

# Hostile environment

Tulane law clinic continues work despite limits on student attorneys

By Megan Kamerick  
staff writer

Chris Williams was drawn to Tulane University to study environmental law. But it's the school's environmental law clinic where he gets a taste of the real world.

"Law school teaches you the fundamental concepts but the clinic does give you hands-on experience in the practical experience of the law," he says. "I didn't want to go out my first year and not be exposed to this kind of stuff?"

Recently, he wrote a brief on the case *Concerned Citizens of New Sarpy v. Orion Refining Corp.*

Tulane represents the group suing Orion, claiming it has violated the Federal Clean Air Act. Opposing counsel made a motion to disqualify the students but a federal court rejected that argument.

"All this stuff is what you really don't get to see or do in a typical law school class," Williams says.

This is the message Adam Babich, environmental clinic director, wants to send: The Tulane Environmental Law Clinic is doing just fine, thanks, and continues to perform important work for students and clients.

It's a far cry from several years ago when clinic supporters accused the Louisiana Supreme Court of delivering clinics a fatal blow.

The controversy began in 1996 when Tulane's clinic began representing the St. James Citizens for Jobs and the Environment, a group challenging the construction of a \$700 million polyvinyl chloride plant in Convent by Shintech Inc. The U.S. Environmental Protection Agency granted a petition to veto Shintech's air permit from the Louisiana Department of Environmental Quality.

The company decided to build a smaller plant on the Iberville-West Baton Rouge parish line.

The victory became a test case for the concept of environmental justice, which means pollution should not harm minorities or poor people disproportionately. It also incurred the wrath of Gov. Mike Foster, who branded the clinic enemies of economic development and called on alumni to stop donating to the university.

Two television specials — a documentary on PBS' Frontline about state judicial races and a feature film on Lifetime called "Taking Back Our Town" — implied that pressure from Foster and business groups forced the Supreme Court to permanently hobble the clinic by altering Rule 20, a state law that allows student lawyers to represent indigent clients under attorney supervision.

The hullabaloo prompted Babich to put a lengthy document on the clinic's Web site claiming reports of its death were greatly exaggerated.

"There was a lot of misinformation out there about what Rule 20 says. A lot of people think it says we can't represent anyone," Babich says. "That's not the case and never has been the case."

When Babich took over leadership of the clinic in 2000, he was often asked why he wanted to come to a clinic that couldn't do anything.

"People thought we were in a dispute with the Supreme Court," he says.

A coalition of attorneys, law students, civic groups and environmental organizations did sue the Supreme Court over the rule changes. However, the clinic was not a plaintiff in that case, Babich says.

The 5th U.S. Circuit Court of Appeals upheld the changes to Rule 20, which states students cannot appear on behalf of individual clients who earn more than 200% of the federal poverty level, which translates to an annual income of \$17,720 for an individual. They can only appear on behalf of community organizations when more than half the group's members meet this definition of indigence. Additionally, student attorneys may not represent clients solicited by clinics for the purpose of representation.

"It seems clear to me the intent of the Supreme Court was to make sure groups weren't represented," says Bill Quigley, director of Loyola University's Poverty Law Clinic and a plaintiff in the case against the Supreme Court.

The Court's action was repeated by varying degrees around the country, according to a recent article in the *American Bar Association Journal*.



Adam Babich, Tulane Environmental Law Clinic director, speaks to law students Ed Dimayuyga, Chris Williams and Aimee Durel.

Many of the 29 environmental law clinics nationwide have come under fire from business or development groups.

At the University of Oregon, a clinic moved out of the law school to become an independent entity. Lawrence Ponoroff, dean of Tulane's law school, says that is unlikely to happen here.

"The clinic is not an environmental advocacy group. It's part of our instructional program, so in light of that it needs to be part of the law school," Ponoroff says. "In its 13-year history, despite intense scrutiny and a two-year investigation by the Supreme Court, there has never been a single finding that the clinic ever engaged in improper, unethical or inappropriate conduct."

The clinic is neither anti-business nor pro-business, he adds. It is in the business of representing clients with legitimate claims under the law.

The Orion case is a good example of the work the clinic continues to do, Babich says — prodding agencies and corporations to follow existing laws. It is also in federal court, he adds.

"Various courts have various student practice rules," Babich says. Students may appear in federal court, he says. "In state court, our students appear on behalf of individuals."

In a state court case against Waste Management, the clinic's attorneys represented the Louisiana Environmental Action Network and Concerned Citizens of Livingston Parish. Law students also appeared on behalf of individ-

uals O'Neil Couvillion and Harold Wayne Breaud.

In August, the 19th Judicial District Court vacated Waste Management's permit to expand a solid waste landfill in Walker, La. As one of his reasons, District Judge Mike Caldwell said DEQ did not address concerns that employees accepted gifts that may have tainted the permitting process.

Situations like that guarantee the clinic a hefty caseload, says Babich. He says the regulatory system is completely broken in Louisiana — a sentiment reinforced by two reports this year by Legislative Auditor Dan Kyle and the Office of Inspector General of the U.S. Environmental Protection Agency. Four staff attorneys and 26 student lawyers could never work all the cases people want his office to handle, Babich says.

However, Robert Kuehn, who directed the clinic before Babich, says the real damage in the rule changes was not to the clinics but to clients.

"The significant harm wasn't and isn't to Tulane, but to people in Louisiana who previously had the benefit of the environmental law clinic's information, advice, and representation," he says. "I fear that the clinic has lost sight of what's important and ceased to be the model program it once was."

Quigley says his clinic is watching what Tulane does under the revised rules but, for now, he no longer has law students represent groups. He does that on his own. •