Shutdown

The law school's Center for Civil Rights found value in teaching litigation by going after governments on behalf of people who lacked legal clout. The UNC System Board of Governors had a problem with that.

by Barry Yeoman
When Rex Young arrived at UNC’s School of Law, eager to work in the environmental arena, he signed up to volunteer for the school’s Center for Civil Rights. Within weeks, he found himself knocking on doors in an eastern North Carolina mobile home community, interviewing residents about the stench from hog waste that permeated their lives.

Few issues in North Carolina are more contentious than the impact of industrial hog farming on the people who live in its midst. Research from UNC’s School of Public Health has shown that the burden of the inescapable smell and scientific links to asthma, waterborne disease and depression falls hardest on African Americans, Latinos and Native Americans.

That racial disparity drew the attention of the civil rights center, which in 2014 signed on as co-counsel for an administrative complaint against North Carolina’s state government. The document, filed with the U.S. Environmental Protection Agency on behalf of three grass-roots groups, charged that the state’s permitting decision — on behalf of three grass-roots groups, Environmental Law Center, Gardens for Green Schools, and Environmental Law and Policy Center — falls hardest on African Americans, Latinos and Native Americans.

That racial disparity drew the attention of the civil rights center, which in 2014 signed on as co-counsel for an administrative complaint against North Carolina’s state government. The document, filed with the U.S. Environmental Protection Agency on behalf of three grass-roots groups, charged that the state’s permitting decision, which technically applies to all University of North Carolina system facilities, was designed to defang an institution that’s unalterably connected to the Civil Rights movement.

On a cloudy Saturday, they caravanned to Clinton, 90 miles southeast of Chapel Hill, where they fanned out and introduced themselves to neighbors. “The hog waste, he learned, is carried on water droplets from the spayers that disperse the waste onto open land. “When their kids wait at the bus stop, it gets on their clothes.” They would arrive at school smelling of pig feces.

Young now works for a renewable-energy company, and the hog farm matter remains unsettled. In January 2017, the EPA corroborated much of the original complaint in a 23-page letter to state regulators. “The ... adverse impacts ... are being felt by large segments of the communities of color, and are potential evidence of systemic concerns, not purely anecdotal claims,” wrote Lillian Durka, director of the EPA’s External Civil Rights Compliance Office.

The center is now involved in settlement negotiations, and its longtime staff attorneys say they plan to follow the matter to its conclusion. But as long as it remains under the University’s umbrella, the center won’t be taking on new clients. That’s because in September, the UNC System Board of Governors voted to strip the privately funded center of the ability to file complaints or lawsuits or to act “as legal counsel to any third party.” The ban, which technically applies to all University centers and institutes, followed three years of scrutiny by board members who argued that litigation is expensive and strays from what should be the center’s academic focus. Just before Thanksgiving, managing attorney Mark Dorosin ‘94 (JD) and senior staff attorney Elizabeth Hadix ‘98 (JD) received termination notices effective on Nov. 30. (They plan to keep representing hog waste clients privately.)

“Aas a steward of the taxpayers’ money, it does not make any fiscal sense to me for us to expend any resources — it may be state resources or anything connected to the University — to file lawsuits against other government entities, thereby forcing taxpayer money to be spent to fight them,” said David Powers, BOG member.

“It clearly is a political hit. Some of these folks, if they were around in the 1960s, they would have been opposed to the goals and the work of the civil rights movement. And if they were around in the 1960s, Lord knows what they would have supported and what they would have opposed.” — Theodore Shaw, director of the Center for Civil Rights

“The Chambers legacy

Hovering over the debate is the ghost of Julius Chambers, ’62 (LL&BJS), the center’s founding director and one of the nation’s most revered civil rights lawyers. During the civil rights era, he endured two fire-bombings and an arson. He later became the first president of the NAACP Legal Defense and Educational Fund.

Chambers’ relationship with Carolina and the UNC System was fraught. He graduated at the top of his law school class but couldn’t attend its end-of-year banquet at a whites-only country club. He served on the Board of Governors in the 1970s but resigned over what he considered UNC’s shaggish approach to desegregation. Blacks, he said at the time, “could not get a fair shake at the University.”

It took 18 months for Gene Nichol, then dean of the law school, to persuade Chambers to lead the center in 2001. By then, Chambers was chancellor at N.C. Central University. “Do you have some kind of death wish?” Nichol recalled saying. “They won’t let you open a center to repress poor black people ... And if we do our work, they’ll close us down.”

Chambers came aboard anyway and launched the center with a three-part mission: scholarship, student training and community-based advocacy. The center considers the three parts interlocking. “The model that Chambers designed is that the research grows out of community advocacy,” Dorosin said. “It’s not sitting around thinking academically about legal problems that folks in eastern North Carolina might face. It comes out of meetings in communities where folks tell us what’s happening.” Likewise, students learn by immersing themselves in advocacy work.

For Alissa Ellis ‘11 (15-JD), volunteer- ing for the center meant helping women who had been involuntarily sterilized — under a state-sanctioned eugenics program that lasted until 1974 — apply for compensation. It was essential training. She said: “I had done interviewing before.”

Protestors for and against the Center for Civil Rights have been speaking out for months. Previous pages: About 300 center supporters gathered on campus just before the BOG vote and marched to the home of UNC System President Margaret Spellings.

“The Chambers legacy

Hovering over the debate is the ghost of Julius Chambers, ’62 (LL&BJS), the center’s founding director and one of the nation’s most revered civil rights lawyers. Chambers, who died in 2013, was part of the team that argued Swann v. Charlotte-Mecklenburg Board of Education, the
government “does not bear the constitutional duty to provide a sound basic education.”

The center has appealed the case to the N.C. Supreme Court.

“There is no diversity”

It was another desegregation case that caught the eye of Steve Long ’82, the Board of Governors member who championed the advocacy ban. Long, a tax and benefits lawyer, says he read news articles about Pitt County, which he says paid $500,000 in attorney fees to defend itself against the center’s challenge to its school rezapassignment policy. “I said, ‘How is that even allowed?’” he recalled. (Pitt school officials could not verify the dollar figure, saying they paid a private law firm for various services and the current records aren’t itemized.)

As Long learned more about the center, he didn’t like what he saw. During a 2014 BOG working group meeting — called to review almost 30 centers and institutes throughout the UNC System — he addressed the center’s new director, Shaw.

“I’ve read your materials. There is no diversity of opinion at that center.”

“We’re civil rights advocates. We have a point of view.”

— Theodore Shaw, director of the center

“Every center is fighting for the same thing — student-focused,” said Theodore Shaw, former law school dean at Duke University and now the center’s executive director. “But each center’s mission and goals are different. It’s a variety of issues that the center is working on.”

While Shaw acknowledges that there is diversity of opinion in the center, he believes it is not the same as ideological diversity. “We are not advocating for a policy that would change law school policy,” he said. “We are not advocating for a policy that would change public policy. We are advocating for civil rights.”

Other critics directly attacked the center’s mission. George Leef, research director for the James G. Martin Center for Academic Renewal, a conservative think tank, described center staff as “leftist zealots.” But Long, a former board member of the conservative Civitas Institute, insists his concerns aren’t ideological. “I don’t care if they’re a conservative, liberal or moderate center. They should not be involved in litigation.”

The center and its defenders say critics either don’t understand or misrepresent the role of litigation. It is the tool of last resort, they say; an option that gives the center leverage during negotiations. “An advocacy organization that cannot litigate is, if not toothless, then certainly hobbled,” said Chris Brook ’02 (05 JD), who interned for the center and now serves as legal director of the American Civil Liberties Union of North Carolina.

Former law school dean Judith Wegner says the center taught students that seeking justice requires many skills, including gathering evidence and talking with residents and public officials. Sometimes lawsuits are required, often they’re not. “It’s a powerful lesson for students who may have come to law school thinking it’s all about glamorous, swashbuckling [attorneys] in the courtroom,” she said.

Long and his allies say the proper way for students to gain litigation experience is through legal clinics, which combine classroom instruction with the chance to represent clients under direct supervision. The law school has seven such clinics, covering immigration, consumer financial transactions, and domestic and sexual violence. Unlike the center, they are limited to third-year students. They, along with the law clinics at N.C. Central, are exempt from the new advocacy ban.

“It is very student-focused,” Long said of the clinic model. “But it also helps people outside the

Tar Heel fans deserve the best network.

#1 Overall Network Performance in America eight times in a row.

verizon

 Rankings based on the RootMetrics U.S. National Network Report as of 11/09/17. Tests with two currently available smartphones on four national mobile networks at all available network types. Your experience may vary. The RootMetrics award is an endorsement of Verizon, not an endorsement of this device.
“The idea that clinics at these two law schools have some kind of safe harbor is chimerical. When they engage in clinics, takes on a case that upsets some friend of a member of the Board of Governors — or somebody on the Board of Governors themselves — that clinic will be next on the chopping block.”

—Mark Dorosin ’94, terminated managing attorney of the center

“The lead-up to the Board of Governors’ vote was an emotional time in Chapel Hill. The campus protests against the Confederate monument known as Silent Sam had cracked open a larger conversation about white supremacy. Fifteen BOG members had just chastised UNC System President Margaret Spellings in an email for not taking a harder line against the “lawlessness” of anti-statue demonstrators.

The afteroon before the vote, about 300 center supporters gathered on campus. They searched first to Silent Sam and then to Spellings’ house, some carrying photos of Chambers. Among the speakers was Dan Borné, the associate president, Dan Borné. His group also pushed hard that would have closed the Tulane clinic, but it failed.

“By helping us see that [desegregation] lifts up every student and is ultimately about accessing power.”

— Weaver

“Make sure this work can continue”

In November, the N.C. State Bar notified the law school that, in its opinion, the center was not authorized to provide legal services because it is neither a law firm nor a clinic. The bar issued its nonbinding “letter of caution” after receiving an anonymous complaint. “I’m perplexed,” Shaw said. “The State Bar has certified students to get credit for working at the center. I’m reminded of that scene from Casablanca. The State Bar is shocked, shocked to find out the Center for Civil Rights is practicing law.”

After the letter’s arrival, Dorosin said that “the University’s concern was that it knew the other members of the staff will go on, and find a way to do the work to which they’re committed.”

— Theodore Shaw, director of the center

“Now it’s done and it’s history, and we have to make sure this work can continue elsewhere. I will go on, and find a way to do the work to which they’re committed.”

— Elizabeth Haddix ’98, terminated attorney of the center