Strict Student Practice Rules Impose Substantial Burden on Disadvantaged Groups Seeking Environmental Justice

Kerryann B. Hamill

I. INTRODUCTION

The industrialization and modernization of our society has resulted in unanticipated consequences to our environment. Through our innovation and creativity, we have simultaneously destroyed valuable natural resources, plants, and animals. Although we have solved some problems, we have created others. Though advocates have taken on the cause of our depleted resources, our endangered species, and our diminishing pool of plants and other wildlife, they have often overlooked the impact of our technological advancements on the people in our society. Who is bearing the cost of our progress?

The environmental consequences of industrial development have not been shared by all, but rather have been born by those populations offering the least resistance to environmental burdens. Some would argue that such is the nature of a democratic society, as often the voices crying out the loudest win. But, sometimes democracy fails and voices are not heard -- not due to the numbers but because certain groups have no resources to play the game. Those plagued by poverty,[1] including many minority groups,[2] have no opportunity to voice their opposition to the imposition of environmental hazards within their communities. Disadvantaged groups,[3] marginalized by our society and segregated by their impoverishment and/or race, are unable to protect

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1. The poverty threshold in 1997 for a family of two people was $10,473 in annual income and $16,400 for a family of four. *See* U.S. Census Bureau, *Poverty Thresholds: 1997* (last revised June 16, 1998) <http://www.census.gov/hhes/poverty/threshld/thresh97.html>. For purposes of this article, the term "poverty" will refer to a "relative state of deprivation" because the official poverty index does not accurately measure how much income individuals and families require for subsistence. *See* HELEN HERSHKOFF AND STEPHEN LOFFREDO, THE RIGHTS OF THE POOR: THE AUTHORITATIVE ACLU GUIDE TO POOR PEOPLE'S RIGHTS 1 (Southern University Press 1997). A poor person will be defined as one who "possesses substantially fewer goods and services, than the average individual." *Id.*

2. The term "minority groups" includes African Americans, Asian and Pacific Islanders, and Hispanics.

3. The term "disadvantaged groups" is used to describe poor communities, composed predominantly of minority groups. Though poverty and race are not inextricably linked, a substantial proportion of minorities live in poverty. In 1997, the poverty rate was 26.5 percent for African Americans, 11.0 percent for whites, 14.0 percent for Asians and Pacific Islanders, and 27.1 percent for Hispanics. *See* U.S. Census Bureau, *Poverty Graphs: 1997* (last revised Sept. 28, 1998) <http://www.census.gov/hhes/poverty/threshld/thresh97.html>.

themselves. Confronting issues of day-to-day survival, disadvantaged communities are left with little energy or resources to combat looming environmental hazards.

Yet, sometimes this all too silent and often forgotten population bands together to take up its own cause and to seek a legal remedy. Having overcome the hurdle of mobilizing a community, structuring opposition and articulating a position, these communities are faced with the reality that the greatest obstacles lie ahead. Their lack of resources and inability to obtain representation have often precluded their access to justice.

Many disadvantaged groups have sought refuge in law school clinics, which have played an important role in providing legal services to groups with environmental problems. Despite the effectiveness of law school clinics in meeting legal service needs of under-represented groups, the Louisiana Supreme Court recently revised its student practice rules to limit the scope of law school clinic representation in response to Tulane University's Environmental Law Clinic's involvement in an environmental justice case.[4] The revised rule not only prevents law school clinics from representing individual citizens whose income exceeds certain federal limits, but also precludes representation of citizens who join together in national organizations.[5]

This paper will explore the reasons why student practice rules such as those being enforced in Louisiana should not be adopted by other states. It will argue that student practice rules which restrict law school clinics' ability to provide representation to prospective clients eliminate an effective avenue for disadvantaged populations to obtain affordable legal services. It will argue that restricting student practice rules will have a debilitating effect on victims of environmental discrimination who seek relief through the court system.

II. ENVIRONMENTAL INEQUALITY AND THE ENVIRONMENTAL JUSTICE MOVEMENT

Studies have shown that the burdens of environmental harm are not distributed equitably.[6] Minority and low-income communities receive more exposure to environmental hazards than the rest of our society.[7] Disadvantaged

4. *See Louisiana's Legal Clinics: Where Business Meets Justice*, THE ECONOMIST, Sept. 12, 1998, at 30 [hereinafter *Louisiana's Legal Clinics*].

5. *See Supreme Court and Law Clinics*, THE BATON ROUGE ADVOCATE, Sept. 10, 1998, at 10B.

6. *See* Hope Babcock, *Environmental Justice Clinics: Visible Models of Justice*, 14 STAN. ENVTL. L.J. 3, 5 (1995).

7. *See id.*

groups are most often the recipients of noise, air, and water pollution.[8] These disadvantaged groups are exposed to the pollution of the middle and upper class, as they tend to live in areas in close proximity to the actual sources of pollution.[9] Industrial facilities, power plants, and pollution from vehicle traffic are heaviest in poor industrial communities.[10] Inner city communities may be exposed to five times as much air pollution than their suburban counterparts.[11] Because of environmentally hazardous conditions, residents of these communities are exposed to increased health risks, such as chronic bronchitis and emphysema.[12]

Advocates for environmental protection, proponents for social justice, and attorneys have joined forces to combat the legal obstacles of disparate treatment cases involving the siting of industrial plants and the disposal of hazardous wastes.[13] As part of an environmental justice movement,[14] these

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8. *See* ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY 5 (Westview Press 1990).

9. *See id.*

10. *See id.*

11. *See id.*

12. *See id.*

13. *See* ALICE L. BROWN, *Environmental Justice: Constitutional and Statutory Challenges to Environmental Racism, in* AFRICAN AMERICANS AND THE LIVING CONSTITUTION 270, 270-71 (Smithsonian Institution Press 1995).

14. Several events prior to 1980 helped lay the foundation for the environmental justice movement. In 1967, a campus riot broke out at Texas Southern University in response to the death of an African American girl. *See* ROBERT D. BULLARD, *Environmental Justice for All, in* UNEQUAL PROTECTION 3 (Sierra Club Books 1994). The eight-year-old girl drowned at a garbage dump which was located in the middle of her Sunnyside neighborhood. *See id.* Angry protesters asked why a garbage dump was placed in the center of this predominantly African American community. *See id.* The protesters' search for an answer resulted in a violent confrontation with members of the police force, and one officer was killed by a ricocheting bullet. *See id.*

In 1979, the first environmental discrimination lawsuit was filed by residents of a suburban, African American neighborhood in Houston, Texas. *See id.* at 4. African American homeowners of a Northwood Manor subdivision initiated the lawsuit following the placement of a solid waste landfill in their minority community. *See id.* at 5. In 1970, when the same community was predominantly white, the Harris County Board of Supervisors had defeated efforts to locate a comparable facility in the area. *See id.* at 5.

In the early 1980s, the environmental justice movement gained national momentum, as numerous civil rights organizations began to lend their support. *See id.* In 1982, community opposition to the siting of a landfill in Warren County, North Carolina erupted into an international protest. *See id.* North Carolina state officials selected Warren County as the official dumping ground for contaminated soil which previously had been dumped in fourteen counties in violation of the law. *See* BROWN, *supra* note 13, at 271. Warren County ranked among the state's lowest in socioeconomic status and had the largest population of African American residents of any county in the state. *See id.* Warren County communities vehemently opposed the siting of

groups have challenged the disproportionate distribution of environmental risks to minority communities.[15] The movement has been effective in communicating the problem to the public at large, but has been less effective in mobilizing the legal community to assume responsibility of these cases.

III. CAUSES OF THE DISPROPORTIONATE BURDEN OF ENVIRONMENTAL HARMS

Although low income, minority, and working class neighborhoods receive a disproportionate share of environmental stressors in their communities, these groups have participated only marginally in the environmental movement[16] and continue to be the primary recipients of environmental hazards. There are several possible reasons why low income, minority communities have been selected as the sites of these environmentally hazardous facilities and why their voices have seldom been heard either inside or outside of the environmental movement.[17] Some theorists lay the blame for the disproportionate burden on disadvantaged communities on factors such as racism, politics, and market forces.

A. *The Role of Racism*

Racism is inextricably linked to environmental inequity.[18] The decision makers themselves are not immune from racist views and attitudes which perceive minorities as indifferent about environmental protection.[19] Despite civil rights victories, racist views and attitudes still permeate our culture.[20]

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the PCB (polychlorinated biphenyls) landfill within their minority community. *See* BULLARD, *supra* note 14, at 5. Local residents waged war against the siting of the toxic waste landfill. *See* BROWN, *supra* note 13, at 271. While civil rights organizations and political activists led demonstrations in protest of the siting, over five hundred individual protesters were sent to jail over the matter. *See* BULLARD, *supra* note 14, at 5.

15. *See* BROWN, *supra* note 13, at 270-71.

16. *See* BULLARD, *supra* note 8, at 1.

17. *See* Richard J. Lazarus, *The Meaning and Promotion of Environmental Justice*, 5 MD. J. CONTEMP. LEGAL ISSUES 1, 4 (1993/1994).

18. *See* Babcock, *supra* note 6, at 10.

19. *See* Babcock, *supra* note 6, at 13-14.

20. In a 1998 public opinion poll, respondents were asked how big of a problem they perceive racism to be in the United States today. Almost 50 percent of those polled viewed racism as a major problem, 37 percent a moderate problem, 12 percent a minor problem, 1 percent not a problem at all, and 2 percent did not know. *See* Roper Center for Pub. Opinion Res., *How Big of a Problem Would You Say Racism is in the United States Today Major Problem, Moderate Problem, Minor Problem, or Not a Problem at All?*, USLAT.110595 R41 (1998).

Racial biases and stereotypes are reflected in our political structures, as well as in our socio-economic strata.[21] Policies motivated by racial bias have resulted in the segregation of our society into unequal parts.[22] Our laws have denied minority groups adequate education, housing, and health care.[23] Disadvantaged groups, left to concentrate on basic survival, are often ill-equipped to wage battles to protect themselves from environmental harms.[24]

Minorities have been under-represented in government and have been relatively absent from environmental policymaking.[25] In the absence of minority representation, the concerns of minority communities have not been heard, and environmental policies have been created which fail to address the unique problems facing minority and impoverished communities.[26] The reason that minorities have not been included in the political process is unclear. It could be that racist attitudes directly excluded minorities from the process or perhaps minority positions were ignored due to stereotypes which presumed that minorities simply did not care about environmental issues.[27] In addition, advocates and lobbyists in the environmental movement have often neglected the concerns of low income and minority groups.[28]

Over the past two decades, environmental policymakers have failed to consider the distributional consequences of legislation, because distributional matters were deemed "social" issues and outside the realm of "scientific" judgments.[29] The disregard of the unequal distribution of the hazards to minority communities may have been premised on the false presumption that communities who were the "disproportionate victims," would also be the disproportionate recipients of environmental clean-up.[30]

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21. *See* Babcock, *supra* note 6, at 11.
22. *See* Babcock, *supra* note 6, at 11. Despite the emancipation of slaves in 1865, and the ratification of the Thirteenth Amendment abolishing slavery and the Fourteenth Amendment establishing equal protection under the law, white Americans continued to reject the view that African Americans should be accorded the same privileges as whites. *See* JOHN HOPE FRANKLIN, *Race and the Constitution, in* AFRICAN AMERICANS AND THE LIVING CONSTITUTION, 28-31 (Smithsonian Institution Press 1995). Public policy has continued to incorporate these racist views well into the twentieth century. *See Id.* at 31.
23. *See* Babcock, *supra* note 6, at 11.
24. *See* Babcock, *supra* note 6, at 11.
25. *See* Babcock, *supra* note 6, at 13.
26. *See* Babcock, *supra* note 6, at 14.
27. *See* Babcock, *supra* note 6, at 13.
28. *See* BULLARD, *supra* note 8, at 3.
29. *See* Lazarus, *supra* note 17, at 2.
30. *See* Lazarus, *supra* note 17, at 3.

B. *The Consequences of Development Patterns*

Various community development patterns contribute to the disproportionate location of environmentally hazardous facilities within minority communities[31] as race continues to play a significant role in the design of urban areas.[32] The spatial layout of urban areas is comprised of "housing patterns, street and highway configurations, commercial development, and industrial facility siting."[33] Federal policies have contributed to the disparity of amenities afforded to minority and white communities and have often segregated metropolitan areas into poor and affluent areas.[34] For example, residential options for African Americans have been determined by "(1) federal housing policies, (2) institutional and individual discrimination in housing markets, (3) geographic changes that have taken place in the nation's urban centers, and (4) limited incomes."[35] Federal housing policies have encouraged the "white exodus" to the suburbs from central cities, while federal funding has contributed to the construction highway systems which have cut through minority communities.[36] The highway systems have "physically isolated residents from their institutions, and disrupted once-stable communities."[37] In effect, federal policies have restricted the mobility of minority residents, limited residential options, and essentially deprived minority families of environmental choices.[38]

In addition, the not-in-my-backyard (NIMBY) phenomenon has resulted in the siting of hazardous waste facilities and polluting industries in poor, minority communities.[39] NIMBY describes the inevitability of environmental hazards to be placed in someone's backyard and the reluctance of all communities to welcome these facilities into their neighborhoods.[40] The determination as to "whose backyard" has sociological implications.[41] More times than not, the poor, minority community is chosen as the site for the industrial waste, while the affluent neighborhoods reap the benefits of the

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31. *See* REGINA AUSTIN AND MICHAIL SCHILL, *Black, Brown, Red, and Poisoned, in* UNEQUAL PROTECTION 53 (Robert D. Bullard ed., Sierra Club Books 1994).
32. *See* BULLARD, *supra* note 8, at 4.
33. BULLARD, *supra* note 8, at 4.
34. *See* BULLARD, *supra* note 8, at 4-5.
35. BULLARD, *supra* note 8, at 4.
36. *See* BULLARD, *supra* note 8, at 5.
37. BULLARD, *supra* note 8, at 5.
38. *See* BULLARD, *supra* note 8, at 5.
39. *See* BULLARD, *supra* note 8, at 3.
40. *See* BULLARD, *supra* note 8, at 3.
41. *See* BULLARD, *supra* note 8, at 3.

industrial waste production and escape the burden of an environmentally hazardous atmosphere.[42] In response to the NIMBY phenomenon, political officials and private industry have often adopted the "place-in-blacks'-backyard (PIBBY) principle."[43]

C. *Market Forces and Economic Excuses*

Market forces also contribute to environmental inequity.[44] In selecting sites for environmental hazards, decision makers often seek the location where the least political resistance is expected and where the cost is most economical.[45] Poorer communities often lack the resources to combat the siting of environmentally hazardous facilities within their communities.[46] In civil rights cases, decision makers often rely on the marketplace to justify their action in choosing a particular site for an environmentally hazardous facility and to refute claims of intentional discrimination against disadvantaged communities.[47] In addition, the decision makers may argue that environmentally hazardous facilities provide much needed jobs to the unemployed.[48] In emphasizing the economic benefits to the impoverished community, the decision makers diminish the importance of protection from a hazardous environment.[49]

IV. THE TULANE ENVIRONMENTAL LAW CLINIC'S BATTLE AGAINST ENVIRONMENTAL DISCRIMINATION AND THE REVISED STUDENT PRACTICE RULES

Law school clinics have acquired a reputation for their almost fearless entry into dangerous political waters and have left their mark on a slew of controversial issues, ranging from desegregation to death-row appeals.[50] This year, the most notorious law clinic endeavor involved the Tulane University's Environmental Law Clinic (Clinic).[51] The Clinic, representing community and environmental groups, challenged the siting of a plastics plant in a low income

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42. *See* BULLARD, *supra* note 8, at 3.
43. BULLARD, *supra* note 8, at 3.
44. *See* Babcock, *supra* note 6, at 12.
45. *See* Babcock, *supra* note 6, at 12.
46. *See* Babcock, *supra* note 6, at 12.
47. *See* Babcock, *supra* note 6, at 12.
48. *See* Babcock, *supra* note 6, at 12.
49. *See* Babcock, *supra* note 6, at 12-13.
50. *See Louisiana's Legal Clinics, supra* note 4, at 30.
51. *See Louisiana's Legal Clinics, supra* note 4, at 30.

area in Southern Louisiana.[52] In response to the Clinic's efforts to have the siting of the plant rerouted, the Louisiana Supreme Court changed the state's rules regarding the group of people eligible for aid through law clinics and effectively restricted minority groups' access to environmental justice.[53] Though the revised rules are prospective and will not impact the case involving the Clinic, the rules will have a lasting, debilitating effect on victims of environmental discrimination who seek relief through the court system.

A. *Tulane Environmental Law Clinic versus Shintech*

Shintech, a Japan-based company, planned to construct a $700 million plastics plant in a poor, minority district in Convent, Louisiana.[54] The Clinic, in its representation of environmental and community groups, alleged that Shintech was practicing environmental racism.[55] Four business groups filed complaints that the Clinic was substantially impeding economic development in southern Louisiana.[56] The Governor, Mike Foster, joined the business groups in their opposition to the law clinics' representation of citizens against the siting of the $700 million plastic plant in Convent.[57] The State Supreme Court of Louisiana responded by creating a stricter law clinic rule.[58] The new Rule XX became effective July 1, 1998.[59] The revised rule provides that:

> Seventy-five percent of a community group's members must be indigent - or poor - to get free legal help from student lawyers and law school clinics. The court defined indigent as an income of $8,050 for a family of one, $10,850 for a family of two, $13,650 for a family of three and $16,450 for a family of four. After the Tulane and Loyola law school deans complained in a joint letter to the high court, the justices reduced the 75 percent figure to 51 percent.
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> Law clinics may not represent community groups

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52. *See Louisiana's Legal Clinics, supra* note 4, at 30-31.
53. *See Louisiana's Legal Clinics, supra* note 4, at 30.
54. *See Louisiana's Legal Clinics, supra* note 4, at 30.
55. *See Louisiana's Legal Clinics, supra* note 4, at 30.
56. *See Bar Association Questions Student Lawyer Rules*, THE DALLAS MORNING NEWS, Wednesday, September 9, 1998, at 18A.
57. *See id.*
58. *See* Joe Gyan, Jr., *La. Bar Backs Clinics *** Supreme Court urged to Delay Rules Changes*, THE BATON ROUGE ADVOCATE, September 9, 1998, at 1A.
59. *See id.*

affiliated with a national organization. Because the rule change will not be applied retroactively .

Law clinics may not solicit cases or provide legal information to potential clients or outside organizations, nor may they help residents organize into groups or offer legal assistance to poor people who wish to create an organization that would then be represented by the clinic. The high court later suspended those changes "pending further orders of the Court."

Law students may not appear before regular or special sessions of the Legislature. [60]

The revision of Rule XX, deemed a mere "clarification," assigned a dollar parameter to the term "indigent."[61] Client income must now meet the standards required by a federally funded agency.[62] The revision of the rule not only prevents student law clinics from representing individual citizens whose income exceeds these limits, but it also precludes representation of those citizens who join together in national organizations.[63] In effect, the State Supreme Court has deprived not-for-profit organizations and moderate income residents access to legal services at a low cost.[64] Without access to law clinics, many citizens will be unable to afford representation and will be denied access to the judicial system.[65]

B. *The Political Response to the Revised Rules*

The political response to the revision of Rule XX has been mixed. The Tulane and Loyola law schools asked the State Supreme Court to reconsider, while the State Board of Governors of the Louisiana State Bar Association (LSBA) urged the State Supreme Court to suspend the revised Rule XX.[66] The LSBA's resolution, adopted August 29, 1998, requested time so that the LSBA's House of Delegates could examine the issue and discuss it at a meeting

60. *Id.*
61. *See Supreme Court and Law Clinics*, supra note 5, at 10B.
62. *See Supreme Court and Law Clinics*, supra note 5, at 10B.
63. *See Supreme Court and Law Clinics*, supra note 5, at 10B.
64. *See Supreme Court and Law Clinics*, supra note 5, at 10B.
65. *See Supreme Court and Law Clinics*, supra note 5, at 10B.
66. *See* Jack Wardlaw, *Foster Takes Flag Over Bill of Rights*, THE NEW ORLEANS TIMES-PICAYUNE, September 10, 1998, at A3.

scheduled for January 9, 1999.[67] The resolution stated, "the Board of Governors of the Louisiana State Bar Association regarded the amendments as having a substantial impact on the administration of justice in the State of Louisiana, the promotion of which is central to the Association's mission." [68]

Governor Foster openly expressed his opposition to the Clinic's efforts to prevent Shintech from locating the petrochemical plant near Convent.[69] Foster supported the Supreme Court's revisions, stating, "the State Supreme Court did a very reasonable thing in limiting what the law clinics can do all they said is, they should represent poor people, not Greenpeace and those guys who hang down from the Capitol. They've got enough money to take care of themselves."[70]

The Association of American Law Schools (AALS) described Louisiana's amended rule as "the most restrictive student practice rule in the nation."[71] In a letter to Governor Mike Foster, the Executive Director of AALS expressed the organization's concern about the negative impact the rule will have on legal education. The Executive Director of AALS stated, "we believe that it unduly interferes with the ability of law schools in Louisiana to provide a first-rate legal education, and will effectively deny law students the opportunity to provide access to justice for the working poor and for many poor community organizations in Louisiana."[72] The AALS contended that the revised rule is not in line with the rules of neighboring states or the nation as a whole.[73] Louisiana holds the only student practice rule which prohibits law clinics from representing community groups with a national organization affiliation.[74]

The League of Women Voters (League), a grass-roots organization committed to furthering the principles of democracy, strongly opposed the Supreme Court of Louisiana's revision of Rule XX regarding student attorneys practicing in law clinics.[75] The League has been active at all levels of government in Louisiana since the early 1940s and stands for the proposition that "government at all levels must be accountable and accessible to all citizens and protective of their rights."[76] The League explained the importance of a

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67. *See* Gyan, *supra* note 58, at 1A.
68. Gyan, *supra* note 58, at 1A.
69. *See* Wardlaw, *supra* note 66, at A3.
70. Wardlaw, *supra* note 66, at A3.
71. Gyan, *supra* note 58, at 1A.
72. Joe Gyan, Jr., *Group Says Amended Law Clinic Rule Interferes With Learning Opportunities*, THE BATON ROUGE ADVOCATE, August 26, 1998, at 3B.
73. *See id.*
74. *See id.*
75. *See Supreme Court and Law Clinics*, *supra* note 5, at 10B.
76. *Supreme Court and Law Clinics*, *supra* note 5, at 10B.

system which enables all citizens to utilize the judicial branch:

> Sometimes legal recourse is the only way to ensure those individuals and organizations comprised of individual citizens achieve that accessibility. The legal process becomes part of the citizens' empowerment to fully participate in government policy decisions, not for monetary reward, but to ensure that the government follows the law and the Constitution.[77]

V. STRICT STUDENT PRACTICE RULES WHICH IMPEDE ACCESS TO JUSTICE ARE CONTRARY TO THE PURPOSE OF LAW CLINICS IN MEETING THE NEEDS OF THE DISADVANTAGED

Restricting student practice rules to limit law clinic representation to persons meeting federal poverty rates and to those groups who have no affiliation to a national organization is contrary to the purpose and goals of law school clinics. Within the clinical setting, student attorneys practice their legal skills on real cases under the supervision of lawyers.[78] In turn, low-income clientele receive legal services at little or no cost to themselves.[79] The American Law School Association has assigned a "higher mission" to law school clinics, as they must strive to protect "the poor and the powerless."[80] Babcock indicates that:

> The primary mission of clinical faculty is to create visible models of justice in action that demonstrate a deep commitment to achieving justice and to challenging injustice. This does not mean that all clinical programs will be alike. It does not mean that clinical courses involve only poverty law or related activities. Nor does it mean that there is a specified or unified agenda for clinical faculty concerning what aspects of justice ought to be addressed or how problems should be defined the critical element is the process of principled inquiry into conditions of justice and injustice as actually manifested in real societal arrangements. This does not dictate a particular

77. *Supreme Court and Law Clinics, supra* note 5, at 10B.
78. *See Louisiana's Legal Clinics, supra* note 4, at 30.
79. *See Louisiana's Legal Clinics, supra* note 4, at 30.
80. *Louisiana's Legal Clinics, supra* note 4, at 30.

> political vision, but demands a willingness to inquire as well as a responsibility to take some form of action depending on the result of the process of principled inquiry.[81]

Restrictive student practice rules frustrate the purpose of law clinics in meeting the needs of the poor and many deprive disadvantaged groups of legal recourse. The Louisiana rule, in limiting access to law clinics to those within a federally established income, excludes a great number of persons who are living in poverty and cannot afford legal services. Across the nation, states are overwhelmed by the legal needs of the indigent and other under represented groups.[82] Despite the growing number of attorneys, a high demand for legal services persists.[83] Approximately 80 percent of Americans living at poverty level lack appropriate legal services and only about 17 percent of attorneys provide pro bono work. [84] Law clinics, if allowed, can help to meet the demand. There are currently over 160 law schools with legal clinics,[85] and at least 16 of those schools have law school clinics specifically designed to address environmental issues.[86]

In addition, the rules, in excluding groups who have national affiliations, presume that these disadvantaged groups have pooled resources with national organizations and have access to adequate legal services. However, joining a national organization does not guarantee disadvantaged groups any greater access to legal services. These rules not only deny many low income persons access to justice, but also deprive them of establishing a louder voice by banding together with larger organizations that can help their opposition be heard.

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81. Babcock, *supra* note 6, at 4.

82. *See* Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements*, 13 LAW & INEQ. J. 39, 40 (1994).

83. *See id.* at 39.

84. *See id.*

85. *See Section on Clinical Education - 1996 Directory*, ASSOCIATION OF AMERICAN LAW SCHOOLS 147-191 (LEXIS-NEXIS Electronic Authors Press 1996).

86. *See id.* As of 1998, sixteen law school members of the Association of American Law Schools reported that they had environmental law clinics: Golden Gate University School of Law, Hofstra University School of Law, Pace University School of Law, University of Oregon School of Law, City University of New York School of Law at Queens College, Georgetown University Law Center, Rutgers, The State University of New Jersey S.I. Newhouse Center for Law & Justice, Syracuse University College of Law, University of California at Berkeley Boalt Hall School of Law, University of California at Davis School of Law, University of Michigan School of Law, University of Montana School of Law, University of San Diego School of Law, Washington and Lee University School of Law, Widener University School of Law, and State University of New York at Buffalo School of Law. *See id.*

VI. STATES SHOULD NOT ADOPT STRICT STUDENT PRACTICE RULES WHICH IMPOSE AN UNREASONABLE BURDEN ON DISADVANTAGED GROUPS

Perhaps the most substantial reason that these rules should not be adopted by other states is that this burden is placed on an already burdened group. After overcoming the hurdle of mobilizing a community, structuring opposition and articulating a position, these communities seeking protection from environmental harms are faced with greater obstacles -- finding a lawyer to take on their cause and meeting the high evidentiary burden required by law to prove that the community has been discriminated against.

A. *Difficulties Obtaining Counsel*

Victims of environmental discrimination experience many difficulties obtaining counsel, not just because of financial limitations, but because of the inherent complex and political nature of these types of cases. Disadvantaged litigants, or any litigants suing for environmental discrimination, would be unwise to proceed pro se. These cases are complex, invoking complicated statutory and constitutional law principles, and are often very controversial.

Communities seeking protection from environmental harms may be confronted with political opposition and competing interests, even within their own community. For example, when a disadvantaged community has been selected as the site for an industrial waste facility, its residents may be divided over whether or not this is a "bad thing." Some residents, welcoming the prospect of more jobs and economic stability, may not be concerned about why their community was chosen. Others will counter that they do not want to be subjected to an environmental hazard, particularly when the imposition of the environmental harm was the result of discrimination. The question becomes: which is more valuable, protection against environmental hazards or the benefit of an economic boost? Not surprisingly, there are no easy answers.

The controversial and political nature of environmental discrimination cases tend to make them unpopular. Often, the proponents of environmental justice find themselves up against "big businesses" and their equally big law firms standing beside them. As in the Tulane case, political forces may also be at work. Lawyers are often discouraged from taking these types of cases due to political pressures combined with the high cost and large time commitment required.[87]

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87. Although the Model Rules of Professional Conduct recommend that lawyers "render at least (50) hours of pro bono public legal services per year," there is no mandatory

B. *Limitations of the Law*

Assuming that disadvantaged communities seeking environmental justice do succeed in securing counsel, they must then try to overcome their greatest obstacle, proving discrimination under the law. In challenging government decisions to locate environmental hazards within disadvantaged neighborhoods, affected communities have relied on both section 1983 of the Civil Rights Act of 1866 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. However, these constitutional challenges have done little to aid disadvantaged communities in obtaining environmental justice.[88] The Equal Protection Clause of the Fourteenth Amendment provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[89]

Though the Constitution establishes a right to equal and nondiscriminatory treatment, case law has established a heavy evidentiary burden for plaintiffs in civil rights cases.[90] The plaintiffs must show that the government, in making its decision to site the environmental hazard, had the intention to discriminate.[91] This evidentiary burden poses an almost insurmountable obstacle, as disadvantaged groups are required to establish a link between the official decision making process and racially inspired motivations.[92]

In *Bean v. Southwestern Waste Management Corp.*,[93] a group of African Americans filed a class action, alleging that the Texas Department of Health's (Department's) decision to allow a solid waste facility to operate in their community was, "at least, in part, motivated by racial discrimination" and

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requirement for lawyers to provide services at no cost or at a reduced fee. MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1992).

88. *See* BROWN, *supra* note 13, at 277.
89. U.S. Const. amend. XIV § 1.
90. *See* BROWN, *supra* note 13, at 276.
91. *See* BROWN, *supra* note 13, at 276.
92. *See* BROWN, *supra* note 13, at 277.
93. 482 F. Supp. 673 (S.D. Tex. 1979).

violated the Equal Protection Clause.[94] In order to meet their burden of proving a discriminatory purpose, the plaintiffs provided statistical evidence to establish that the Department's approval of the solid waste facility was part of a pattern of discrimination in its placement of these facilities.[95] After scrutinizing the statistical data, the district court remained unconvinced that the decision was the result of intentional racial discrimination, though it acknowledged that "the decision to grant the permit was both unfortunate and insensitive."[96]

In reaching its decision, the court relied on two U.S. Supreme Court cases: *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,[97] and *Washington v. Davis*.[98] These cases set the constitutional parameters of official action in selecting the sites for environmental hazards. Official actions which produce racially disproportionate results are not unconstitutional unless the actions are intentionally discriminatory as well.[99] In other words, showing a disparate impact on a particular race "is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution."[100]

Similarly, in *R.I.S.E. (Residents Involved in Saving the Environment) Inc. v Kay*, members of a bi-racial community organization challenged the siting of regional landfills within their area on equal protection grounds.[101] The district court recognized the disproportionate effect the placement of the landfills would have on African American residents, but concluded that the decision makers had carefully balanced environmental suitability, economic factors, and cultural needs.[102] Again, the court, relying on *Arlington Heights* and *Washington*, concluded that the plaintiffs failed to meet their burden of showing discriminatory intent in permitting the siting of the landfill.[103] Despite the disproportionate impact on the racial community, the court found that the selection of that location for the facility was not "unusual or suspicious."[104]

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94. Bean v. Southwestern Waste Management Corp., 482 F. Supp. 673, 674-75 (S. D. Tex. 1979).
95. *See id.* at 677-80.
96. *Id.* at 680.
97. 429 U.S. 253 (1977).
98. 426 U.S. 229 (1976). *See also* BROWN, *supra* note 13, at 276.
99. *See* BROWN, *supra* note 13, at 276-77.
100. Washington v. Davis, 426 U.S. at 242.
101. R.I.S.E., Inc. v. Kay, 768 F. Supp. 1144, 1145 (E.D. Va. 1991).
102. *See id.* at 1150.
103. *See* BROWN, *supra* note 13, at 277.
104. *R.I.S.E.*, 768 F. Supp. at 1149-50.

C. *Problem of Showing "Intent"*

The above cases are similar in that the plaintiffs were unable to gather sufficient evidence to prove the motivation of the government in making its decision. Disadvantaged groups are faced with the almost impossible task of demonstrating that a party had the intention or motive to discriminate on the basis of race. Critics of a "motive-centered doctrine of racial discrimination" point out that, in these cases, the wrong party has the burden of persuasion.[105] They argue that "true" motives are easily disguised, and that false motives can easily be fabricated.[106] In addition, motive may be impossible to ascertain because government actions are most often the result of the interaction of several decision makers and because many different motives are involved.[107]

Professor Charles Lawrence illuminates a further complication of a motive-centered doctrine in cases of racial discrimination, the "unconscious nature" of racially discriminatory beliefs.[108] Professor Lawrence explains that individuals are often unaware that their decisions are influenced by cultural stereotypes.[109] Racism, though currently rejected by our society as immoral, remains an "integral part of our culture."[110] The unconscious element further frustrates efforts of victims of environmental discrimination to meet their evidentiary burden because the decision makers themselves are not cognizant of the role racist perceptions play in the decision making process.

VII. CONCLUSION

Because everyone shares one environment, environmental impacts will eventually be felt by all. Environmental concerns confronting one population today may be the concern of our own community tomorrow. However, we should be particularly concerned when environmental harms are being disproportionally distributed, intentionally or unintentionally, to disadvantaged

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105. *See* Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 319 (1987).

106. *See id.*

107. *See id.*

108. *See id.* at 323.

109. *See id.*

110. *See id.* One explanation for the unconscious element of racism is that, when confronted with a conflict between the societal morale condemning racism and a racist conception, the mind tends to remove the racist perception from consciousness. *See* Lawrence, *supra* note 105, at 323. A second theory purports that the media, family members and peers transmit racist beliefs which are incorporated into the individual's perception of the world without the cognitive recognition of their racial quality. *See id.* As a result, the individual does not experience the racist element of his perceptions at a conscious level. *See id.*

groups, and when rules or laws are passed which deprive these very same groups' access to justice. States which adopt strict student practice rules, such as those adopted by Louisiana, place an unnecessary burden on disadvantaged groups which are already burdened by difficulties in obtaining and financing counsel, the complexity of the law, and high evidentiary burdens for proving discrimination.