

What Follows the Cancun Trade Wars?

The Empire Strikes Back



Protesters, such as these challenging the FTAA, declared victory

Tell the Truth; Obey the Law

Ten years ago in the heat of the battle over logging old growth forests in the Pacific Northwest, a battle characterized by stubborn, government denials that forest species were endangered when in fact their numbers were falling off the chart, a remarkable thing happened. A wildlife biologist was appointed Chief of the US Forest Service. The Service's credibility with the public had hit an all time low, and morale was dropping fast. In came Jack Ward Thomas. He called a meeting of all Service personnel in Washington DC and his message was direct and plain: "tell the truth; obey the law."

The results were positive and dramatic. New collaborative planning led to resolution of the old growth and other natural resource controversies, and set the stage for a new culture in environmental responsibility. It lasted until the year 2000 . . .

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As the World Trade Organization meeting in Cancun, Mexico broke down in September, anti-trade activists celebrated. Ministers reached an impasse and the meeting ended early as the 146-nation trade body failed to advance the latest "Millennium" round of negotiations that began in Doha two years earlier. Exuberant messages flooded the Internet, and protestors – relegated by authorities to a protest zone several kilometers from the ministerial itself – staged impromptu fiestas. Maude Barlow, of the Council of Canadians, heralded an "historical victory . . . that will lead to new dynamics."

In addition to trade delegates, Cancun had attracted an assortment of groups and individuals concerned about a range of social impacts that

accompany international trade – some to march, some to throw rocks, and some to debate outcomes and alternatives. In what John Audley of the Carnegie Endowment later called the "three ring circus" of Cancun, governments met in the big top while marches and debates were staged on either side in auxiliary tents.

In one sideshow, the public marches had at times turned violent. Security fences were overrun and brought down, and protestors hurled rocks, sticks, and concrete at police. At one point, a South Korean farmer, wearing a sign that said "WTO Kills Farmers," scaled a barricade and fatally stabbed himself. But police kept their distance and largely ignored the street theatre.

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Clinic Welcomes New Supervising Attorney

Maintaining its strong litigation capability, the Environmental Law Clinic has added Chris Brown to its cadre of supervising attorneys. Chris served as a staff attorney for the Texas Commission on Environmental Quality, where he specialized in air and water quality permitting and rule-making. Before that, he served as an assistant attorney general for the Texas Attorney General's Office, a judicial clerk for the U.S. District Court for the Western District of Texas, a natural resource specialist for the

Texas Senate Research Center, and a briefing attorney for the Texas court of appeal. His B.A. is from Northwestern University, where he was named to Phi Beta Kappa. He earned his J.D. and Masters in Public Affairs from the University of Texas in 1996, and became a Rotary Foundation Fellow at the Free University of Berlin, where he studied German constitutional history. "I feel welcome here," says Chris, "by the people and the work. It's as if I've come home."



Chris Brown



Dual Realities at the Environmental Law Clinic

At the Tulane Environmental Law Clinic, we live in two realities. One corresponds to the first part of our mission – to train strong, ethical litigators. It is hard not to paint a rosy picture of this reality: As part of a top-five ranked environmental law program, we attract talented and motivated student attorneys and have the pleasure of helping them come into their own. We are blessed with a supportive Law School and University, a capable staff, and an abundance of challenging, cutting edge issues. We win a fair share of victories, and our alumni who take these experiences into practice are making us proud.

Our second reality corresponds to our mission to provide environmental legal services for those who

would otherwise go unrepresented. It is more problematic. As Louisiana's only public-interest environmental law firm, we know that cases we turn down are unlikely

No one wants to see litigation block whatever they view as progress. Professionals on all sides, however, know that the system's credibility depends on community



ever to be brought. Many of our clients live in communities under siege, surrounded by sources of toxic pollution. Too much pollution goes unmonitored and too many violations go unabated. Poor and minority communities suffer a disproportionate share of the impacts. As professionals, we celebrate our victories and take losses in stride. But for our already struggling clients, each loss can be a calamity.

Fortunately, most of our clients retain their optimism, viewing themselves as activists rather than victims. And while it sometimes seems we take a step forward only to take one back, we are having a positive impact. EPA and Louisiana regulators have acknowledged many of the regulatory system's problems, dropping some policies that failed to conform to law. An awareness is spreading among the business community that it does not pay to try to roll over residents' concerns.

participation in environmental decisions, regardless of community residents' ability to pay lawyers and even when their views spark controversy. As lawyers, we owe each client a duty of loyalty. Yet we serve not only our clients, but also our profession, by training strong, ethical litigators and by helping the bar tackle its obligation to make the legal system work for everyone.

The Tulane Environmental Law Clinic counts you among its constituents whether you are a client, alumnus, funder, academic colleague, student, board member, or fellow environmental professional – even if you are one of our clients' opponents. No single one of you is likely to favor each and every step the Clinic takes on behalf of a client. Nonetheless, this is your environmental law clinic and we want it to make you proud.

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Tulane Environmental Law News

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Environmental Law and Policy

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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.

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TULANE ENVIRONMENTAL LAW SOCIETY – FALL CALENDAR

Aug. 28 – Opening Meeting	Oct. 7– Conference Planning	Oct. 25 – Southern Forests: Survival and Sustainability
Sept. 5 – Welcome Party	Oct. 11 – Bike Trip	Oct. 28– Conference Planning
Sept. 7 – Bike Tour of the City	Oct. 14 – Conference Planning	Nov. 8 – Overnight Canoe Trip (Bogue Chitto Creek)
Sept. 17 – Conference Planning	Oct. 17 – Bike to the French Quarter	Nov. 11– Conference Planning
Sept. 18 – Tree Huggers Happy Hour	Oct. 18 – Canoe Trip (Jean Lafette State Park)	Nov. 25 – Conference Planning
Sept. 19 – Mayor’s Breakfast	Oct. 20– Bike Trip to Quarter and Algiers	Dec. 3 – Picnic on the Mississippi
Sept. 20 – Lake Clean-up	Oct. 21 – Careers’ Speaker Panel	<i>On-going</i> – Recycling projects
Sept. 27 – Canoe Trip		
Sept. 30– Conference Planning		



The 5-tier Pyramid

Photo Gallery- Shots from Recent ELS Outings



To Horn Island



Red Creek - Chalk & Charcoal

The Yin and Yang of Toxic Torts

The field of toxic torts is a sleeper in environmental law. It *was* environmental law before the advent of environmental statutes, and then took a back seat in law schools and the media. Meanwhile, leaking waste pits, groundwater contamination, toxic spills and unregulated discharges from oil tankers, pulp and paper mills and mishandled pesticides produced a steady stream of injuries and plaintiffs seeking tort-based remedies. It is fair to say that, despite the public law emphasis in law school studies, nearly half of law graduates who touch environmental law in their practice will do it through one side or the other of toxic tort actions. Particularly in Louisiana and the American South where the regulatory climate is, ahem, permissive, and the exposure levels high. For this reason, Tulane has decided to give greater emphasis to toxic torts in its curriculum, with a course on Class Actions (by former Dean Ed Sherman) and two additional seminars taught by practitioners from both sides of the field.

Carol Welborn Reisman teaches the introductory course in Toxic Tort Theory and Law. Carol is a shareholder with Liskow & Lewis, with over twelve years of litigation experience in toxic tort, production liability and class actions. She received her B.S.M. degree, summa cum laude, in 1987 from the A.B. Freeman School of Business and her J.D. degree, summa cum laude, from Tulane Law School in 1990, where she was an Associate Editor of the Tulane Law Review and a member of the Order of the Coif. Ms. Reisman has handled numerous individual personal injury cases and class actions involving exposure to a multitude of chemicals from hydrogen sulfide to formaldehyde, organic tin compounds and carbon monoxide. She has extensive experience deposing and defending depositions of experts in toxicology, occupational medicine, neurology, psychiatry, industrial hygiene, chemical engineering, and air dispersion modeling. Ms. Reisman recently tried a four-week jury trial involving a claim arising from an alleged toxic encephalopathy, and secured a “zero” verdict for her client; in another tort matter arising from an explosion at a chemical plant, she successfully defeated a class action certification attempt made by neighboring residents. She says she enjoys the practice because of its challenges, in particular those of cross examining opposing scientific and medical experts.



Carol Reisman



William Goodell and Friends

From the other side of the ledger comes William Goodell, who teaches a practicum on Toxic Tort Litigation, modeled on live case pleadings and mock trial exercises. An LL.M. graduate from Tulane, Bill served in the Environmental Enforcement Division of the Louisiana Department of Justice before moving out into a solo practice. He has also taught the Environmental Advocacy course at Tulane, associated with the Environmental Law Clinic. Bill’s experience and emphasis is on the plaintiff’s side, and he has secured major verdicts and settlements involving damages from oil and gas activity and chemical exposure. His interests are in teaching how to integrate the science and business aspects of a toxic tort practice, from cost considerations to the challenges of technical arguments and proof in a field in which certainty is a rare commodity, but harms are

very real. An avid hunter and fisherman, Bill says he enjoys what he does because he likes representing the underdog, and in his mind that includes the environment.

New Courses for 2003-04

Comparative Environmental Law

Professor **Oliver Houck** will be offering a Comparative Environmental Law course in Spring 05, focused on the national laws of the US, European Union, Latin America and Asia. There is no text in the field, which he says is understandable given the diversity of issues and approaches around the world. The course is distinct from International Environmental Law, which treats pollution and natural resource responsibilities at the multi-state and world levels. This course, by contrast, will parallel national treatment of similar themes such as impact assessment, enforcement, pollution control and wildlife protection. It's almost too ambitious to succeed, Houck says, which, like paddling through a swamp, is what could make it a lot of fun.

Urban Practicum

Daria Diaz, an environmental lawyer with a strong background in teaching and litigation, will offer a new Urban Environmental Practicum next spring. An LL.M. graduate of Tulane who served as a Supervising Attorney and then Acting Director of Tulane's Environmental Law Clinic, Daria has been in private practice until recently, when she joined the energy practice of Stone, Pigman. Students in this course will conduct research on zoning, demolition by neglect, renewal and recycling incentives and other items on the agenda of the City of New Orleans. We look at this as a city service, she says, and excellent practical training.

International Development Law Clinical

Institute Director **Eric Dannenmaier** launched a new clinical offering this fall on "International Development Law and Sustainability." The four-credit seminar is designed to engage students in real world projects in international sustainable development law. A classroom component covers theory and case studies – emphasizing areas where Institute projects serve as a laboratory. Students represent international institutions and non-governmental organizations as they conduct supervised research, draft policy papers and support legislative initiatives in the US and overseas.

Biology and the Law of Biodiversity

The Spring '04 course in Biodiversity will include for the first time a mandatory credit hour in Conservation Biology, also taught in the Spring by Professor **Tom Sherry** of the Biology Department at Tulane. Dr. Sherry is an ornithologist with a strong research emphasis on the Red Cockaded Woodpecker and other avian species. He has guest-lectured in the law course in the past, but this will be a trial run for law students in a full-bore class in biology. The topics will include evolutionary biology, species and speciation, population genetics, viable population analysis, extinction and conservation methods. Professor Houck, who will be teaching the law course, says he will be in Conservation Biology with his students, at 8:00am.



Tulane's Environmental Journal

The Tulane Environmental Law Journal, now in its seventeenth year of production, provides its readers with an in-depth analysis of environmental law and related issues.

Volume 16:1

Clean Air Act New Source Review, International Asbestos Litigation, International Rights to a Healthy Environment and Environmental Justice.

Volume 16:2

Symposium Issue: The Endangered Species Act: Thirty Years of Politics, Money, and Science Takings Law, Scientific Standards of the ESA, Appropriations and Administration of the ESA

Volume 16:3

Special Issue: "Environmental Law and Sustainable Development in 21st-Century Cuba"

Sustainable Coastal Tourism in Cuba, Balancing Conservation and Development, Land Use Planning in Cuba, and Sustainable Agriculture and Development.

For more information, or to subscribe, contact TELJ at 504-862-5309, lbecnel@law.tulane.edu.

Telling the Truth *Continued from page 1*

Today, the Forest Service is under the supervision of a timber industry lobbyist, the Department of Interior is under the control of a James Watt protégée and an oil industry lobbyist, and the EPA Administrator, after defending and apologizing for the Administration's hostility to initiatives such as global warming on which she had staked her career, has resigned in humiliation. The difficulty for the Administration was not in getting its personnel to undermine environmental laws, which they promptly set out to do, providing windfalls to party contributors, across the board. The difficulty, rather, was that the idea of environmental protection still rang big bells with the American public. Telling the truth about what the Administration was doing was not only embarrassing; it could be politically costly as well. So it stopped telling the truth.

Not by accident. By design. In 2002, sensing a negative reaction to the Administration's environmental initiatives, Republican strategist Frank Luntz – an author of the famed "Contract With America," which, *inter alia*, targeted environmental laws for amendment and outright repeal – prepared a memorandum for the White House and majority leaders in Congress. Front

in the context of global warming, and provided a game plan for the Administration and its players on Capitol Hill. The memo read: "The scientific debate is closing [against us] but not yet closed. There is still a window

"When I use a word,' Humpty Dumpty said, in a rather scornful tone, 'it means just what I choose it to mean—neither more nor less.'"

-Lewis Carroll, THROUGH THE LOOKING GLASS

of opportunity to challenge the science." What was needed here, the memo went on to explain, were "Words That Work," among them:

"We must not rush to judgment before all the facts are in."

"Scientists can extrapolate all kinds of things from today's data, but that doesn't tell us anything about tomorrow's world."

"Unnecessary environmental regulations hurt moms and dads, grandmas and grandpas."

Reflecting on this advice, one is reminded of the Nixon tapes and the desperate, twisting of truth they displayed as the ring of facts closed in. In the context of science-based environmental policy, it is close to the subornation of perjury. The Administration's ensuing actions contradict the very meaning of the English language, to say nothing of pollution control laws. See EPA's redefinition of the term "modifications" to allow power plants to avoid the use of abatement technology; see its determination that carbon dioxide is not a pollutant. They are so numerous that litigation cannot hope to catch them all. Even the media has trouble keeping pace with them. They are couched in such Words-That-Work as the "Forest Health Initiative" and the "Clear Skies Initiative" which, phenomenally, triples the timber cut and postpones the use of cleaner technology for the next thirty years.

We have always used euphemisms to soften the image of assaults on the environment. What is going on here is new, however, and qualitatively different. The labels are the very contrary of what is in the bottle. They are intended to mislead. They are planned, comprehensive, and deceptive by any name you choose. Imagine, a successor to Jack Ward Thomas calling the agency together and saying: "Do not tell the truth; Obstruct the law." Now imagine the White House doing it. Guess what? It is happening.

- Oliver Houck, Professor of Law



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and center was the environmental image problem. Luntz counseled a new PR strategy: full speed ahead on the administration's programs, but covered by "an effort to reassure a skeptical public that you care about the environment for its own sake – that your intentions are strictly honorable." The recommended buzz words were "common sense," "freedom," "voluntary," and the increasingly used "sound science."

The "sound science" advice is illuminating. It came

M.C. Mehta Visits TLS

Keynotes Conference on Law, Science and the Public Interest

“It is the lawyer who learns to swim against the tide who makes a difference in the world.” -M.C. Mehta

In Spring 2003, Tulane Law School had the honor of hosting Mr. Mehta as the keynote speaker for its annual Environmental Conference. Mehta, a world-renowned public-interest lawyer, has had a tremendous impact on the development of environmental law in India, and by example, the world.

Mehta began his speech by describing the historical background for the fight for environmental protection in India. After India gained its independence from Britain in 1947, the new political leadership wanted to show that India could be as modern and rich as the US and Western Europe. The next fifty years saw rapid industrialization – and rampant contamination of India’s land, air and water. Up to and including its most honored cultural treasure the Taj Majal.

Mehta began his career practicing in the High Court, and shifted his practice to the Supreme Court in 1983. Then a chance meeting changed his outlook. At a party, a stranger approached him and said, “You are greedy.” When Mehta pressed for an explanation for this unexpected accusation, the man replied that during the freedom movement, the lawyers did wonderful things for the country. But after independence, he stated, “all the lawyers became greedy and no longer did things for the country.” The man explained to him that the Taj Mahal, one of the wonders of the world, was dying, and the “lawyers were doing nothing.” Mehta gave the man his card, and asked him to call.

Mehta never heard from the stranger, but the man’s words deeply affected him. Eventually, he decided to look into the problem himself. He went to see the Taj Majal and witnessed how the acid rain, caused by nearby polluting industries, was destroying this national icon and architectural masterpiece. After six months of prepara-

tion, he took the case to the Supreme Court.

The Indian Constitution of 1950 establishes that the people of India enjoy certain fundamental rights, including the right to life. A citizen has the right to go to the Supreme Court if any of his or her fundamental rights are infringed upon. Until Mehta, however, little use was made of this provision. To him, a healthy environment was an essential part of the right to life, and the state of the Taj Majal made clear that this right was being violated.



M.C. Mehta (left), and friends, at the Conference Dinner March 2003

The Supreme Court refused to hear Mehta’s case three times, “throwing the papers back in [his] face.” They told him he was crazy to ask that they limit industries when India was such a poor country. But Mehta persisted, insisting to the Court that he was simply re-

minding them of their duties to society. On his fourth attempt, the Court accepted the case, and ruled in his favor. Five hundred polluting factories were closed, and then placed under stringent, technology-based controls.

Mehta brought a second landmark case to the Supreme Court when he learned that a one-mile stretch of the Ganges River had caught fire. Upon visiting, he learned that two nearby industries were releasing toxic chemicals into the river, causing the fire as well as skin diseases in the local population. To truly understand the significance of this, Mehta explained, you must understand that the Ganges is considered the holiest of rivers in India.

Mehta brought a case against these two industries, which was heard by a judge who had a reputation as being quite difficult. Even the judge was impressed, however, by the fact that the river had caught fire. It surfaced that not just two, but hundreds, of industries were dumping chemicals into the river. Now the court

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Cancun Trade Wars Continued from page 1

In the other sideshow, public debates had at times turned elliptical. Participants continued a tradition of scholarly inquiry and nuanced proposals. But delegates kept their distance and largely ignored the policy experts.

In the end, the marches and the debates probably had less impact on the outcome than their participants had hoped. The breakdown was not because trade officials had listened to the public; rather it was because officials had not listened to each other. In the aftermath, fingers pointed in many directions and a few principal culprits emerged.

Developed countries were faulted for pushing so-called “Singapore issues” of investment, competition, transparency in government procurement, and trade facilitation in closed-door sessions. Poorer, developing countries, it was reasoned, were not ready to address these issues – and the tactics of the larger countries amounted to bullying. Others put the blame on billions in annual agriculture subsidies that the United States, Europe and Japan grant to their farmers. US cotton subsidies were singled out for abuse.

Brazil, India and China had rallied G-21 countries (a shifting informal coalition sometimes called G-22, more recently called G-20) to reject any agreement that did not promise to reduce these import-blocking agricultural subsidies. Some applauded the move by the troika to rally developing countries into a meaningful negotiating bloc capable of showing some muscle in a contest with big economies. Others decried the move as playing on a classic north-south schism – accusing the ringleaders of cynically protecting their own interests, including their own highly restrictive import tariffs on farm products (which in the case of India, for example, average 110%).

While the WTO has weathered setbacks before – it rebounded in Doha within two years of the “battle in Seattle” – there are signs that the underlying issues are now more intractable. In the aftermath of Cancun, WTO Deputy Director General Roderick Abbot projected that the failed round has pushed back a conclusion to the Millennium round until 2006 – and some would call that optimistic. It isn’t clear where the members will go from here. The European Community, for

its part, has signaled that it will not take the initiative to resume the talks. Instead the EC’s Deputy Director-General for Trade, Pierre Defraigne, has allowed only that “we’ll be in a listening mood. . . . We’ve already paid enough.”

In a recent Financial Times editorial, US Trade Representative, Bob Zoellick, offered his own post mortem, and decried the “rhetoric of resistance” that characterized Cancun. Zoellick divided the world into “won’t-do” and “can-do” countries, and wrote “as the WTO ponders its future, the US will not wait: we will move towards free trade with can-do countries.”

The Empire Strikes Back: Beware the Bilaterals

So where does this leave us? Perhaps Zoellick’s article, along with recent machinations in the US and Europe, provide an answer: bilaterals. Bilateral trade agreements can accomplish precisely the same trading goals for large economies – commitments on investment, government procurement, etc. – but without the pesky tendency of developing countries to rally and form coalitions.

By moving toward free trade with “can-do countries” one at a time, the US, Europe and Japan can, in the words of European Trade Commissioner Pascal Lamy, “cherry-pick” the countries of greatest interest to domestic business concerns, and leave smaller, less developed markets, out on their own. But in the case of the plucked “cherries,” membership may not have its privileges.

Aside from the enormous shift in negotiating power – no trading blocs or coalitions can protect countries that venture into bilateral negotiations with large economies – there are problems of negotiation and implementation capacity that will plague small countries proceeding separately. There are also legal challenges ahead where nations build a network of bilaterals rather than a uniform, rationalized system (however irrational many claim the system to be).

Trade negotiations for a small country are tough enough when you can count on your friends and neighbors. But small staffs, overtaxed bureaucrats, and limited budgets combine with the complex, arcane discipline of trade to leave many unable to effectively go it alone. The proposed regional accord to establish a

The Empire Strikes Back Continued from previous page

Free Trade Area of the Americas (FTAA), for example, is packaged with a multimillion dollar technical assistance program of “trade capacity building” that includes training for negotiators and support for the implementation of new customs and duties regulations that are inherent in the proposed regime. It is unlikely that any such comprehensive package will accompany bilaterals. Left to fend for themselves, many fear that small countries will be so much chum for the sharks.

Bilaterals raise another concern in their potential to create inconsistent and confusing legal regimes that

can reduce predictability (predictability is a good thing as legal regimes go) and increase the likelihood of unintended consequences (which is not a good thing). For example, most-favored-nation clauses that are common in bilaterals (a provision that, in essence, gives parties the benefit of bargains their counterparts may strike in separate treaties) could require parties to unwittingly grant rights and privileges to existing bilateral trading partners simply by virtue of their inclusion in subsequent agreements. This raises the specter of provisions such as the investor rights provisions of Chapter 11 of the North American Free Trade Agreement (NAFTA) (a

much-maligned provision that has been read to grant special rights to foreign investors wishing to challenge domestic policy) being extended to bilaterals without the benefit of negotiations or counterbalances. By stitching together a patchwork of bilaterals, we may be spinning a web of confusion and consequences that will take years to unravel.

Yet signs that bilaterals are now the favored path are clear and mounting. Even before Cancun, in October 2002, President Bush unveiled the Enterprise for ASEAN Initiative, aimed at building a “network” of bilateral free trade agreements among the US and members of the Association of Southeast Asian Na-

tions. A bilateral with Singapore has already been concluded. In the meantime, BNA International Trade Reporter (BNA) quoted a US trade official speaking on background at a recent meeting of the Global Business Dialogue and the National Foreign Trade Council as saying that, in the wake of Cancun, the US will “push ahead with bilateral and regional agreements.” Other sources in Washington indicate that the cherry-picking has begun, as trade “fitness” assessments are already beginning for a number of potential bilateral trade partners. The International Centre for Trade

and Sustainable Development recently reported that Colombia and Peru left the G-21 (now termed G-20+) in the wake of Cancun to pursue separate agreements with the US – evidence that the bilateral process is already having collateral impacts on the developing country coalition.

For its part, Europe seems to be steering the same course. With an EC paper on bilateral trade to be debated in November, it seems clear that the Europeans will deepen and acceler-

ate bilateral and regional trade initiatives in response to the Cancun setback. According to BNA, the EC’s Deputy Industry Minister Adolfo Urso has urged that the EU, “despite its ‘strong multilateral credentials,’ should press ahead with bilateral initiatives.”

So, can those who question the wisdom of global trade accords and fear for the developing world really call the WTO breakdown in Cancun a victory? Or will it, in time, be seen as pyrrhic – creating new “battle lines” at a time when developing country delegates, and trade activists, are already overextended?

-Eric Dannenmaier, Director, Tulane Institute for Environmental Law and Policy



The Economist cover from 20-26 September 2003
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Institute Co-Hosts Program on Access to Genetic Resources in Costa Rica

Tulane's Institute for Environmental Law and Policy sponsored a **Conservation Clinic and Workshop on Access to Genetic Resources** from June 18 through July 28 in San Jose, Costa Rica, with support from the John D. and Catherine T. MacArthur Foundation, and in collaboration with the Environmental Policy Directorate and the International Cooperation Directorate of the Cuban Ministry of Science, Technology and the Environment (CITMA), the University of Florida and the University of Costa Rica.



The Genetic Resources Policy Team at work in San Jose

After a five-week program of research and drafting, the students offered a workshop to present their findings, and to obtain expert review of their findings.

This unique clinical and workshop approach arose from a strategic alliance among Tulane, the University of Florida School of Law, and the University of Costa Rica Faculty of Law. Participants in the Genetic Resources program attended summer school sessions on international and comparative environmental law, and team with

The program teamed young professionals from Cuba with students from the Florida/Costa Rica summer school in a clinical program of research and legislative drafting directed through Tulane by an international team of ex-

other students to perform the clinical work – reinforcing their learning and strengthening their work product with a diversity of perspectives.

Photo Contest Winners



First Prize, **Alligator Bayou**, Kay Bond



Second Prize, **Horn Island**, Ellen Addington

INSTITUTE AGENDA: 2003-04

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

Inter-American Trade Ministerial

The Eighth meeting of Trade Ministers and Representatives to negotiate the Free Trade Area of the Americas (FTAA) is set for late November in Miami, and the Institute is among a group of coordinating organizations that will facilitate workshops on key issue areas (such as labor, human rights, women's issues, and small economies) within the "security perimeter." The forum will take place inside police lines where public concerns can be aired and discussed with Ministers and their staff through civil discourse. The Institute is co-chairing two of the thematic workshops – one on Trade and Environment and the other on Public Participation and Access.

Environmental Assessments and Trade

The Institute is working with environment ministries and non-governmental organizations in twelve countries of the Western Hemisphere to conduct country assessments of the potential environmental impact of proposed Free Trade Agreements. The project centers on identifying high-change economic sectors with a high potential impact on the environment, and evaluating legal and institutional alternatives to manage and minimize this impact. Reports have just been published for Argentina and Brazil, and work continues in Paraguay and Uruguay and in Central America. The project will expand to the Caribbean during 2003-04.

Public Participation and Access to Justice

The Institute is working with government and NGO partners in Africa, Asia, and Latin America to strengthen mechanisms for public participation in environmental decision-making. Projects focus on strengthening public access to international environmental institutions through comprehensive, long-term study and public dialogue.

Environmental Security & Conflict Vulnerability

The Institute is working with the Foundation for Environmental Security and Sustainability on a Congressionally-mandated study of Environmental Risk Assessment and Conflict Vulnerability in the developing world – concentrating on the role of governance. The work began with field research over the past summer in Nepal, and will continue with case studies in Africa and Latin America in the coming months.

Human Rights and the Environment

The Institute is working with the Organization of American States to understand and address linkages between human rights and the environment through inter-disciplinary research. The project will produce a technical report on legal and policy intersections for consideration by the General Secretariat and the Inter-American Commission on Human Rights. The report will also offer recommendations for a future program of action for OAS Member States.

Annual Conference

Set for April 2-3, 2004

Law, Science & Public Interest

Planning has begun for the 9th Annual Tulane Environmental Law Conference in New Orleans. The event, co-hosted by the Environmental Law Society and the Tulane's Institute for Environmental Law and Policy, draws 300 plus participants from academia, law firms, business and advocacy groups, and the general public from around the Gulf Coast. This year, plans are being developed jointly by the student coordinators and members of the environmental community from throughout the Gulf Coast region.

Preliminary plans for 2003 include panels on climate change, environmental justice, the Gulf Coast, the Administration's environmental record, and urban smart growth.

Annis Maguire, a recent graduate of Notre Dame, joined the Institute this fall as Publications Coordinator. She will be helping to produce a series of country studies on the environmental impact of free trade agreements, and a collection of translations of Cuban environmental Laws (with Environmental Defense) along with other Institute publications. She and her husband Shamus are recent transplants to New Orleans from South Bend.



Department of Advanced Learning: LL.M. 2003-04

Aniefiok E. Bassey, Nigeria.

"I'm from Akwa Ibom State, one of eight states which make up the Niger Delta region of Nigeria. At more than 20,000 square kilometers, the Delta is one of the world's largest wetlands - it has perhaps 6,000 square kilometers of mangrove forest, high biodiversity and high levels of rare and endemic species. The region is also the hub of crude oil and natural gas exploration and production activities in Nigeria. Four decades of oil and gas operations have left adverse and devastating impacts on the Niger Delta environment, in addition to gross human rights abuses. The devastated state of the Niger Delta environ-



Cleveland, Duangrak, Gyorgyi, Raj and Lina

ment ignited my interest in pursuing graduate studies in Energy and Environment at Tulane. My research will focus on developing a legal and policy framework for the regulation of oil and gas pollution in Nigeria, drawing on the framework in the United States."

Cleveland Coon, U.S.A.

"As a boy of 9, I learned to swim in a river that bordered my grandparents' farm. I lament the fact that my children or grandchildren may not have such a memory to cherish. I have held onto this memory throughout my private and public practice. It is my motivation to study environmental law and to become a participant in the fight."

Patricia Cornette, Brazil

"During my years of private practice in Brazil, I worked in several fields of law, but none of them fascinated me as much as environmental law did. The complexity and wealth of this field reflects the complexity of our world. My interests are centered in environmental policies for public health issues. After graduation, I would like to work on sustainable development policies for the improvement of public health."

Alexander Cuda, U.S.A.

"I have a B.A. with majors in Comparative Literature and

Latin from Cornell, completed in 2000. I received my J.D. from Tulane last year, where I served as Senior Articles Editor of the Journal of Law & Sexuality and as a Senior Fellow for the International LL.M. Legal Research and Writing class. I've clerked for the Law Offices of Deonne DuBarry and Regan & Associates, and am currently affiliated with Barkan & Neff. I've also worked and volunteered for the ACLU of Louisiana and the Louisiana Appellate Project. I am originally from Charleston, West Virginia, where I worked on undergraduate breaks for former Secretary of State Ken Hechler, my state's most avid opponent of mountain-top removal, the coal-mining plague that afflicts WV. I am a proud bleeding heart liberal and vegetarian, who believes that we should be able to beat Mother Nature into submission, but that we shouldn't kick her while she's down."

Osamu Nagatomo, Japan

"Since 1996, I've been working at a Japanese public utility as an in-house lawyer. For the last decade, the company has been expanding its business: not only distribution of gas to end-users, but also development of natural gas and importation of LNG by its own tankers. We face very large cleanup responsibilities for old facilities as well. I would like to think about what the company should do, as an energy company, to advance both economic growth and protection of the environment."

Rajkumar Singh, India

"A keen interest in environmental law took me to WWF at Jawaharlal Nehru University, where I had the privilege to work on many contemporary environmental issues. And with the exposure and learning I will gain from the LL.M. program, I wish to stay involved in the subject and facilitate developing a regional capacity in environmental law, particularly in the south Asian region."

Duangrak Trongmethirat, Thailand

"Thailand is world-famous for tourism, while it's capital city, Bangkok, is notorious - particularly for air pollution. The knowledge I am gaining here will be an advantage to my challenging work in the Pollution Control Department in Thailand."

Lina Uribe, Colombia

"Since the beginning of my career I have been interested in environmental law and in the year 2002 I obtained a degree in Environmental Law in Bogota. I have also worked in a general practice law firm on environmental projects such as a wastewater treatment plant for the Bogota River. In Colombia this branch of law is still in formation and in need of qualified professionals prepared to write environmental regulations and negotiate individual permits and international treaties which are the foundations of the environmental protections in my country."

University Award to Environmental Professor

Tulane University's Presidential Award for Teaching Excellence at the Graduate and Professional level was awarded to Oliver Houck. Known for his commitment to hands-on learning, Houck holds a BA from Harvard College and a JD from Georgetown, with three intervening years in the US Army. He began his career as an Assistant US Attorney in Washington DC, followed by ten years as General Counsel to the National Wildlife Federation where he established its litigation and law school clinical programs. In 1981 Houck moved to New Orleans and joined the law faculty at Tulane. "Initially it was for one year," he says, "to negotiate a deal on saving the Atchafalaya Basin. Somehow, we just stayed." When asked about the most satisfying aspect of his job, he replied that it was discovering, years later, that a former student is negotiating air permits in New Mexico, or drafting the forestry laws for Paraguay, or has won a case against Sprawlmart. "To think that you might have had a hand in that is awesome ... in the right sense of the word."



Mehta Keynote

Continued from page 7

turned to Mehta for guidance, and he suggested that they issue a public notice stating that all polluting industries should appear before the Supreme Court by a date certain, or risk closure. Thereafter, the Court shut down some of the worst offenders, stating it was conscious that the closures would cause some unemployment; however, the life and health of the citizens of India were more important. The Supreme Court started expanding the scope of the Constitution's guarantee of a right to life, and in doing so established the right to a healthy environment as an integral part of that right to life.

As for Mehta, he has established the leading national environmental organization of India. In 1996, he won the coveted Goldman Environmental Award. In typical fashion, he used the monies to establish an Eco-Ashram, a training school for judges and lawyers in environmental law - with a spiritual dimension.

We wish him well.

Environmental Law Clinic Continued from page 1

Here are some the Tulane Environmental Law Clinic's accomplishments over this last year:

Clinic student attorneys obtained a remand from the U.S. Court of Appeals for the Fifth Circuit, requiring EPA to enhance **Clean Air Act safeguards** in a five parish area surrounding Baton Rouge, Louisiana.

A Clinic petition, on behalf of a coalition of grass-roots environmental groups, resulted in an EPA demand that Louisiana show progress "in restoring program integrity" to its **water discharge permitting system**, or face possible "withdrawal of program authorization." In response to the petition, EPA has increased oversight of the Louisiana program.

On behalf of the Louisiana Environmental Action Network ("LEAN"), Clinic student attorneys

successfully petitioned the EPA for an objection to a **Clean Air Act permit** that increased air emissions in an area that already violates minimum public health standards.

The Clinic obtained federally enforceable measures to reduce air pollution in a settlement of a **Clean Air Act citizen suit** on behalf of the Concerned Citizens of New Sarpy.

On LEAN's behalf, the Clinic obtained a settlement requiring mitigation of **groundwater** use at a newly constructed power plant.

On behalf of Saint James Citizens for Jobs and the Environment, Clinic student attorneys have mounted an administrative challenge to disposal of **sewage sludge** near residences of a predominantly lower income, minority community.

- Adam Babich, Clinic Director

From the Ozark Hellbender to the DC Reg. Binder - *Student Summers in Environmental Law*

As usual, our environmental students went to summer law jobs in all parts of the country and into a wide range of experiences: the good, the bad, and the “incredible.” Here is a sampling:

M. Nicole Adame, 3L, *Environmental Section, Fulbright & Jaworski*, Houston, TX. “This was my first time working in a purely environmental section at a private law firm. I was concerned that it would be difficult to defend the clients’ actions and that the attorneys would be far from any sense of ‘green.’ Instead, I found a small group of people that wanted to protect the environment and uphold the law while helping to ensure that their clients were treated fairly by the government. It certainly gave me a new perspective on environmental defense.”

Karen Bishop, 2L, *Alabama Department of Environmental Management*, Montgomery, AL. “Working in a state agency is a great experience because it gives you exposure to administrative law as well as state and federal environmental statutes. I had the opportunity to observe administrative hearings, draft administrative orders (which assess penalties for permit violations) and to go out with

the inspectors to investigate complaints—by far the most interesting part of my summer.”

Kay Bond, 3L, *Water and Land Section, Environmental Division, North Carolina Attorney General’s Office*, Charlotte, NC. “I worked under the North Carolina Bar’s third year practice rule, which allowed me to argue motions in front of administrative law judges, defend depositions, and participate in settlement negotiations. My supervisor, Mary Penny Thompson, is a Tulane alum who was an Environmental Journal member and a student attorney in the Environmental Law Clinic. She was committed to showing me what it would be like to work in the environ-

mental arena of state government; I was given my own cases and allowed to manage them as I saw fit. Incredible.”

Bryan Brody, 2L, *Missouri Coalition for the Environment*, St. Louis, MO. “My main project was to research and write a petition to list the Ozark Hellbender (a type of salamander) as a federal endangered species. I also worked on several issues relating to Missouri’s revised section 303(d) list of impaired and threatened water bodies (under the Clean Water Act). It gave me a positive view of the way non-profit citizens’ organizations operate and their ability to effectuate change at a national level.”

Charles Capp, 3L, *Florida Fish and Wildlife Conservation Commission*, Tallahassee, FL. “I was

a legal advisor on wildlife and water issues implicated by the Comprehensive Everglades Restoration Project - the largest environmental restoration project ever attempted. The most interesting aspect was sitting in on some meetings involving high level officials at both the state and federal agency level. If you are curious about what really goes on in government, a summer internship with an agency

will give you a good idea. Following that experience you will either insist on changing the way government works (or doesn’t), or will want nothing to do with a government job ever again.”

Clay Garside, 2L, *Environmental Division, Alabama Attorney General*, Montgomery, AL. “My work centered mainly around state enforcement of the Clean Water Act. I got a first hand look at the nitty-gritty of drawing up complaints, discovery, investigation, and the like. Additionally, I was assigned an overarching project to write a memorandum about the rights of riparian landowners in Alabama and how the impending tri-state water rights compacts would



While TLS Students were clerking across the US over the Summer, **Tropical Storm Bill** paid a visit to New Orleans

Student Summers *Continued*

mesh with those existing property rights. I also got to meet with state agency officials to help advise them on water use permits. Generally, I gained insight into the roles of the federal and state governments and private plaintiff firms in enforcing environmental regulations. A positive experience.”

Rebecca Gerber Judd, 2L, *Sierra Club Environmental Law Program*, San Francisco, CA. “I assisted Club attorneys with in-house litigation and national lawsuits. I also managed the Club’s docket brought on behalf of its local chapters: clean air and water, urban sprawl, commercial logging and wildlands. My primary task was legal research, EIS and administrative record review for an anti-logging suit in a pristine area of the Tahoe National Forest. I also drafted a portion of an amicus brief supporting a local Iowa county’s attempts to regulate concentrated animal feeding operations.”

Tara McBrien, 3L, *Environmental Defense Section, Environment and Natural Resources Division, US Department of Justice*, Washington, DC. “The Section is responsible for defending environmental suits against the federal government – from rule-making challenges to permit disputes to CERCLA actions and

more. The Section also handles all of the Clean Water Act 404 program, which deals exclusively with wetlands litigation, in conjunction with the Army Corps of Engineers. Our cases included everything current from the classroom, including “takings,” the new Clean Air Act New Source Review rules, wetlands litigation after SWANCC, and mountaintop mining.”

Helen Pope, 3L. *Duncan, Courington & Rydberg, LLC*, New Orleans, LA. “Last summer I worked in a 20-attorney defense firm that represents insurance companies against toxic tort claims – usually filed by plaintiffs who were exposed to asbestos in shipyards many years ago. I researched liability rules and damage awards; my work appeared in client letters, motions, memos and “rainmaking” presentations. The best part of the clerkship was the opportunity to interview victims and attend depositions in rural Louisiana, Mississippi and Alabama. I was struck that the insurance attorneys called themselves environmental lawyers.”

Joshua Schnell, 3L, *Region 2, EPA*, New York, NY. “At first I was a bit bewildered at the lack of work being done. I’m from New York and I know the water is dirty. Then, I came across an EPA internal study explaining that, despite the

fact that a quarter of the nation’s largest industrial plants and water treatment facilities are in serious violation of pollution standards, only a fraction of them ever face formal EPA enforcement actions. No wonder it was so quiet there.”

Andre Shiromani, 3L, *Natural Resources Defense Council*, New York, NY. “I interned in the urban litigation department, and researched hazardous waste law in preparation of future litigation against some big polluters. I also researched the Civil Rights Act and contracts law for a lawsuit seeking to have Albany finish lead paint removal from poor peoples’ houses. It was wonderful to work with dedicated environmentalists and lawyers that did not have to compartmentalize their lives by separating their personal beliefs from their work. If they’d let me, I would have quit law school and stayed there as a permanent 2L intern.”

Genifer Maree Tarkowski, 3L, *Environmental Crimes Section, Environment and Natural Resources Division, U.S. Department of Justice* in Washington, DC. “I worked as a law clerk assisting in the criminal prosecution of environmental crimes. The Section encountered a wide-array of environmental topics involving the clean water act and clean air act.”

Visits and Drop-bys

We caught a visit from the **Hudson Riverkeeper** in September when David Gordon, Senior Attorney, dropped by to give a lecture on the ins and outs of Section 316 (b) of the Clean Water Act. As our readers will know, this is the provision call for best available technology controls for mega-power plants. The issue was born on the Hudson River, back in the days of the celebrated Storm King pump storage plant and the Indian Point nuclear facility, i.e. the 1960s. At issue is the fate of millions of fish larvae and juveniles entrained on intake screens. EPA stalled on the required BAT for years, was ordered forward, dithered some more, and finally came up with regulations so permissive that they mock congressional purposes. Gordon’s tale of the Riverkeeper’s continuing struggle to make the law work was an object lesson for the Tulane students. It is not just Louisiana that drops the ball. We are grateful to David and his group for their work, and for the reminder.

Alumni Notes

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

Jason Forman, 1999. "I work for the NOAA Office of General Counsel in Washington, DC. I pursue natural resource damage claims for injuries to NOAA's marine trust resources under CERCLA, Oil Pollution Act, and the National Marine Sanctuaries Act. I work mainly in New York, New Jersey, and Puerto Rico."

Allison Gassner, 1998. "I am practicing environmental law with the U.S. Department of Agriculture, Office of the General Counsel, Pollution Control Team in Washington, DC. My work focuses on CERCLA and RCRA issues on federal lands in the National Forest System."

Darrin Holender, 2000. "I graduated in 2000 and moved to Israel shortly thereafter. My wife, Karen, and I live in Jerusalem. I am presently working for Dr. Richard Laster, one of Israel's leading experts in environmental law. We are presently working on international water law projects including the future of the Dead Sea."

Amanda Hubbard, 1998. "I am currently working for the Department of Justice, Computer Crime and Intellectual Property Section. Current projects include: domestic legislative and policy initiatives; legislative drafting assistance to other countries; international negotiations, including projects with the United Nations; and of course, criminal prosecutions."

Noel Johnson, 1984. "While I consider myself an enviro alum, I now serve as a family court magistrate judge in the District of Columbia Superior Court."

James Johnston, 2002. "After about a year in private practice, where I handled a variety of cases - including a few dealing with toxic tort issues - at a small law firm, I recently accepted a position with the Office of the Public Defender in Maryland. Outside of work, I've been active locally with the Sierra Club, working on wetlands and Corps issues and serving on

a Baltimore Port and Harbor Commission committee exploring alternative methods for dredge spoil disposal."

Vincent J. Keegan, 1989. "Keegan & Associates, PLC. My practice is mainly in real estate and lending law."

Timothy M. Killian, 1999. "I am a Senior Consultant for the consulting firm of Booz Allen Hamilton and on a contract for EPA. I am a Technical Manager for the RCRA, Superfund & EPCRA Call Center, responding to questions on the RCRA, UST, CERCLA or Superfund, EPCRA, the Oil Program (SPCC) and CAA Sec. 112(r) regulations."

Christy King, 2001. "I'm a Trial Attorney with the U.S. Department of Justice's Environmental Enforcement Section. EES is responsible for the civil enforcement of environmental statutes, including the Clean Air Act, Clean Water Act, CERCLA and RCRA."

Itzhak E. Kornfeld, 1990. General Counsel, OASYS Environmental Solutions LLC, Philadelphia, PA. OASYS provides consulting services and invests in new technologies. I served on the "Homeland Security" team on PA Governor Ed Rendell's Transition Team, and continue to advise PA's Homeland Security Director, Keith Martin. Additionally, I have recently published a number of articles, as follows: "Terror in the Water: Threats to Drinking Water and Infrastructure," 9 Widener L. Symp. J. 439 (2003); "A Water Solution for the Middle East Conflict," 33 *Env'tl L. R.* 10207 (Mar. 2003); "Trouble in Mesopotamia: Can America Prevent a Water War between Iraq, Turkey and Syria," 10 *Middle East Policy* (forthcoming 2004).

Edward B. MacMahon, 1985. "I have been engaged in an active trial practice since I left Tulane. I clerked for the now Chief Federal Judge in the Eastern District of Virginia and have been practicing in this area ever since. Of interest to you now is that for the past two years I have served as the appointed - CJA - attorney for Zacarias Moussaoui in the criminal case here in Alexandria. Has been quite the experience - all of your criminal procedure classes would not have prepared me for this."

Continued next page

Tulane Environmental Law News

TLS Alum Appointed to Head New Orleans Mayor's Office on Environment

Yarrow Etheredge, a 1999 graduate of Tulane Law School, discussed New Orleans' environmental agenda with an attentive audience of environmental activists, government, and industry officials at a recent Mayor's Environmental Breakfast. This was Etheredge's first such gathering since becoming Director of the New Orleans Office of Environmental Affairs in August. While at Tulane, Etheredge held positions as Vice-President of the Environmental Law Society, Managing Editor of the Environmental Law Journal, and Co-Editor of the Environmental Law Newsletter. She was also a student lawyer with the Environmental Law Clinic. Etheredges's enthusiasm for her new post and background in the field bode well for environmental affairs in New Orleans.



Yarrow Etheredge (on right) meets with her future constituents at the last Annual Spring Conference.

Alumni Notes continued from previous page

Marian Macpherson, 1991. "After spending 6 years as their lawyer in Silver Spring, Maryland, I am now working as a Management and Program Analyst for NOAA's National Marine Fisheries Service on a project to improve and streamline the process for developing and implementing Federal fishery management regulations. I work in Pascagoula, Mississippi (with frequent trips to D.C), and live near my family in Fairhope, Alabama."

Stacey H. Mitchell, 1994. "I'm a Trial Attorney with the Environmental Crimes Section of the Department of Justice in Washington, D.C."

Diane S. Mitnik, 1996. "I'm with Duncan, Courington & Rydberg, L.L.C. in New Orleans, presently doing asbestos defense work for several different companies."

Jon Owens, LL.M. 2000. "I'm currently working as Counsel to EPA's Environmental Appeals Board (EAB). The EAB is the final decision-maker for the EPA in administrative law cases, including penalty appeals and permit appeals. I advise the Board and draft their decisions."

Martha A. Rodriguez, 2000. "I am a Lieutenant in the United States Coast Guard, stationed at Coast Guard Headquarters (CGHQ) in Washington, DC. My first two years at CGHQ were in the Office of Environmental Law. I provided advice regarding removal of lead from soil at previously owned Coast Guard lighthouses pursuant to CERCLA and TSCA, prior to their transfer to state and local authorities."

Lisa Rushton, 1994. "I am an environmental attorney at Paul Hastings Janofsky & Walker LLP. We are a full practice large international firm. I primarily practice in the area of corporate mergers and acquisitions, but also do regulatory compliance work for my clients and toxic tort litigation."

Gautam Srinivasan, 1998. "I am practicing environmental law with the US EPA, Office of General Counsel, Pesticides and Toxics Law Office in Washington, DC, focusing on TSCA and FIFRA issues. On October 12, 2002 Allison Gassner and I were married in Philadelphia, PA."

Roberta J. Stewart, 1998. "I currently work for the U.S. Department of Transportation, for the Office of Chief Counsel in the Federal Railroad Administration. The main part of my job is the enforcement of railroad safety laws, and my duties include the negotiation of civil penalty orders and settlement agreements, litigation before administrative bodies and Federal courts, as well as the occasional rulemaking. Additionally, I am one of the agency's attorney experts on regulations governing the transportation of hazardous materials."

Gregory T. Young, 2001. "I work for a corporate law firm in Nashville, Tennessee. Recently, I have been involved in a couple of toxic tort cases and in the drafting of Tennessee's water quality standards and antidegradation statement."

-TLS environmental alums are encouraged to send updated information and notes to the Institute at enlaw@law.tulane.edu

Faculty Notes - Recent Publications and Activities of TLS Faculty

Adam Babich

"As usual, I've spent the last year focused primarily on the Tulane Environmental Law Clinic – an endless source of excitement, elation, heartbreak, and inspiration. With 26 student attorneys, four staff attorneys (including me), a Community Outreach Program that includes a director and undergraduate interns, and a legal secretary, we keep lots of balls in the air. Before fully savoring our latest victory, or recovering from the most recent setback, we're back in the ring for the next round. And rather than burning out, our lead litigators graduate – so the staff draws on a constant flow of new energy, ideas, and enthusiasm."

Courses: Hazardous Waste (S), Environmental Advocacy Seminar (F), Legal Analysis (F), Environmental Clinic (S & F).

Publications: "The Wages of Sin: The Violator-Pays Rule for Environmental Citizen Suits," 10 *Widener L. Rev.* (forthcoming 2003); "Too Much Science in Environmental Law," 28 *Colum. J. Env. L.* 119 (2003); "Environmental Justice in Louisiana," 51 *LA. B.J.* 90 (Aug. 2003); "Too Much Science," *Env'tl. F.*, May/June 2003, at 36; "The Sting: How Louisiana's Emission Credit Trading System Dirties the Air," *SECOND GENERATION ISSUES COMM. NEWSL.*, May 2003, at 11; and "How the Tulane Environmental Law Clinic Survived the Shintech Controversy and Rule XX Revisions: Some Questions and Answers," 32 *Env'tl. L. Rep.* (Env'tl. L. Inst.) 11476 (Dec. 2002).

Presentations: "Environmental Justice, Society of Environmental Journalists," 13th Annual Conference (9/03); "Environmental Issues facing Louisiana's Next Governor," Louisiana State University Law Center Environmental Roundtable (5/03); "Luncheon Speaker," National Petrochemical and Refiners Association's National Environmental & Safety Conference (4/03); "Environmental Justice in Louisiana," Women for a Better Louisiana (4/03); "The Wages of Sin," Widener Law School's "Citizen Suits at Thirty Something" Symposium (4/03); "New Source Review Issues and Clean Air Act Title V," EPA Clean Air Act Title V Advanced Training (3/03).

Eric Dannenmaier

"A highlight of the past year has been my work with a coalition of environmental NGOs seeking greater access to the process of making trade policy in the Western Hemisphere. Trade Ministers and their staffs live in a closed culture that values privacy and confidentiality. At the same time, they are negotiating agreements that will profoundly affect lives in the US and abroad. In the Americas, we can report progress on the environmental front as NGOs become increasingly articulate about their interests and increasingly able to create a space at the table to at least commence a dialogue with governments. Progress, yes – but many continuing obstacles, both in the law and in its application. Looking forward to the year ahead."

Courses: International Development Law & Sustainability (F)

Publications: "Public Access to Trade Policymaking: The FTAA as a Work in Progress," *Fordham International Law Journal* (forthcoming 2004); "Participación de Sociedad Civil en el ALCA," *HACIA UN DERECHO DE PARTICIPACIÓN EN LAS AMERICAS*, at 67 (May 2003); Editor, *ENVIRONMENTAL SUSTAINABILITY IN TRADE: EVALUATING THE POTENTIAL IMPACTS OF THE FTAA, THE CASE OF ARGENTINA*, North-South Press (September 2003); Editor, *ENVIRONMENTAL SUSTAINABILITY IN TRADE: EVALUATING THE IMPACTS OF THE FTAA, THE CASE OF BRAZIL*, North-South Press (October 2003).

Lectures/Presentations: "Hacia un derecho de participación en las Americas: de Río a Québec," Civil Society Forum at the Seventh Meeting of Ministers of the FTAA, Quito, Ecuador (November 2002); "Assessing Environmental Sustainability in Trade," Organization of American States General Secretariat, Washington, DC (December 2002); "Predicting Environmental Impacts in Free Trade," Conference on Trade and Environment, Carnegie Endowment for International Peace, Washington, DC (December 2002); "Challenges to *Ex Ante* Environmental Assessments," Greening the FTAA Symposium, McGill University, Montreal Canada (February 2003); "Integrating Citizens into Trade Sustainability Assessments," European Commission Symposium on Sustainability Impact Assessments, Brussels Belgium (March 2003); "Environment and Trade Linkages in the FTAA," Annual Meeting of the Inter-American Bar Association, Committee XI, New Orleans (June 2003); "Environmental Degradation and Conflict Vulnerability: The Next Global War," Society of Environmental Journalists, New Orleans (September 2003); "Findings in Environmental Assessment of Trade Agreements," Inter-American Development Bank, Symposium on Trade Capacity Building, Washington, DC (October 2003).

Günther Handl

"I have continued to focus on human rights and environmental protection; sustainable development issues; and corporate social and environmental responsibility."

Courses: Sabbatical (F); Public International Law (S); International Environmental Law (S)

Publications: "The IAEA Nuclear Safety Conventions: An Example of Successful 'Treaty Management'?" 72 *NUCLEAR LAW BULLETIN* (December 2003); "Trail Smelter in Contemporary International Environmental Law: Application to Nuclear Energy," in R. BRATSPIES & R. MILLER (EDS.), *TRANSBOUNDARY HARMS IN INTERNATIONAL LAW: LESSONS FROM THE TRAIL SMELTER ARBITRATION* (Cambridge University Press, 2004); Review of P. BIRNIE AND A. BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* (2nd ed.), in 13 *YEARBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* 2002 (2003).

Conference Lectures/Presentations: "Sustainable Development after the Johannesburg Summit of 2002," 2003, International Law Association's Weekend West Conference at Loyola

Faculty Notes - *Continued*

Law School, Los Angeles, February 8; “Trail Smelter in Contemporary International Environmental Law: Application to Nuclear Energy,” at Symposium on Transboundary Harms in the 21st Century: Lessons from the Trail Smelter Arbitration, University of Idaho, College of Law Coeur d’Alene, Idaho, March 21; “Corporate Transboundary Liability for Overseas Operations,” Tulane Annual Environmental Law Conference, March 29; “Corporate Environmental Responsibility and the Alien Tort Claims Act,” Annual Meeting of the Inter-American Bar Association, New Orleans, June 19; “Command-and-Control vs. Market-Based Environmental Management Approaches,” Environmental Law & Policy, Euroconference 3, Salzburg, September 27; “Environmental Human Rights Claims under the Alien Tort Statute: Understanding Recent Setbacks,” American Branch of the International Law Association, Annual Meeting, New York City, October 24.

Oliver Houck

“I started off ’03 in Spain, teaching a graduate course in comparative environmental law at the University of Sevilla, and attending a course on biological diversity offered by a Spanish foundation for Latin American biologists. I came home in the late Spring to two projects that have haunted me for a long time. One is the tax code’s restrictions on lobbying and political action by environmental (and all) public charities — restrictions that have always seemed to me to tilt the playing field in public policy — asking where they came from and whether they make sense. I first raised these questions in 1988, but was unable to answer them in a satisfactory way; this time I think I have it right. The other is a third round of histories of cases that made waves and shaped environmental law. I am drawn more and more to history. The more I see law, the more I see people.”

Courses: Natural Resources Law (F), Criminal Law (F), Comparative Environmental Law (S), and Biological Diversity (S).

Publications: “Thinking About Tomorrow: Cuba’s ‘Alternative Model’ for Sustainable Development,” Tulane Environmental Law Journal, Summer 2003; “Brothers in Arms”; “The Secret Motor of Environmental Law”; and “The Deconstitutionalization of Environmental Law,” in Spanish, electronic version, University of Sevilla, Fall 2003, printed version, University of Alicante, (forthcoming Spring 2004); “The Limits of Charity: Lobbying, Litigation and Electoral Politics by Charitable Organizations Under the Internal Revenue Code and Related Laws,” Brooklyn Law Review, (forthcoming Winter 2003); “More Unfinished Stories: Lucas, Atlanta Coalition and Palila/Sweet Home,” Colorado Law Review, (forthcoming Spring 2004).

Papers and Presentations: “Tales from a Difficult Marriage: Science and Law in Environmental Policy,” American Association for the Advancement of Science; “A Story of Two Rivers: The Mississippi and the Guadalquivir,” Department

of Water Resources, Andalucia; “Civil Law and Public Law in Environmental Policy,” Bar Association of Andalucia. He also chaired a Workshop on Recycling in Havana, Cuba, and offered lectures at the University of Alicante, Spain, and Monterrey Technological University, Mexico.

Jonathan Nash

“I’ve completed my first year of teaching at Tulane Law School, and I’m pleased to say that I’m really enjoying it here. Pollution Control is the nuts-and-bolts environmental class; it’s heavily regulatory, but I inject some policy discussion into the mix. Property, of course, is the old first-year standard, but I try to integrate environmental issues as well. On the research front, I’ve continuing to focus on tradable pollution permits and, more generally, market-based approaches to environmental regulation. There are problems with these approaches, and I’ve been exploring ways to mitigate them. One of my current projects looks at how tradable permits might be used to enhance habitat and ecosystem protection. Another focuses on the use of congestion fees to mitigate of transportation impacts in urban areas.”

Courses: Pollution Control (F), Civil Procedure (F), Common Law: Property (S), Law and Economics (S).

Publications: “Context-Sensitive Voting Protocol Paradigm for Multimember Courts” 56 STAN. L. REV. 75(2003); “Examining the Power of Federal Courts to Certify Questions of State Law,” 88 CORNELL L. REV. 1672 (2003); “Environmental Superliens and the Problem of Mortgage-Backed Securitization,” 59 WASH. & LEE L. REV. 127 (2002); “The Design of Marketable Permit Schemes to Control Local and Regional Pollutants,” in AN INTRODUCTION TO THE LAW AND ECONOMICS OF ENVIRONMENTAL POLICY: ISSUES IN INSTITUTIONAL DESIGN 331 (Timothy Swanson ed., 2002) (with Richard L. Revesz)

Lectures/Presentations: “Induced Travel and the Case for New Capacity Peak Charging Regimes as a Response to Traffic Congestion,” Midwestern Law and Economics Association Annual Meeting, Indianapolis, IN, October 2003; “Ecosystems, Endangered Species, Markets, and Geography: A New Direction for Habitat Trading Programs,” American Law and Economics Association Annual Meeting, Toronto, Canada, September 2003; “Environmental Regulation and Property Rights: Refocusing Critiques of Marketable Pollution Permits,” Tulane Law School Faculty Works-in-Progress Series, New Orleans, LA, March 2003; “Environmental Superliens and the Problem of Mortgage-Backed Securitization,” American Law and Economics Association Annual Meeting, Cambridge, MA, May 2002; Academic Faculty, Institute of Judicial Administration Seminar for New Appellate Judges, New York, NY, July 2003.

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. The experience of its faculty, the scholarship of its journal, the strength of its clinic, international projects of its institute, and the momentum of the Environmental Law Society—in the

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



Eric and Arlo, New Year's Day 2003

We are here, and it is now.
Further than that,
all human knowledge
is moonshine.
-HL Mencken



Tulane Environmental Law News

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