttles Becomes Clinic Deputy Director

The prodigal son has returned. John Suttles joined the staff of the Tulane Environmental Law Clinic as its Deputy Director in August of 2002. Suttles graduated from Tulane Law School with a JD in 1988, an LLM in Environmental Law in 2002, and a mound of debt. To pay it down, he went into private practice, soon reaching the level of firm partner and specializing in asbestos litigation. He made money. He got used to the high life. Interviewed for this article, he commented: “The worst curse is to get everything you wanted” – because then you are tied to it.

John then broke with private practice and opted for life in the lower-paid lane, public interest law. He brings attitude and energy to the clinic. He has rediscovered the optimism of his student days. He says, “public interest lawyers tend to be better-trained lawyers because they simply haven't got the support staff of a large firm – the attorney has a better handle on the litigation process.” He encourages students to really enjoy the learning process and make the most of it.

– John Wayne Pint, 2L



John Suttles back on home turf in the TLS courtyard.

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## 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 fifteen 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 international projects of its institute, and the momentum provided by its students. These four components

of Tulane's program—in the extraordinary setting of New Orleans, the Lower Mississippi River, and the Gulf Coast—provide a unique academic experience for those with an interest in environmental law and international 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>.

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## The Impossible Exam Question

*How would you answer this one? At the close of an examination last year in Natural Resources Law, without prologue or further explanation, appeared the following question:*

“The Desert Speaks” by Jorge Luis Borges

There is a time towards evening when the desert seems to speak, but we cannot hear it.

Or perhaps we can hear it, but we cannot understand what it has to say.

Or perhaps we can understand it, but what it has to say is as untranslatable as music.

Question: What does this poem have to do with Natural Resources Law?

*Dear Reader:*

*We are still searching for the answer. Professor Houck swears that, while he received several “good” responses, none were (in his words) “magnificent.” If you think you have an answer for us, please e-mail it to this Newsletter at [jpint@law.tulane.edu](mailto:jpint@law.tulane.edu). Magnificent answers will be printed in the next issue of this newsletter. Ed.*



### Tulane Environmental Law News

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