"In no instance is a lawsuit a strategy for winning a fight. It is always a tactical move."

"Environmental justice struggles are at heart political and economic, not legal, so a legal response is often inappropriate or unavailable."

"Lawyers primarily should be taking their direction from grassroots organizations, but many times we see that not happening."

"Two lawyers came to my home in pin-striped suits. My first thought was FBI."

"We have to make sure we get a lawyer that's not easy to be bought off."

"Whether we won or not wasn't important, but not rolling over as other neighborhoods had done — or been forced to do — that was important."

"Lawyers must serve not as white knights out to save the victim community, but as resources to be integrated into a broader struggle for community empowerment."

"Legal advocacy is essential because the environmental issues they are addressing are, in significant part, framed in the language and processes of law."

"The embracing of 'environmental justice' by Washington-based and-oriented groups means an institutionalization of the idea within the system and a consequent dilution of its power."

"Despite all of the current fascination with this subject, the legal community has probably accomplished little in providing assistance to poor communities and communities of color who bear the brunt of this society's environmental degradation."

"Lawyers on tap, not on top."
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Why the Law?

by Francis Calpotura

A recent victory by activists in the Georgia Sea Islands to preserve their community is one example of the many victories and, I’ll submit, strategic challenges that confront the fastest-growing movement that involves people of color in the country today — the environmental justice (EJ) movement. (Read: the proliferation of community organizations with the proliferating Environmental Law Centers around the country has resulted in legal strategies for winning environmental justice fights, to the detriment of direct-action, community-oriented strategies.)

The political implications are serious. A legal strategy affects how the issues that confront a community are understood. For example, the fight by the Sea Islanders was framed as a “preservation” issue in order to employ a variety of zoning, and endangered species laws to delay development. This cut on the issue of development fails to show the racial and class character of the developer’s strategy, something organizing for community control and equitable development would do to a much greater extent.

In addition, a legal strategy takes the fight away from arenas in which people can have some direct influence — their politicians, local development company offices, residences of the CEO, bank offices, etc. — to a place where they don’t, i.e. in some chamber controlled by a judge where only the lawyers are allowed to speak (and only in English). This strategy does not facilitate the building of a cohesive, imaginative and militant base of people willing to employ various tactics on the opposition. This has great implications on how deep our organizational base is, and how leaders get developed.

Strategic Questions

The more important strategic questions for the environmental movement go beyond mere choice of strategic options to employ. The questions that continue to nag me are these: Is...

>> see WHY THE LAW? page 64
The Movement & the Legal Community
by Pat Bryant & the Gulf Coast Tenants Organization

The basis for change for our people is internal. More simply put, the solutions to the problems lie in the hands of those victimized who actively work for change.

The grassroots environmental movement affirms this simple principle, rejecting any notions that imply that external resources are more significant than internal resources. The Gulf Coast Tenants Organization believes that there is no need to further distinguish any particular external resource (such as themselves, "Am I a lawyer who happens to do grassroots work, or am I a grassroots worker who has a license to practice law?" We do not believe there is a middle ground even though the individual understandably will then continuously struggle with herself over the correct role she has to play.

While we believe that those involved in defining the legal part to the movement intend to raise the quality of legal representation for communities suffering from toxic poisoning, we disagree with their approach. We think it is dangerous to further distinguish lawyers from other resources in our movement. In the early 1970s when the grassroots movement forced the establishment of Neighborhood Legal Services, we coined the slogan, "Lawyers are on tap, but not on top." To us, this meant that the use of the courts was one of the resources that should be available to our people's struggle, but not the primary resource.

Many approach the concept as "The Environmental Justice Movement and the Legal Community." We look at the subject as "Legal Resources Inside and Outside of the Environmental Justice Movement." We view the outside resources without sentiment. Our use of these resources are narrow in scope and can only play a limited role in our communities. The lawyers providing these resources have no idea about the direction of the People's movement. They inevitably place themselves and their profession at the center of their activities. We have little faith in their ability to provide much more than technical assistance (e.g., filing court documents, research, etc.) We view those inside of the environmental justice movement with no more and no less admiration than any other workers. They are subject to the same criticism and praise we all deserve and they must be involved, on some level, in different phases of our work. They have an equal voice in the decision-making process in terms of the tactics and strategies we all decide upon.

The problem of lack of accountability in lawyers is a real one. However, the problem does not exist because of a lack of identified principles, strategies, or tactics. The problem emanates from elitism, opportunism, or political careerism that is not peculiar to the legal profession. Lawyers) from any other. Inside of the grassroots movement, we have many individuals who bring valuable resources to the table. We have workers who happen to be lawyers. Outside of the grassroots movement, there are lawyers who happen to get involved in environmental work.

What we have noticed is a tendency by various so-called professionals to distinguish themselves and their roles in progressive struggles. We think each individual has to ask
Lawyers, the Law & Environmental Justice: 
Dangers for the Movement

by Luke Cole

Over the past ten years, the environmental justice movement has grown from a scattering of local struggles around the United States into a national force to be reckoned with. With the new national prominence has come the trappings of power: a presidential Executive Order on environmental justice, a national advisory committee appointed by the Environmental Protection Agency, a flurry of legislation introduced in Congress.

After a long period of inaction, the legal profession has also jumped wholeheartedly onto the environmental justice bandwagon, bringing lawsuits, sponsoring symposia, initiating environmental justice classes and clinics in law schools, writing law review articles. Each day, there is some new legal activity on the environmental justice front.

These two developments — national prominence in the form of activity in Washington, DC, and the upsurge in legal activity — are connected, and are potentially dangerous developments for a movement founded on, and dedicated to, grassroots empowerment. In this commentary, I want to talk about the second development, the rise of interest and activity by the legal profession in relation to environmental justice struggles. My message, up front, echoes that of Pat Bryant and the Gulf Coast Tenants Organization in their cover article: the movement should privilege neither the law, nor the lawyers.

A New Fascination with Environmental Justice

Environmental justice as a concept has finally taken hold of the legal profession. Whether or not this is a positive development has yet to be seen. The signs of the engagement of the legal profession are many: lawyers and law students have produced an ever-growing number of lawsuits, administrative complaints, symposia, classes, and articles on environmental justice in the past three years. Even the American Bar Association has weighed in, passing a resolution on environmental justice at its 1993 annual meeting.

Community groups, environmental and civil rights organizations, and private attorneys have filed dozens of lawsuits in community struggles for environmental justice in the last five years. Some of these lawsuits have been suits using environmental law, some have been straight up civil rights suits, some have been interesting blends of the two disciplines. Others have used a variety of (seemingly unlikely) state and federal laws — from the those governing Medicaid to the federal highway statutes — to try to promote environmental justice. Many of these suits have been successful, and the legal piece to the environmental justice movement is becoming ever more sophisticated.

The legal struggle has moved beyond the courtroom, as well. More than 20 administrative complaints under Title VI of the Civil Rights Act of 1964, alleging environmental racism, have been filed with the U.S. EPA in the past 15 months, with more being filed each month. The EPA has accepted nine of the complaints for investigation, and the outcome of its investigations will influence the extent to which this strategy is pursued in the future.

The colonization of the movement by legal groups dilutes the movement's premises, taking the power of environmental justice as a potentially transformative social movement and turning it into "just another" issue among the many on which the legal groups are working.

Nor is the interest in environmental justice limited to practitioners; in fact, there may be greater interest in law schools than anywhere else. Dozens of law school symposia
have been held to address the topic of environmental justice, at schools in every region of the country. With Golden Gate and Tulane leading the way, offering the first classes just two years ago, law schools around the country are adding environmental justice courses to their curricula, in many cases inviting actual practitioners of the legal specialty to teach. More than a dozen such classes have been offered at schools nationwide in the past two years. In the 1994-95 school year, we know of at least seven law schools which will offer environmental justice classes to their students; several of these schools have instituted environmental justice clinical programs, about which more later.

While legal scholars were prominently silent on the topic for some two decades as activists, journalists and social scientists documented and fostered the environmental movement, that silence has ended and a veritable blizzard of articles has resulted. Although the very first article explicitly mentioning environmental justice was published just three years ago, there have been more than 150 law journal articles on environmental justice published since that time, with more published each month.

Amidst all this activity, however, some significant pitfalls exist. The environmental justice movement is in danger of being overwhelmed by the attention of its "friends." Legal strategies themselves can be dangerous for community groups, and the rise of legal institution-building in the environmental justice arena threatens to push out ongoing community organizing efforts and preclude others.

**Why the Law is Dangerous**

Volumes have been written on why legal strategies are often a bad choice in particular local struggles: using the law can be disempowering because it takes the struggle out of a realm in which the community has control over it, because it by definition involves one or two people speaking on behalf of a community (rather than the community speaking for itself), because it necessitates the translation of raw anger at broad societal injustice into legally cognizable claims, because it moves a collective struggle into an individual lawsuit, and because it may legitimate an illegitimate system.

Beyond the potentially detrimental effect on local struggles, the legal strategy's effect on a national, movement level. A focus on the law is dangerous on a national level when groups engaged in legal and legislative strategies lose sight of the goals of the movement because they are so caught up in playing the legal game. One symptom of this is when a group devotes ever-increasing amounts of resources to legal and legislative strategies at the expense of other, more participatory, community-based strategies. The tendency is self-perpetuating and self-reinforcing. This is what happened to the traditional environmental movement.

The traditional environmental movement — institutionally represented by the "Big 10" environmental groups including the Environmental Defense Fund, the Natural Resources Defense Council, the National Wildlife Federation and the Sierra Club — began its most recent wave of activity as a grassroots movement in the late 1960s. (The earliest environmental activity after Native Americans was by elite preservationists and conservationists around the turn of the century, and was hardly "grassroots.") The environmental movement of the late 1960s borrowed tactics from the contemporaneous Civil Rights Movement, such as mass demonstrations like Earth Day in 1970, which involved millions of people.

However, shortly after Earth Day, the traditional environmental movement began to turn away from its grassroots to focus on national policy. And it carried out that focus from Washington, D.C., seeking to become a player in national legislation and through lawsuits in federal courts. Lawyers became an increasingly dominant force within the traditional environmental movement as it began this professionalization, and by the early 1980s most of the Big 10 groups were run by lawyers. The traditional groups moved away from a broad, participatory strategy of protest to an insider strategy of trying to influence and shape environmental law — both before it was made, by lobbying Congress, and after it was passed, by bringing numerous lawsuits to refine it. As the head of one
The law is dangerous to social movements because it is a cocooning and self-referential game, in which its players believe they are important simply because they are playing — whether or not they are losing or winning. Now, there is a role for law and lawyers, to be sure, in any social movement, and one measure of a movement’s success is the codification of its goals — the right of women to vote is now part of the Constitution, the right to desegregated schools is the law of the land, as is the right to an abortion. But without a broad social movement to back up those laws, to insist on their enforcement, to push for their strengthening, to defend against their evisceration, then the laws mean little. As we have learned by watching the traditional environmental movement do its work in Washington, we who live by the pen, can die by the pen: if our “victories” are won in back room deals in Congress, or in court, then they are easily overturned in the next back room bargaining session, or in the next lawsuit.

Reproduction of Hierarchy: Legal Groups Jump on the Environmental Justice Bandwagon

The rush of legal groups with no prior experience in environmental justice work into the field has several implications for the environmental justice movement. These implications are both theoretical and practical. Put simply, the environmental justice field is being colonized by lawyers and legal groups.

On a theoretical level, the embracing of “environmental justice” by Washington-based and -oriented groups means an institutionalization of the idea within the system and a consequent dilution of its power. How does this happen? The national legal groups have, by history and design, a national focus and a legal orientation. This stands in direct contrast to the environmental justice movement, which has historically had a local focus and a community orientation. So when the legal groups get a hold of the concept of environmental justice, they redefine it to fit their focus and orientation, although they are in direct opposition to what environmental justice is all about. The “answer” to environmental racism becomes laws.

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less of a threat to that system and are thus more attractive grantees than the more radical grassroots groups. Employees of the legal groups look like and think like the funders, and are largely drawn from the same social class, in contrast to the racially and economically diverse environmental justice movement.

The disproportionate funding of legal groups contributes to the trend mentioned above: because increased funding creates (and, dialectically, is created by) greater stature, the legal groups are increasingly able, through their work and contacts in the press, to describe and define environmental justice. For them, however, environmental justice does not mean the fundamental, systemic change it signifies for many grassroots activists. Thus as "environmental justice" becomes more and more a part of discussions on a national level, to the extent that those discussing it come from the legal groups, its meaning is changed. The colonization of the movement by legal groups dilutes the movement's premises, taking the power of environmental justice as a potentially transformative social movement and tuning it into "just another" issue among the many on which the legal groups are working.

In a very real way, the legal groups are re-creating one of the roots of environmental injustice — the making of decisions by people not affected by the decisions.

Implicating the Clinics

The new wave of environmental justice clinics could also pose problems for the environmental justice movement. As a product of a clinical legal education, it is hard for me to argue with the pedagogical effectiveness of clinics. However, clinics in the context of a movement may play a different role than clinics that operate in traditional poverty law areas such as housing or public benefits. In their best incarnation, clinics do cutting edge legal and political advocacy with a community, helping that community empower itself and use every means, including the law, at its disposal.

Such partnership is unfortunately rare in the history of clinics — as it is rare in any area of the law, even in law offices committed to movement work. The Tulane Environmental Law Clinic, for one, has established itself as an ally to the environmental justice movement in Louisiana, and has pushed the boundaries of the law with novel strategies such as a Title VI administrative complaint. Some other clinics have had less success in establishing a community base.

Clinics pose some of the same problems that other legal outfits do, such as competition for resources, but also pose a different type of challenge for community groups because the clinics have a local focus.

The goal of clinics, their raison d'être, is first and foremost to educate students — not build the movement, which would be an organizer's first goal. Growing out of the goal of training students is one of the lines that clinics use to justify their existence: "we are creating new environmental justice advocates." While there are no studies available on the subject, in my experience this line is questionable. Ironically, most of the clinics' graduates — as with most law graduates — go on to work in corporate law firms, sometimes the very firms that communities come up against in struggles. In a sense, clinical students who later become anti-environmental corporate lawyers are, during their clinical legal education, being taught by their clients how to subvert the environmental justice movement.

This is not to say that clinics do not do valuable work: the work they provide is sometimes essential to their clients, who often would otherwise have no representation. But that fact does not obviate the need to ask hard questions about the role of clinics in the environmental justice movement.

The Self-Referential Quality of Legal Academia

The environmental justice movement is also in danger from another legal source: legal academia, particularly law review scholarship. This danger is considerably more subtle, and probably not as direct a threat, as the use of the law and the bandwagoning of environmental groups and clinics. Legal academia, through its own self-referential quality, instead poses a threat to the movement's ability to define itself? Legal academics, as they seek to define and describe the environmental justice movement, increasingly rely on themselves as sources, rather than consulting primary sources in the field.

One symptom of the self-referential character to legal thought is what I call the "Godsil Phenomenon." This phenomenon, which I name after my friend and colleague in the movement, Rachel Godsil, occurs in legal academia in the following way: Many of those who have written in law reviews seem to be under the mistaken impression that Godsil's note in the Michigan Law
Review was the first article ever published on environmental justice, or at least their citations would so indicate. Many who have written on environmental justice summarize the activity in the environmental justice movement, and then cite to Godsil: "There was an environmental justice movement," footnote Godsil. Now, Ms. Godsil's work was an important, even trailblazing, legal article — among the first in legal academia. But it was by no means the first article on the subject, which entertained the scholarly interest of sociologists, public health professionals, historians, epidemiologists, doctors, and most importantly, grassroots activists, for at least 25 years before Godsil published her article.

Why is this seemingly minor point important? Two reasons. Writers who fall prey to the Godsil Phenomenon are engaging in second-rate scholarship, and they are being what Richard Delgado calls "imperial scholarship." First, citing only to law review texts about environmental justice ignores the richness and texture of the primary sources, which are often accounts by or about the very people involved in local struggles. One of the central tenets of the movement is "We speak for ourselves," or that people who have too long been denied a voice should be the ones defining and describing their own communities. The primary sources of research in the environmental justice movement range from interviews with participants to newspaper articles to epidemiological studies to sociological treatises. Their diversity of perspective and content is missed entirely by the legal academia, which has concentrated on legal academia, which has concentrated on legal scholarship.

Second, the Godsil Phenomenon goes to the historical construction of knowledge, and ownership of that knowledge. By continually citing Godsil's work, rather than looking to primary sources, legal academics create, and then reinforce, the idea that Godsil, a white woman, was the first to write on the topic. This cheats those who actually were the first to write on the topic — sociologists like Robert Bullard, who as well as being the most prolific author in the field is also an activist in the environmental justice movement, and African-American — from recognition. By building and strengthening the myth that a white person wrote the first article on environmental justice, and ignoring the real creators of knowledge about the topic, who are largely people of color, the legal academy engages in what Delgado calls "imperial scholarship," appropriating as it own the work of others. Ironically, Godsil's piece was not even the first law review article on the subject — an African American woman, Regina Austin, co-authored an article that appeared five months earlier than Godsil's note.'

Conclusion: The Traditional Environmental Movement should emulate the Environmental Justice Movement, not the other way around...

Too much of the focus of the traditional environmental movement has been on law and legal tools; that misapplication of resources is in danger of infecting the environmental justice movement, as well. For the environmental justice movement to stay vibrant, oppositional, creative and strong, it must reject the self-reinforcing tendency to use a legal strategy as its primary strategy. And, instead of looking to the law, traditional environmental groups should use the grassroots, community-based and community-led environmental justice movement — which is broader in its goals and healthier as a movement than the traditional environmental movement — as a model.

As the Gulf Coast Tenants Organization reminds us in their cover article, "lawyers are no better or worse than any other member of the movement, and should be judged by the same standard — "We need always remember their slogan of the 1960s, that the movement needs "lawyers on tap, not lawyers on top." Luke Cole is a Staff Attorney with California Rural Legal Assistance in San Francisco, and General Counsel to CRLA's Center on Race, Poverty & the Environment. He is the co-editor of this journal.

Notes
2 Tom Turner, The Legal Eagles, Amicus J., Winter 1988, at 25, 27 (quoting Fredrick Sutherland, executive director of the Sierra Club Legal Defense Fund). The movement has also been ill-served by legal academia, which has concentrated on writing article after article about strategies which have failed the movement (such as equal protection suits, mentioned in perhaps 75 percent of all articles thus far published on environmental justice) and focused little attention on creative new strategies that might actually work.
5 Pa Bryant and the Gulf Coast Tenants Organization, Environmental Justice and the Law, 5 Race, Poverty & the Environment 1 (Fall 1994/Winter 1995).
6Id.
New Developments in the Environmental Justice Movement

by Ann Bastian and Dana Alston

Over the past two years, a new level of organizational development has been reached in the environmental justice movement. In discussing our sense of how the movement has evolved and matured, it seemed useful to share our thoughts and observations.

Environmental justice struggles have been around a long time, but they only gained self-consciousness and recognition as a movement over the last few years. Broadly defined, this movement links grassroots activism around environmental protection to issues of economic development, social equality, and community empowerment. The movement has been woven together from several threads.

Environmental justice activism has grown out of multi-issue community organizing, particularly in communities of color. Community organizations have traditionally responded to environmental problems through the health hazards posed to children and neighborhoods. The long battle against lead poisoning is an example.

Another part of the movement derives from organizing around occupational health and safety, which links labor rights issues with workplace and community hazards. Recent examples include legislative right-to-know campaigns, farmworkers’ struggles against pesticide abuses, and campaigns against the reproductive dangers of high-tech industry.

A third strand comes from the work of civil rights activists to raise issues of environmental racism, citing the disproportionate impacts of pollution on communities of color, the bias in government regulatory practices, and the glaring absence of affirmative action in the established environmental advocacy organizations. The issue of environmental racism has helped to articulate a social and economic justice agenda attached to environmental protection, and has also helped to spark activism around the class and gender issues embedded in environmental risk.

A fourth strand of the environmental justice movement comes from historically indigenous communities engaged in struggles to retain and protect their land bases. Native Americans, Chicanos, and African Americans have inhabited large tracts of land that were designated by treaty with the U.S. government, by Spanish and Mexican land grants in the 1700-1800s, and through allotments to emancipated slaves during Reconstruction. These areas, rich in natural resources, have become targets for acquisition by industry and real estate developers, and also by conservationists pursuing land preservation. To address the resulting dilemmas confronting indigenous communities, activists have linked environmental concerns with issues of land and sovereignty rights, cultural survival, racial and social justice, alternative economic development and religious freedom.

Finally, the environmental justice movement has developed through interaction with the massive base of grassroots activists engaged in organizing against toxic hazards. At any given moment, there may be 3,000 to 5,000 local citizens groups across the country battling for the clean-up of toxic waste dumps, the regulation of industrial emissions, prohibitions on power plant and incinerator sitings, the protection of water...
supplies, the enforcement and improvement of EPA standards, and many other issues. These groups arise in widely diverse settings, but are heavily from poor and working class communities, with a notably high level of women activists and leaders. Some groups have a strictly "not-in-my-backyard" perspective. Many others, however, have grasped the linkage of their backyard issue with patterns of corporate abuse, government neglect, and citizen disenfranchisement, leading a growing number of toxics activists into environmental justice networks.

Over the past five years, these distinct threads have become increasingly intertwined through national, regional and local initiatives. One galvanizing moment was the People of Color Environmental Leadership Summit, initiated by the United Church of Christ Commission on Racial Justice and drawing over 1,000 participants to Washington D.C. in October 1991. The Summit underscored that many veteran organizers of color from civil rights and community organizing traditions have also been in the forefront of environmental work, crucial in building the links across these sectors of activism and deepening the concept of justice which unites them.

Several national environmental organizations have also provided vehicles for network building on a wide scale, through their conventions, campaigns, and support work. These include the former National Toxics Campaign Fund (NTCF), the Citizens Clearinghouse for Hazardous Wastes, Clean Water Action, Greenpeace campaigns, the Environmental Support Center, the Institute for Energy and Environmental Research, and the Highlander Center's STP Schools. At the same time, it should be noted that environmental justice groups have been courted but not well represented by the major environmental lobbying organizations and traditional conservationists, which have been neither inclusive or activist enough for an enduring match with grassroots organizations.

In addition, environmental justice organizing has received legal and technical support from a variety of national and regional legal organizations, among them: California Rural Legal Assistance, the Lawyers' Committee for Civil Rights under Law, the Center for Constitutional Rights, the NAACP Legal Defense Fund, Tulane Environmental Law Clinic and the National Conference of Black Lawyers. The continuing role of legal organizations in the environmental justice movement is not clear, however. Grassroots organizations are interested in convening a meeting with the legal community to develop principles to insure that legal services are provided in ways that are beneficial and accountable to the communities being served and to the goals of the movement as a whole.

Finally, it is important to recognize the contributions that social justice religious groups have made to environmental justice movement building and the growing interest of traditional civil rights organizations in this work. While national connections have stimulated growth, the real vitality of the environmental justice movement has continued to flow from the bottom up. The driving dynamic of this movement springs from the interaction of diverse grassroots groups, from the infusion of new activist leaders, from the priority of strong local base-building, and from increasingly sophisticated issue and constituency coalitions. The maturation process has been uneven but ongoing, as groups with a common environmental justice perspective forge new organizational forms and initiatives. Among the principles guiding this perspective are the need for multi-racial collaboration and democratic practice amongst themselves. Most often, the collaborative process has begun at the local and state level, with groups sharing resources and providing mutual support for policy and direct action campaigns.

Growing collaboration has not produced a unified umbrella organization in every state (much to the inconvenience of funders), but the process has produced statewide resource organizations and stable statewide networks of local anchor organizations. Moreover, an increasing number of activists, organizations and networks are collectively engaged in national policy work with Congress and federal agencies.

The environmental justice concept has also spurred the formation of distinct national constituency groups, fostering organizing within their own communities and seeking representation in the policy process. This article can hardly encompass the rich field of work percolating throughout the entire environmental justice movement, but we would like to highlight several of the latest developments that have both national and grassroots impacts.

Four new constituency networks have been established among organizations of color:

The driving dynamic of this movement springs from the interaction of diverse grassroots groups, from the infusion of new activist leaders, from the priority of strong local base-building, and from increasingly sophisticated issue and constituency coalitions.
The Environmental and Economic Justice Project (EEJP), founded three years ago as a project of NTCF, has become an independent training and education center for environmental justice organizations. Its work includes an intensive training curriculum for organizers of color, educational programs on multi-racial organization building, and a grassroots leadership development program. EEJP’s diverse board, representing a number of leading activists of color in the movement, also serves as a focal point for strategic discussion, convenings and expanded network building.

- The Indigenous Environmental Network (IEN) was formed in 1992 following three annual convenings of Native American activists from across North America. IEN’s 1993 conference, held in Oklahoma, drew over 300 participants and representatives from 36 tribes; the 1994 conference, held in Minnesota, was also well attended. IEN serves as a resource center for grassroots organizing on environmental and land rights issues on reservations and rancherias, providing technical and organizational assistance and building mutual support strategies. Its National Council and annual conference are in themselves important centers for collaboration, advocacy and consensus building among Native American activists.

- The Farmworker Network for Economic and Environmental Justice (FWN) came together in 1993 after two years of discussion among seven farmworker membership organizations from the U.S. and Caribbean that are organizing against pesticide hazards. FWN’s goal is to enlarge resources for direct organizing around pesticides, to promote exchange and mutual support among farmworker organizations, and to forge a common voice for farmworkers in policy debates over regulation, sustainable agriculture and occupational safety and health.

- The Asian Pacific Environmental Network (APEN) also formed in 1993 after a period of internal organizing to encourage grassroots organizing and leadership development in Asian American and Pacific Islander communities around primarily urban environmental problems such as lead poisoning, housing and community development, as well as workplace safety. An emerging issue is the representation of Asian Pacific voices in the environmental movement, linked to issues of immigrant rights, community empowerment and multiculturalism. APEN will also serve as a clearinghouse and resource for existing environmental efforts across diverse Asian Pacific groups.

- The Electronics Industry Good Neighbor Campaign organizes around the hazards that high-tech production poses to surrounding communities, workers and natural resources. Its campaign focuses on the practices of the government-sponsored consortium of American microchip manufacturers, Sematech, and its affiliated corporations. As a joint project of the Silicon Valley Toxics Coalition, the Campaign for Responsible Technology and the Southwest Network for Environmental and Economic Justice, the campaign has functioned as a national policy advocate for alternative technologies and public oversight of Sematech, while at the same time sponsoring community organizing for good neighbor agreements with local plants, now locating along the Mexican border.

- The Military Toxics Project (MTP) is a newly independent organization that has grown out of a former NTCF project. MTP represents over 100 member groups from every part of the country, focused on the post-Cold War clean-up of America’s vast military apparatus. Issues include the closure and conversion of military bases with serious contamination problems, the disposal of chemical weaponry, and the use of uranium weaponry in the Gulf War, with impacts on GIs, war victims and communities neighboring the production facilities. MTP also works in collaboration with the Military Production Network, a policy coalition which for the past several years has focused on the Department of Energy and the hazards of nuclear weapons production and waste.

Another thrust of the environmental justice movement in the past four years has been the creation of regional networks, linking grassroots groups and resource organizations to increase the exchange of information and mutual assistance. Like the constituency and issue networks, the regional formations are organizing around two principles: a safe, clean environment and workplace can only be achieved by building a multi-racial, multicultural, and international movement; and, sustainable development alternatives must be defined by the communities impacted by such policies.
The Southwest has produced the most developed regional network thus far:

- The Southwest Network for Environmental and Economic Justice (SNEEJ) was formed in 1990 and links grassroots organizations with environmental justice concerns in an interstate network that includes California, Arizona, New Mexico, Nevada, Colorado and Texas. SNEEJ currently has five major campaigns, focusing on EPA accountability, high-tech industry, border justice, sustainable communities and youth leadership. SNEEJ also has two projects: La Campaña Campesina: Farmworker Justice Against Pesticides, and Sovereignty and Dumping on Native Lands. In August 1993, SNEEJ convened its third annual gathering in San Diego, which included a full day’s meeting in Tijuana and marked the integration of Mexican organizations into the Network. The 1994 meeting in Las Vegas, NM, marked a new maturity in the Network.

The South has also seen activity:
- The Southern Organizing Committee (SOC) stimulated a new level of networking activity by convening the 1992 Southern Community/Labor Conference for Environmental Justice in New Orleans in December 1992. Over 2,000 people attended this meeting, including 500 youth. SOC has continued to work on the Conference mandate for a campaign to develop state networks that will feed into a regional structure based on collective and democratic decision-making. Also in the region, the EPA Region 4 Task Force has been formed with community representatives from eight southern states to monitor and guide EPA decision making.

- The Southern Regional Economic Justice Network (RENJ) is a parallel network of organizations working on worker rights and community economic development issues, with a strong emphasis on industrial hazards and workplace health and safety issues as a focal point for grassroots organizing, coalition building, and the reform of state regulatory policies.

The Northeast: Activists from the Northeastern states have convened organizing meetings to expand the base of organizations involved in environmental justice work, develop a data base of organizations, and organize toward a regional gathering.

The Northwest: An initial meeting was held in the summer of 1993 in Portland, Oregon of organizations interested in building an environmental justice network for the Northwest. The meeting included hotel workers, farmworkers, Native American and immigrant community activists. In the fall of 1994, organizations throughout the region formally established a netowrk and set up an action plan.

The Midwest: In 1992, a meeting of 25 organizations brought together urban environmental justice groups with Plains Indian groups. The meeting established an ongoing committee to explore convening a Midwest regional environmental justice conference.

Clearly, in all of the developments cited here, the operative word is: network. While the concept can and does mean many things, there is something happening in the environmental justice movement that signifies more than a clearinghouse, a mailing list, or a periodic trade convention. The emergence of constituency, issue and geographic networks as the major organizational form in this movement signifies the evolution of a new level of work and a new model of organizational development.

The new networks indicate that the movement has achieved a more solid infrastructure of on-the-ground organizations and activities. The new networks also indicate that the movement is growing beyond the local level in its capacity for inter-group collaboration, programmatic initiatives, and policy influence. At the same time, there has been a somewhat explicit rejection of older models of national organization building that centralize grassroots energies when they are sufficiently powerful and convert them into a single institution that then acts as command center and broker for the movement or for a single issue or constituency. There is a related antipathy for national organizations that impose one style of work and foster competitive, sectarian relationships with parallel organizations.

In contrast, the networks have actively sought to include different kinds of organizations and organizing cultures, encompassing the multiple strands of the environmental justice movement. There has also been a clear principle that new national and regional formations, as they reach for wider influence, must remain in the service of grassroots activism and community empowerment. The networks now emerging are self-
they are trying to create democratic decision-making structures that rely on strong, participatory and representative boards.

The concern over democratic practice also involves an insistence that new formations reflect and respect the genuine diversity of their internal constituencies and potential allies. The concern is not only that organizations should be inclusive and appropriately multicultural, but that they should be capable of educating constituents and activists around broad issues of injustice, particularly racism and sexism. The new networks have the fluidity to absorb diversity and rely on consensus-building processes that emphasize internal education.

This is not to say that the networks represent some ideal or ultimate stage of organizational development. In fact, they seem to be openly transitional. The networks are a place where new activism can draw upon and reshape older traditions of social justice organizing. They are a place where participants can consider how to create coalitional organizations that can be both democratic and engage power. This is no easy trick, but the networks have very deliberately taken on the dilemmas. Moreover, a number of leaders who survived the dissolution of the National Toxics Campaign Fund and who are activists in the new networks have created an ongoing set of discussions about the institutional lessons of the NTCF experience and the necessary ingredients to creating a national, multi-racial organization that responsibly represents a dynamic social movement.

There is no exact end point in all of this, but a very exciting opportunity to attend the maturation of this movement. For funders, the opportunity is to support more than the grassroots side of environmental action, which many of us believe gives ongoing impetus to rather halting policy advances. By funding the networks, we have the opportunity to broaden and deepen environmental action—to enlarge its goals and impacts, to link its national and grassroots levels. We also have the opportunity to nurture new centers of activism, and with them, new forms of civic organization and political culture that may well serve many causes and calls to leadership in the communities of 21st Century America.

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New Public Policy Tools in the Grassroots Movement:

The Washington Office on Environmental Justice
by Deeohn Ferris

Maturation of the environmental justice movement has fostered greater collaboration, cooperation, communication and information exchange among grassroots groups and environmental justice networks. As a result, public policy strategies pursued by progressive, diverse, community-based environmental justice groups continue to be instrumental in convincing federal, state and local decisionmakers to begin addressing environmental, workplace and economic injustices. Through the justice agenda, Congress, the courts, government, business and industry are confronted with issues of civil and human rights, indigenous land rights and sovereignty, cultural survival, racial and social justice, worker protection, sustainable communities and growth.

To help propel the national momentum generated by local action and the rapidly growing cadre of knowledgeable community activists, regional networks and grassroots organizations have formed an alliance to establish a working office in the nation's capitol. The Washington Office on Environmental Justice, a collaborative endeavor, is a unique and exciting breakthrough in terms of facilitating grassroots public policy advocacy, strategy development and implementation at the national level by building on paramount local struggles, issues and areas of concern. This article surveys federal policy developments, other responses to the movement, and recent movement strategies, all of which highlight the need for and utility of a Washington Office, before discussing the Washington Office itself.

Federal Policy Developments

Initiatives in the federal policy arena deriving from concerted, organized and systematic community-based work highlight the value of and need for a coordinating office in Washington. Many of these initiatives were first prescribed as policy options in the Environmental Justice Transition Paper, which was submitted by activists to the President-elect's Environmental Justice Transition Team at the close of 1992. For example, since January 1993, President Clinton pledged to achieve environmental justice in his 1993 Earth Day Speech and issued the Executive Order on Environmental Justice (E.O. 12898) galvanizing the federal government for the first time to deal with, among other issues, multiple and cumulative pollution exposures, research and data analysis, and the toxic consumption hazards experienced by populations which subsist on fish and wildlife. Capturing seventeen federal departments and agencies and other officials as the President may designate, the goal is government-wide fulfillment of the equal protection mandate in communities of color, among workers who may be exposed to substantial environmental hazards, and in low income communities.

The government's chief enforcement official, U. S. Environmental Protection Agency (EPA) Administrator, Carol Browner, established environmental justice as one of the Agency's top four priorities and created the National Environmental Justice Advisory Council, principally selecting activists of color and interest groups, industry and state government officials as members. On the research front, a half-dozen federal agencies, including EPA, the National Institute of Environmental Health Sciences, the Department of Energy, Centers for Disease Control, and the Agency for Toxic Substances & Disease Registry, coordinated with grassroots networks and groups in convening the landmark national Symposium on Health Research and Needs to Ensure Environmental Justice.

Responses to the Movement

A brief review of the two years also reveals that sectors in addition to the federal government have responded to the grassroots impetus with a panoply of actions at the national level. In March 1993, the Environmental Justice Project of the Lawyers' Committee for Civil Rights Under Law, in conjunction with environmental justice leaders, organized and convened the first national interdisciplinary legal forum on Civil Rights and the Environment: Bridging the Disciplines. In the churches and synagogues, Vice President Gore addressed the National Black Church Summit on Environmental Justice in December 1993, reaffirming the Administration's commitment to environmental justice, and the National Religious Partnership for the Environment embracing people of color issues as themes. Eight months earlier, in August, the American Bar Association (ABA) issued a resolution acknowledging environmental discrimination and several ABA committee forums occurred. Soon thereafter, the National...
Lawyers Guild issued a supporting resolution during its Fall national conference.

A number of other widely varied national interest groups, legal and technical organizations, have begun probing the issues, as well. Physicians for Social Responsibility, the National Association of Minority Health Professionals, the National Association for Public Interest Law, Union for Concerned Scientists, American Association for the Advancement of Science, the National Bar Association, American Public Health Association, the National Conference of Black Lawyers, the Association of State and Territorial Solid Waste Management Officials, NAACP Legal Defense Fund, the American Waterworks Association, the National Association of Black Public Administrators, Children's Environmental Health Network, NAACP, the U.S. Catholic Conference, Forbes and Chemical Week magazines have either convened symposia, workshops and panels or featured speaker sessions.

Reactions from industry, environmentalists and states during this same period reflect advancement of the movement agenda. The Chemical Manufacturers Association established an industry workgroup and initiated an internal company education program focusing on facilities issues and public "advisory" groups. The National Wildlife Federation's Corporate Conservation Council met to discuss its report on disproportionate impact entitled "Not Just Prosperity." The Committee for the National Institutes of the Environment issued a "Breaking New Ground" report reviewing environmental justice concerns, and the U.S. Catholic Conference deliberated at a symposium on church approaches. By the Fall of 1994, the National Association of Manufacturers, which is planning to announce a policy, held an industry symposium on facility and siting aspects of environmental injustice.

Soon thereafter, the National Governors Association met to explore state equal protection strategies. Evidencing keen interest in the issues, to date, at least thirteen states have introduced legislation or resolutions addressing aspects of environmental justice. A few, for example California and Texas, have created study groups. In recent developments, a national conference investigating environmental (and "social") justice aspects of transportation investment and policy sponsored by the Federal Transit Administration and the Surface Transportation Policy Project was held at the Environmental Justice Resource Center in Atlanta in May, and a nascent inquiry by EPA is underway for grassroots input into the impending review of U.S. environmental performance by the Organization for Economic Co-Operation and Development (OECD) which will occur in early 1995.

Congressional decisionmakers, too, including the Black Caucus and the Hispanic Caucus, continue to add to growing national attention to community concerns. Hearings and bills in 1994 centered on certain federal level issues, including a ban on transnational shipment of wastes to OECD countries and developing nations, community-based Superfund reform provisions, amendments to the Resource Conservation & Recovery Act authorizing direct citizen action to prevent waste disposal facility siting in inundated areas, an incinerator moratorium, pollution on Tribal land, provisions requiring unaggregated data collection on people of color health and toxic exposures, ranking the top one hundred environmental high impact areas that warrant federal action, and reinforcing prohibitions contained in Title VI of the Civil Rights Act of 1964 against discrimination in federal environmental programs and programs receiving federal funds nationwide.

**New Movement Strategies**

Innovative federal public policy tools being employed by environmental justice networks and communities of color are becoming new action-forcing prototypes at the federal level. Community action has triggered investigations by the U. S. Civil Rights Commission into whether states are discriminating in the implementation and enforcement of environmental statutes. (See, e.g., The Battle for Environmental Justice in Louisiana: Government, Industry and the People, which concludes that communities of color along the Mississippi River bear disproportionate health burdens.) Twenty administrative civil rights challenges under Title VI have been filed to prevent discriminatory waste facility siting by groups such as Gulf Coast Tenants Organization, and communities of color in Alabama, California, Mississippi, Michigan, Texas, and Louisiana.

Native Americans for a Clean Environment (NACE), an Oklahoma-based group and a leading critic of the nuclear industry, has partnered with a predominantly African American community group, Citizens Against Nuclear Trash (CANT) in Homer, Louisiana, to combat efforts by the federal Nuclear Regulatory Commission (NRC) to permit the first private plutonium enrichment facility in the United States. Joining the community in Homer to collaborate on strategy,
NACE issued *Silent Sirens*, a report on the NRC challenging safety procedures and the inadequacy of emergency response planning at nuclear facilities. The community is experimenting with a legal action which was filed on their behalf by the Sierra Club Legal Defense Fund. The Indigenous Environmental Network is also involved in the fight against the consortium seeking to locate the facility in Homer, which includes the power company involved in the "temporary" nuclear disposal site controversy near Dakota land in Prairie Island, Minnesota and on Western Shoshone territory in Nevada.

On the Southeast side of Chicago, People for Community Recovery (PCR) has developed a lead abatement training program. Thus far, sixty-four neighborhood residents have been trained in lead abatement and safety techniques. Cooperative relationships with contractors have resulted in job placement for thirty workers. PCR's project is an economic development model which is being shared with communities around the nation. Coalescing cleanup goals with employment needs, expansion of this program is expected to provide needed workforce skills to people of color, for some of whom these jobs are the first productive employment opportunity.

Another important new national model is the *first* environmental justice petition filed under the federal Toxic Substances Control Act (TSCA), by the Southwest Network on Environmental & Economic Justice and its affiliates, the Environmental Health Coalition and Comite Ciudadano Pro Restauracion del Cañon y Servicios Comunitarios del Padro. This petition, a community-based initiative, generated the broadest enforcement action undertaken to date by EPA. It catalyzed issuance of environmental subpoenas to ninety-five transnational corporations and an EPA inquiry into whether ongoing activities pose an unreasonable risk of injury to health or the environment. Under TSCA sections 20 and 21, the community challenges environmental noncompliance under the North American Free Trade Agreement (NAFTA). Requesting relief pursuant to TSCA, NAFTA and other legal authorities and, also for the first time, the environmental justice Executive Order (E.O. 12898), the petitioners seek multi-media geographical remedies, enforcement and rulemaking to prevent illegal import, export and releases of toxic chemicals in the New River and communities of color along the Southern California and Mexico border.

The *Washington Office*

The actions chronicled in this article, and their considerable implications at the local and national levels, are not exhaustive. However, even this abbreviated review of events is illustrative of the movement's accomplishments and the value of a *grassroots*-driven entity in the nation's capitol that advocates on behalf of and is directly accountable to communities of color. To meet the ever increasing need for comprehensive strategies on issues of national concern, analytical needs, information sharing and communication among movement *groups*, networks, advocates and organizers, and build on the grassroots campaigns that reached these interim milestones with the Administration, government regulators and Congress, a broadly representative alliance of multi-racial, multi-issue, and multi-regional groups pivotal to the environmental justice movement have initiated the Washington Office on Environmental Justice in the nation's capitol. The idea to create an office in Washington, DC began to emerge from the grassroots at least as early as the period leading up to the organizing activities associated with the 1991 First National People of Color Environmental Leadership Summit. Since then, new regional networks have been born, existing networks strengthened and working relationships between and among networks and community groups have solidified.

The primary alliance of grassroots organizations and networks involved in formation of the Washington Office are the Southwest Network on Environmental & Economic Justice, Indigenous

"Unlike traditional social justice organizations, this *multi-racial, multi-cultural movement of peoples of color is evolving from the bottom up and not the top down.*"
Facilitating the collaborative work of grassroots groups and communities of color who, increasingly, are providing greater input into shaping environmental priorities, the Washington Office is an important follow-up to the 1991 People of Color Summit. The Washington Office is being developed in the spirit of the Summit's Call to Action: "Unlike traditional mainstream social justice organizations, this multi-racial, multi-cultural movement of peoples of color is evolving from the bottom up and not the top down. It seeks a global vision based upon grassroots realities." Intended to fill a critical void in the nation's capitol — public policy formulation and advocacy on behalf of and responsive to community-based environmental justice networks, organizations and communities of color — the Washington Office is not a new organization. Rather, its purpose is to ensure a presence for environmental justice organizations in Washington, DC, provide eyes and ears, enhance cooperation, as well as assist with coordinating policy advocacy activities.

Capitalizing on local and regional community struggles which have commanded the attention of government, environmentalists, legal and public interest groups, scientific and professional organizations, business and industry, major objectives of the alliance of networks and groups supporting the Washington Office include penetrating the public policy process, identifying and making the most of opportunities at the national level which are engendered by those struggles, crafting collective goals, programs and projects, and building capacity to deliver pertinent analysis, services and technical assistance to the grassroots.

Working with communities of color, the Washington Office can facilitate activities associated with and responses to the numerous requests for research, expert witnesses at hearings and trials, dissemination of studies and reports, advice to boards, committees and panels. Requests come from individuals and all kinds of groups, including citizens, grassroots leaders, environmental and conservation groups, students, journalists, public health officials, elected officials, Congressional staffers and others. The resources to assist networks and communities to identify and prioritize issues, execute federal policy campaigns, access decisionmakers, and optimize opportunities for discussion are ingredients essential to making grassroots voices heard in the nation's capitol.

This uniquely grassroots-driven instrument is a key link in strengthening and supporting networks, groups and communities and assisting in their inclusion into the mainstream of public policy decisionmaking. In contrast to working solely through environmental organizations, civil rights and legal groups or professional, scientific, health and educational institutions, the Washington Office can ensure that people of color speak for themselves at the federal level and are served by an entity which is governed by and accountable to them. Equally important, with community-based strategies as the fulcrum, the Office can leverage opportunities for liaison, and enhance coalition-building and networking by grassroots activists with groups such as public policymakers and others.

Through Washington Office-sponsored dialogue, regional networks, grassroots groups and communities of color can share perspectives on crucial concerns, expand efforts to educate highly impacted communities (thereby strengthening and amplifying the voices of grassroots activists working to remedy environmental and economic injustices), monitor, analyze and promptly act on events of national significance, and timely intersect with activists and organizers, regulatory officials, legislators and the Administration. Together with identifying venues for grassroots leaders to educate elected officials, environmental, worker protection and public health decisionmakers, and enhancing the capacity of affected communities and regional networks to conduct outreach, inform the media, and activate other modes of influence, the Washington Office can assist with translating the vigor of the environmental justice movement into sustained power necessary to win lasting changes around the nation.

Deeohn Ferris is an environmental attorney with sixteen years of public policy experience spanning enforcement, regulatory compliance, litigation and legislation. For nearly two years, she served as the de facto Washington Office while launching the Environmental Justice Project at the Lawyers' Committee for Civil Rights Under Law. Presently, she is Director of the Washington Office on Environmental Justice.

**The Washington Office can ensure that people of color speak for themselves at the federal level and are served by an entity which is governed by and accountable to them.**
Many people credit a case out of Houston, Texas with being the first environmental justice civil rights lawsuit ever brought. The 1979 case, Bean v. Southwestern Waste Management, alleged that the siting of a garbage dump in the African American neighborhood of Northwood Manor was discriminatory. Argued by a young lawyer just beginning private practice, Linda McKeever Bullard, the case was the first time civil rights laws had been used to challenge the siting of a garbage dump. Although the residents of Northwood Manor ultimately lost the suit, the case was an inspiration for many of today’s civil rights lawsuits around environmental justice issues. It also launched the career of Linda’s husband, Bob Bullard, who began studying environmental racism and to this day remains the most prominent and prolific writer in the field.

RPE’s Luke Cole caught up with Linda McKeever Bullard as she was packing up her home in Los Angeles to move to Atlanta. Linda McKeever Bullard long ago left the profession of law to take up screenwriting, but her legacy lives on.

RPE: How did you get involved in the Bean case?

LMB: A local minister, the Reverend Willie Hunter, came to me and told me about a group of people who were upset about a landfill opening in their neighborhood. He wanted to know if I would talk to them. At first I was skeptical, because, number one, I didn’t know anything about landfills. And number two, I didn’t know anything about how to stop one even if I did know anything about landfills.

I wasn’t real enthusiastic initially about talking with them, but for some reason — and it probably had to do with the fact that my rent might have been due on my house (laughs) — I agreed to talk to them.

RPE: What type of law were you practicing?

LMB: As I recall, I had just opened my own office. I had worked for three years at Thurgood Marshall School of law, teaching contracts and labor law. I left there to go into private practice. I wanted to do it my way, and that’s why I had to have my own office. The Bean case must have been one of my very first cases. I worked at Thurgood Marshall from 1976 to June 1979. I think in August I was in my office, and in October we filed suit in that case.

RPE: Did the community group have a name?

LMB: Not at that time. At that time they were just a group of irate, leaderless citizens, residents who were very upset that they were getting a landfill. The people had seen the construction going on in the neighborhood, but they had been told they were getting a shopping center. So you can imagine their shock and dismay the day they learned they were getting garbage trucks instead of a shopping center.

Because if you looked at the entrance at the time, if anything it looked like you were going into a park, a very tranquil, verdant setting. Obviously it was designed deliberately that way, so they wouldn’t know — and there was no way to know while the project was under construction — that they were actually getting a landfill.

RPE: The stealth landfill.

LMB: The stealth landfill and the stealth permit process — because the other thing they didn’t know about was that the permit had been granted. When they came to me the permit had been granted and the landfill was due to open.

They wanted to know what could be done. I remember saying at the time, half-seriously, "well, you could always try laying down in front of the trucks." I had no idea of what to do to stop a landfill. I was very honest about that when I talked with them. When I talked with Willie Hunter, I told him, "I have no idea how you stop a landfill. A landfill? What is a landfill, by the way?" I knew nothing about the situation. But I started hearing over and over again that people were saying, "They picked us because we’re Black, they picked this neighborhood because its Black." Now that resonated with me, and I immediately thought about using the Civil Rights Act if that were in fact true, but I had no way of knowing. The other problem was that we were under the gun, because the landfill was due to open. It was a question of trying to stop them before they opened or having a more difficult time trying to stop them after the fact. I didn’t have the luxury of time to really think about it, because if I had, I would have never done this. (laughs) But I didn’t have that luxury to reflect.

RPE: Did you think about using environmental laws?

LMB: Those options weren’t open to us. The only option that was open was to make an argument based on the Civil Rights Act. You see, the company argued that they had given proper notice, they had given everyone the opportunity to be heard, there was a hearing that was held and nobody showed up, and therefore, case closed. And they were absolutely right. To have gone down that road, and to have challenged them on anything other than the issue of race would have
played right into their hands. In fact, they were waiting for us, they wanted us to argue the suitability of the site and the geological surveys and such, they wanted us to argue the technical aspects, because we would have lost.

RPE: So you’re sitting there, you’re looking down the barrel of this landfill coming your way, what did you do?

LMB: I went home and I begged Bob to help me. (laughs) I mean, literally, begged him. I knew that I needed an expert. I knew that if I was going to argue "pattern and practice" — a pattern and practice of locating these kinds of facilities in Black neighborhoods — I needed someone to testify to that effect. My people had no money. They didn’t have the funds to really finance that case, and so I knew I had to have an expert, someone who would work free or at a minimum rate and the only person I could think of who would do that was Bob. (laughs)

It was ironic, because the work he was starting out at Texas Southern University was in residential segregation, looking at housing patterns and that kind of thing, so I knew that he could make the leap very easily to looking at, in addition to housing patterns, where the landfills were. If I gave him a list of landfills, he could plot them. Of course, he was very reluctant to get involved initially, because he knew how much work it would take, and I didn’t want to think about that. I just wanted to get into court and do something to see if we could stop a runaway train, which at that point was the opening of this landfill.

Whether we won or not wasn’t important, but not rolling over as other neighborhoods had done — or been forced to do — that was important. So I was willing to take the chance if they were, with the understanding that we were in an uphill battle. Everywhere I went, the first thing everyone would say was, "you know you can’t win." (Laughs) It was like a mantra, "you know you can’t win."

RPE: Did you go into court?

LMB: Not only did we go into court, we kind of flew into court with papers literally trailing behind us, Bob and I. We were assigned to the only black judge at the time in the Southern Distmt of Texas, a black woman who had recently been appointed to the bench. She was a Jimmy Carter appointee. She took the bench at about the same time that I went into private practice, so we were both kind of new to this federal arena. Initially I thought, "oh wow, how lucky we are," because this woman, Gabrielle McDonald, had virtually made the law in Title VII [the federal law barring discrimination in employment] back following the passage of the Civil Rights Act. If anyone knew civil rights law, she did, and she was presumably very sympathetic to these kinds of cases. To the extent that she gave us a full opportunity to be heard and gave us a full court hearing, she was, but it was a double-edged sword being in there with her.

RPE: In what way?

LMB: She had to bend over backwards to show the defendants — the white defendants — that she was not showing us any favoritism because we were Black and she was Black. And also she understood that "you have to dance with the one who brung ya." She was appointed to that bench for a reason, and that was to say "no" to Black people. That’s essentially the job of all of these appointees, they are there to say no. Women appointees are there to say no to women, Black appointees are there to say no to Black people. And her dilemma became — once she understood the magnitude of the case — how to say no to us. Because it was so blatantly obvious that this was not only a pattern and practice that had been going on for so long and was going on now, but was such a cruel abomination — how could any right thinking Black person turn their back under these circumstances? It was a real dilemma for her. She solved it, of course, by not conducting the hearing for the permanent injunction. She just presided over the TRO [temporary restraining order] hearing. But I’m getting ahead of myself in this story.

RPE: You went into court. How did the hearing take 14 days? That seems like an awfully long TRO hearing.

LMB: It was. But this was also an extraordinary case. To my knowledge, and to hers and everyone else’s, no one had ever alleged racial discrimination in the siting of a landfill. And we had voluminous evidence, both sides, all sides. There must have been initially seven or eight defendants in court, and they all had to put on evidence.

RPE: Who actually wanted to build the landfill?

LMB: That was Browning-Fems Indusmes, BFI. The agency which granted the permit was the Texas Department of Health, but I sued the City of Houston, and the County, and a company by the name of southwestern Waste, I sued several individuals, I sued everyone whom I thought had something to do with either the locating or selecting the site, or granting the permit, or both. Because Browning-Ferris did not pick that site, they bought the property and they applied for the permit.

RPE: How did the hearing go?

LMB: I thought we had a good shot. We had shown a solid pattern, and there was not a reasonable explanation that the defendants could offer why this existed, other than on the basis of race. I didn’t think that they had articulated a good faith business reason for that situation as a defense and so I felt that it would be a very difficult for Gabby — that was her nickname, Gabrielle McDonald — to just say no to us.

RPE: What was the evidence?

LMB: Well, the first time we went to court at the preliminary injunction hearing we had something like a hundred or so sites. We had a printout of all the sites, including those of the different agencies involved which granted permits for different kinds of things — we just used everything and we wound up with a hundred sites. We also used census tracts. All we had to do was to put the sites in the tract and just by looking at the predominantly Black tracts and where most of those sites fell there was a graphic pattern. Just looking at it, you’d pause to wonder, "why are all of these sites in the Black census tracts?" When you looked at it that way it was really overwhelming.
The defendants argued that, "well, that's not fair — you have to look at who is actually living in the tracts since there are white people who live in a predominantly Black tract and they may be living next to a landfill." Now, they just raised those questions. They never proved that.

But really, I thought that the evidence was overwhelming. Under the circumstances, considering what little time we had and the pressure we were under, it was amazing what we did, what we were able to put together, what Bob was able to put together. And there were a number of times when we both or either one us would threaten divorce or murder (laughs) because we were the ones doing the work. He and I and my law clerk. We were coloring in census tract maps, and he was very careful about the coloring — rightfully so, which I and my law clerk didn’t appreciate as much as he did. So invariably we’d get in a fight about the fact that we weren’t coloring the maps as carefully as we should.

RPE: "You’re going outside the lines, Linda!"

LMB: And that line would make a difference. Only I didn’t appreciate it, until I got in court and got in trouble over one of those lines. Those are the kind of difficulties that he and I were having, but by that time Bob took to that case like a duck to water in terms of the evidence and digging out the facts and connecting the dots of what was going on. It was kind of amazing because initially I had to beg him to get involved in the case. I was looking at it from a legal standpoint, but he actually was the one who was doing all the ground work. Going out and taking the pictures and investigating those damned census tract maps — every night he’d have us doing another one.

RPE: So what happened?

LMB: The judge didn’t rule from the bench. She just said she would take it under advisement. Of course she wasn’t going to rule from the bench, for virtually every day the court room was packed with residents, staring down her throat. She wasn’t about to say no to them, to their faces, so she took in under advisement.

Sometime later, I happened to be over in the federal building, and I ran into her clerk. He was surprised to see me, and it was like, “oh, by the way, could you step in my office please?” He told me that she had ruled, he told me her decision before I got it in the mail. Of course, my position was, “well, if that’s how she decided, that’s how she decided. I don’t agree, but I’ll have to wait and see the opinion.” He needed to explain to me what the problem was, that they had looked at the evidence every kind of way possible and they just felt that our evidence didn’t hold up — that we needed some additional evidence. I felt that that was something she had him do — she wanted him to make me understand was “it was nothing personal, the judge really tried, you know, but we just couldn’t do it for you this time, kid.” That kind of thing.

RPE: How did you feel when you heard the decision from the Clerk?

LMB: I wasn’t disappointed, because I wasn’t expecting anything. Everyone had told me, “you know you can’t win,” so I knew not to prepare myself for a victory. I knew that it was long shot. I knew that what we were trying to do was virtually impossible. The most important thing that I wanted to do with my people was to assure them that this was a battle and not the war. Because I knew that psychologically the defendants were hoping that this would just thoroughly deflate the community, and then they'd just go away, they'd just fall apart.

But instead of saying the cup is half empty I told the group, “the cup is half full.” I said, “look, the judge has given us a road map. No, we didn’t get the TRO, but we have a roadmap on how to get one.” That was my pep talk: "we don’t have to give up. If you will stay with me and Bob, we’ll stay with you and we’ll get back to court and we will have the evidence that she says she wants. As long as it’s your fight it’s our fight.” That was my commitment to them, and that was Bob’s commitment.

RPE: Bob was fully on board?

LMB: Bob was in, he was in.

RPE: Little did you realize how in
to do Gabby a favor and take this one over for her.”

Well, you know Gabby had no intention of hearing the case.

**RPE:** She told you what to get and then she couldn’t very well turn you down if you’d shown up with it.

**LMB:** Exactly. She couldn’t deliver because that’s not why she was put on the bench. So again we were caught in the politics of this thing, and so to take her off the hook but yet maintain the appearance they assign the Chief Judge. He reminded me of the judge in *The Verdict*, the movie with Paul Newman. He was that judge, I mean in terms of the things that he would do, the things that he did in the course of the trial. If we made any points, he made sure to erase the board. He severely limited my ability to examine several key witnesses who were either company officials who would have known who had inside information as to why the site was picked, or who knew about the history of the site. I remember with one witness in particular, he told me to shut up and don’t ask any more questions.

**RPE:** Wow, “excuse me, your honor.”

**LMB:** This is a court, right? That’s how blatant it was, because they knew from the evidence — we had all been taking depositions, you have to do all the pretrial stuff so everybody’s case is out on the table — they knew that we had them so the only way they could win was to cheat. And so they did.

I was devastated. It devastated me because I had not seen that kind of blatant unfairness before. I had always blithely gone on in whatever forum I was in — I was there for truth, justice and the American way. Being totally idealistic was what probably protected me in a lot of instances. But I got stomped on as a result of the final judgment, and what hurt me more than anything else was when he said that I had directed Bob to obtain a predetermined result in the case. Like, how do you predetermine these landfills? Like, I actually sent him out here and made him see things that didn’t exist simply because he and I are married? That wasn’t the issue with Gabby. But that was the basis upon which he denied our motion and that was the end of the case.

I appealed it and got back a one word ruling that said, “Affirmed.” That pretty much was the end of my legal career. I didn’t know it at the time, though. Right after that case Bob brought me to San Francisco. I was so depressed for having lost that case — I was not only depressed, all of my illusions about the legal system had been stripped bare and I saw the system, the naked corpse, that I hadn’t seen before. That’s how much I was affected. What sustained me in all of my battles was my idealism, so when I saw the underbelly of the beast that really did it. I remember being down at Fisherman’s Wharf and thinking to myself, “I don’t have to do this anymore.” It took me another year to actually decide that I wasn’t going to continue; that case was the beginning of the end.

**RPE:** What did you decide to do?

**LMB:** Well, I didn’t know what I was going to do. I didn’t know if I was going to practice law anymore, but I told myself, “Linda, if you had the time, what would you do?” Because I had two kids and I had a practice and I had a husband and I had a home to run — I never had any time. So I finally had time and I said well, I’d like to write, and I’d like to take a course on ancient Egyptian history and so I did those two things. And then I wound up taking a novel writing class. And I discovered that I had an affinity for story telling.

So I’d just discovered that I had these story telling abilities, and then I had all these illusions — you know I always thought big, right? — “Well if I write this bestselling novel, who’s going to do the screenplay? I better keep it in the family, so I better know something about screenwriting.”

In the screenwriting course I realized that in Houston, Texas I was not getting the straight dope and that maybe I better go where the screenwriters are. Then I heard someone whisper the words “film school” and I decided well, maybe I better apply to film school. That will give me a good excuse to be in LA, and so I applied to UCLA Film School in the screenwriting program and it was the only school I applied to. I didn’t even know that there was another one. And I got in.

And so here I am, years later. Bob was a little surprised. He didn’t believe me when I said I was done with law. He thought that I loved it so much that I would live and die a lawyer. But I knew that I could do more telling the stories that I have to tell based on the things that I experienced, than by trying to take these cases one by one and being ground into the dirt.

**RPE:** Last question. Why did you go to law school in the first place?

**LMB:** I wish that I could say, “well, I always wanted to be a lawyer and it was my dream to be a lawyer and blah, blah, blah.” But that wasn’t the case. I went to law school because I didn’t have anything else to do with myself at the time and I didn’t know what else to do. It just happened that when I went to law school — again, like novel writing — I discovered that I had an affinity for it and a certain willingness to fight that lent itself to law school.

I have no regrets. I think that it’s been a wonderful experience, it has been a great experience.

**RPE:** And Bob has certainly taken to the field...

**LMB:** Well, to tell you the truth, I was surprised. I had no idea that when I started practicing law how affected he was and I think that had something to do with his determination to go on and really take the struggle to another level, which is exactly what he did. And of course he and I are our biggest fans — I couldn’t be more proud of him for that.

And as I point out to him on the occasions he’s got a big, really giant head is that, “you know, there aren’t that many sociologists who get to discover, or happen upon, an original field of research.” I figure I am worth my weight in gold for that reason alone, because if I hadn’t begged him to take this case, he wouldn’t be doing what he’s doing. I just point that out to him when his head just don’t fit in the door. (laughs)
Voices from the Movement

What the Grassroots Have to Say About the Law

Recognizing that just talking with lawyers would give a skewed picture of the legal piece to the movement, RPE asked six prominent movement activists around the country, What is the role of lawyers in the movement for environmental justice? RPE’s Heather Abel conducted these interviews...

Gail Small
Executive Director
Native Action
Lame Deer, Montana

GS: I'm an activist, but I'm also a graduate of a law school too — maybe I have some biases because I am an environmental lawyer too.

RPE: What needs aren't being met by lawyers?

GS: Coming from an Indian reservation — I'm a member of the Northern Cheyenne Tribe, and my reservation is surrounded by coal strip mining — we’ve been dealing with environmental impacts to the reservation and the tribe here for thirty five years now, my entire life time. We're a very small tribe. There's six hundred of us, although we have a 500,000-acre reservation. Oftentimes, we get in a situation where the environmental issues that are critical for us are not the sexy issues that some of your larger environmental, public interest firms might be willing to take on. That is disheartening.

I've been told for example, by one of my tribal presidents eight years ago, that it's not a sexy issue for these folks, because basically all that lives out here is just a bunch of Indians. And that we could be sacrificed, we've always been sacrificed, so that's the attitude. I think that we actively sought out the Sierra Club, the Wilderness Society, all those major legal assistance foundations, but they wouldn't come to our aid.

The other problem that I've experienced in working with environmental lawyers here is that Indian law is a unique body of law, and often times environmental lawyers have never taken a course or have never prepared themselves by researching Indian law. So they come to a reservation without having any understanding of what the jurisdictional situation is, and we end up having to educate them. And often times their strategy is not the best strategy that some one would have taken had they had a strong background in Indian law.

So that has been my experience, that lawyers are just not educated. But I think it goes even broader, in the sense that the American public is not educated. When you begin elementary school, throughout high school, everyone has to take "U.S. Government" and "U.S. History." None of those curricula mention the fact that Indian tribes are governments, though, similar to state and federal governments — that we have our own court system, that we have a judicial, legislative and executive branch to our government.

RPE: So when you use lawyers, do you call upon lawyers from the tribe?

GS: When we use lawyers, we try to use lawyers from this community, because they are part of the community, they live with us. I know that is really difficult for a lot of Indian reservations where you don't have any private lawyers, and a lot of times the tribal lawyers are just so overwhelmed meeting the daily crises of the tribal government that they have very little time to really research and challenge some of the environmental issues that are occurring around them. The other problem with a lot of your tribal lawyers is politically, they are in many ways neutralized and can't address the major environmental issues that these tribes are confronting. It may be the situation that the mine or whatever is bringing in 80 percent of that tribe's income, so that tribal attorney is not going to aggressively fight that mine. Tribal attorneys find themselves in a very difficult position if the tribal administration does not allow them to develop their legal skills to protect the reservation's environment.

By contrast, oftentimes in the work that we do, we [Native Action] would be the client. We're a non-profit group, and our constituency is the population of the reservation and we're more free to take on some of the cutting edge issues. So we try to take on lawyers who are very familiar with what is going on in the community, who have to live here.

The other thing that's really critical to understand is that
of all, they should have some type of protocol discussion that they go and make appointments with the tribal president, and the tribal council, and they notify the government as to who they are, and what they're there for, and to ask for their assistance. And second, it is really critical to explain to those attorneys that the experts in our communities are elders and that we have qualified them as experts in many areas ranging from cultural to environmental issues. Those are the people they should be looking to for expert testimony, and they should be working with and asking for help from nonprofits, the tribal colleges, the schools.

Richard Moore
Chair
Southwest Network for Environmental and Economic Justice
Albuquerque, New Mexico

"We have lawyers that are running around basically ambulance chasing in terms of environmental justice issues."

RM: Well we have unfortunate things going on in this moment in history. We have lawyers that are running around basically ambulance chasing in terms of environmental justice issues. We have many very unhealthy communities and people in those communities, because of air contamination and water contamination and an industrial facility being located in or around the community, or a dog food company or a pig farm, or Texaco, whatever it may be. What we've seen is an increase of lawyers rushing into the communities saying, "I'll take this on, pro bono for the meantime, and if we file this suit and win anything, I'll just take a percentage." In many cases the lawyers are really guiding people down the wrong path.

We see the same thing happening to workers inside work places, where lawyers have made agreements in terms of settlements that said the workers wouldn't make public statements after the suit was settled out of court. And many times in our situations, what we're finding out is that many of those workers and community people didn't really have all the information in their hand to make that kind of decision. If
they had, many have stated that they wouldn't have made it. They never would have agreed to sign a paper that they didn't understand that said that they could say nothing for the rest of their life about what happened to them inside this facility. So we’re seeing an unfortunate rampage of what I would consider illegal activity on the part of lawyers.

On the other side of that coin again, we clearly see lawyers that are committed to working with organizations, in a professional, principled manner, and understanding that for primarily people of color organizations, that the direction needs to be taken from those local organizations.

Now, lawyers to us are technicians. There’s all different kinds of technicians. There’s doctors and lawyers and community organizers, there's a whole set of different kinds of technicians. Lawyers play a function of one of those levels of technicians. And so, there’s a lot, on the one hand, that lawyers can do in our community and some are clearly doing that, like demystifying the law. A lot of our people can handle their own situations if they were trained in fact in doing that. To us that’s a much broader empowering process than people, whether individual or organizations, becoming dependent upon lawyers.

And many times what we’ve seen when these things are not developed beforehand, you may find the case of the best of the best of community organizations, and once it was perceived to be turned over to the legal arena, then those top-notch people back down and say, “it's in the legal hands and we don't have to do our door knocking, we don't have to do our one-on-one, we don't have to do our community meetings, we don’t have to do our boycotts and pickets.” Then you see, either intentionally in some cases or unintentionally, the dismantling of very good community organizations.

While there is a role there, I think that no-one needs to put themselves higher than the next. Lawyers have a role, and we have a role as community activists and organizers and I think that we need to sit at the table as equally as we sit at the table with industry and we need to be able to do that with the legal community. Lawyers, no matter who they are, cannot put themselves at any higher level than anybody else. They’re just as important as the next person, and the other person is just as important as that person. Until some of those attorneys bring themselves back home, we’re going to continue to have some of the confusion and problems that we're having in these communities.

Stormy Williams
President
California Communities Against Toxics
Rosamond, California

We've had very good successes and very good luck with the attorneys we have been dealing with. You know, you hear so much about attorneys as money-grabbers and ambulance chasers. We have never had that experience with the environmental lawyers that we deal with. I personally have known Luke Cole for many years and consider him one of my family. Also Bradley Angel, at Greenpeace, is an attorney, so he is able to read over these legal papers to help groups that he's working with to understand them. That comes in very handy although he is not a practicing attorney. Also, our group here is working with attorneys with CBE concerning a proposed tire-burning cement plant. We also are working with Anne Simon and her students on the tire burning case. We also have a local attorney in Bakersfield.

While we would prefer to be able to knock these projects off the tracks before we have to get to the court and lawyer stuff, it often does come down to this. We find they're considerate of our issues. I live in the high desert and up where I live we have 24 toxic sites and the state's worst childhood cancer cluster, as well as the state’s only commercial toxic incinerator. And we have two cyanide heap leach gold mines. We are a unique area, which I term a sacrifice zone. We see the whole gamut of regulators that were not regulating, and now that the kids are dead, it’s “Oh, my god.”

We depend quite often on attorneys.

I'm the president of California Communities Against Toxics [California’s statewide coalition of grassroots antitoxic groups] and the desert representative, so all the desert groups are my groups to help. Some of them have been working with attorneys. One has not panned out too well, in the San Bernardino area. But on the whole, we're very satisfied and pleased with environmental and public service attorneys.

Connie Tucker
Executive Director
Southern Organizing Committee
Atlanta, Georgia

We really don't have a lot of examples of where it [the involvement of the legal community] works, quite frankly. We're running into problems all the time about the role of lawyers. Lawyers tend to think that they should control the community when they represent the community. Many of them, depending on what kind of philosophical position they come from, their only objective is to win the suit.

For instance, in a community we're dealing with right now, the lawyers are pretty well controlling that community. They have no respect for community activists. Their only objective is to win the lawsuit, and they don’t see that the community, regardless of how the lawsuit turns out, may face having to live in a contaminated site, even during the clean-up process because of the procedures and technologies that are being used. That is not the lawyers’ concern. Their only concern is winning the suit.

Oftentimes, the strategy they use is controlling the whole community and telling the community, “if you do this, it could hurt the suit.” So they use the promise of financial settlement as a way to blackmail the community for control of whatever strategies they have. Then we have other problems where the lawyers are just vultures. They end up getting the bulk of the settlement and the impacted community ends up getting peanuts.

RPE: Do you find solutions to this
in trying to do things without lawyers?

CT: We need more conscious lawyers to get involved in environmental law. The problem is that these things are very expensive and require a lot of upfront money. Sometimes $150,000 and more. So the way it's panning out is that the more conservative firms who have that kind of resources are taking the lead on environmental law. We need to come up with a strategy that will provide lawyers to communities that don't have the seed money for law suits. We need to have more progressive attorneys partner with some of the folk who are out there doing environmental law because they are complex laws. You don't just get into environmental law, it takes a lot of research, and contact with folk who have been involved with environmental law.

There has been a historic problem, a tension between community organizers and lawyers. We've actually seen lawyers who try to take the role of a community organizer. Sometimes it's to repress the community's actions. Other times it is to determine the community's actions. What we need lawyers to understand is that their role is the legal piece, that's their role. We need them to work in partnership with community organizers, not in competition.

Jean Gauna  
Executive Director  
Southwest Organizing Project  
Albuquerque, New Mexico

We look at the legal strategy as only being a small sliver. Litigation is a tiny portion of any campaign. It gives us just a little bit more leverage — we can have a legal strategy, we can go to court, but it's got to be driven by a political strategy, not the other way around. We have had many positive experiences, but it usually happens only after a little bit of a struggle. In many cases, our most negative factor when we choose a legal strategy is that lawyers see it the other way around: they're driving the campaign. They are beginning to say the political things: "you guys can't do this because we have to do that in the court."

The other negative thing is that these kinds of strategies are long-term. It takes forever to get to court. So if the organizing was in any way driven by that, we would not be able to sustain and maintain what we're doing. It's critical that the political strategy is the primary focus, that the community organizing drives the legal strategy. In many cases, lawyers have been "on top, not on tap."

We sent a letter to the group of 10 with 103 signatures in 1990. It really raised the issue of race in the main-stream environmental movement. Of the group of 10, two were the Natural Resources Defense Council and the Environmental Defense Fund. We have had both good experiences with NRDC and not so good experiences. They gave us one of their best attorneys to show us that they were interested in working with community organizations and communities of color, which was the basis of this letter. However, he didn't have any time for us, and a few times he messed up the work. So they agreed that he was too busy, and that we were too far away, being in New Mexico while he was in New York. So they got us a NRDC lawyer in Los Angeles. He was great because through an organizing strategy, which the lawyer understood, we had a major victory for both of us.

In Las Vegas, New Mexico, with some workers, we worked with a legal services lawyer. He took on an unfair practice suit. The company was not only not paying people and poisoning people inside the plant, but also poisoning the environment with huge emissions into the air and water. This legal services attorney took on the portion on the unfair labor practices; NRDC took on the portion of the violation of environmental permits. After four years, we won and the company has to rehire all of them and pay back pay. Those cases have been very positive experiences. This doesn't overshadow the fact that there's always been a little bit of struggle. But it's worked out. Maybe change requires a little bit of struggle. The reason why it's worked is that the lawyers have not been allowed to drive the strategy.

On the other hand, there is the concept of ambulance chasing. The whole environmental justice concept has become institutionalized. The big environmental groups are tapping into the little bit of bucks we get to diversify themselves. We've been diversified.

Hazel Johnson  
Executive Director  
People for Community Recovery  
Chicago, Illinois

There's not that many environmental lawyers out there. The ones that are out there are really overburdened. The lawyers I use, I work to death. I think there is a need for environmental attorneys. Here in Robbins, Illinois they want to build an incinerator. I asked Keith Harley how he could help. When he first went out he told us that within a certain distance of the incinerator that was to be built, the people were supposed to be notified. They were not notified. Now, I have asked him to write a letter under Title VI. I'm forever asking him to write letters for me in legal terms, because I can't compose no letter the legal terms way. It's a great need. An organization like mine needs attorneys to write letters for them in the professional legal ways. We also need them to represent us in different cases. There's enough room for everybody. If a landfill owner is not going according to his permit, there's another thing for a lawyer to do, let the people know that he is violating his permit.

Keith said I ask him for so much, he even gave me one of his assistants. He comes out once or two times a week. I think I have him for eight weeks.

There are too many lawyers, but not in the field of the environment. It is so easy for lawyers to turn their heads in another direction. Those polluters, they donate very heavily to get what they want. We have to make sure we get a lawyer that's not easy to be bought off.
In the Summer of 1992, Luke Cole called me and explained he was creating a national network of all the community-based legal service organizations which maintain full-time environmental law practices. He told me he was impressed by the reports of the work we were doing at the Chicago Legal Clinic, and asked if I would serve on an advisory panel for this national network. I was flattered by his offer and gladly accepted.

In the Fall of 1992, a reporter from the Chicago Tribune was doing a story arising from one of our cases. During an interview with me, she asked me if there were any professional organizations with which we were affiliated. I told her about Luke’s network and, crowing a little bit, told her I was a member of the advisory panel of this national organization. She spoke to Luke, and extracted an important piece of information which he hadn’t told me. Luke told the reporter there were only three legal services offices in the country which maintained full-time environmental law practices. Later, she called me and asked the inevitable question: “how important is it to you to be on the advisory panel of a three-member organization?” Fortunately, that wasn’t her story angle.

I mention this incident for a few reasons, not the least of which is to add to the growing number of anecdotes about Luke. Another reason is because through this reporter’s efforts, I was brought face-to-face with a fact which was and is very surprising to me — it is rare for legal service organizations to practice environmental law. This is surprising because for the Chicago Legal Clinic, environmental law is a perfect fit with the mission of providing community-based legal services which will contribute to the process of progressive change for individuals and communities.

The Chicago Legal Clinic was born in Southeast Chicago. The Clinic was the brainchild of a local parish priest who witnessed the destruction of the local economy in the recession of the late ’70s and early ’80s, and the corresponding devastation of the lives of workers and their families. At one time, Southeast Chicago was the industrial hub of the nation. In fact, Southeast Chicago was built on wetlands filled to create an industrial base within the City of Chicago. After a century of building industries and communities on top of slag heaps, industrial waste dumps, and contaminated fill dredged from local waterways, much of the steel-based economy died fifteen years ago in the blinking of an eye. In an area which is eight miles long by eight miles wide, there are 47 sites on the CERCLIS list of abandoned toxic sites. An additional 44 industrial waste disposal sites have been identified by a historical geographer. There are 576 generators of hazardous wastes, ranging from small quantity generators to major chemical plants. In the midst of this massive industrialization, there are heavily populated neighborhoods —
Hegewisch, South Deering, Irondale, Pullman, Roseland, Altgeld Gardens, East Side, Jeffrey Manor. There are also wetlands, like the Big Marsh, which are precious remnants of the region's past. When viewed as a unified geographical region with those

**Legal services should be community-based. In this way, we not only serve clients, but participate in the building of an infrastructure of human services within neighborhoods.**

portions of Northwest Indiana also within the Calumet watershed, a virtually unparalleled portrait of population density, industrialization, and valuable ecosystems emerges, all on top of one another.

When it opened in 1981, the Clinic was a storefront office with a single attorney. Today, the Clinic has 13 attorneys working out of three neighborhood offices. This year, we anticipate serving almost 5,000 clients in all types of civil cases. In addition to the Environmental Law Program, we maintain specialized programs serving the victims of domestic violence and empowering the guardians of otherwise neglected children. We have a volunteer panel of 150 attorneys, and have a

program for providing community legal education. Our entire budget is roughly equivalent to the salary of a senior partner in a Chicago law firm.

I came to the Clinic in 1987 as a law student volunteer. I was in an intensive environmental law program at law school, and I wanted to find a way to practice environmental law at the Clinic. In addition, I am a member of the United Church of Christ, a seminary graduate and married to a UCC minister, so I was influenced by the UCC's study *Toxic Wastes and Race*. One of my law school professors, Stuart Deutsch, and the Executive Director of the Clinic, Ed Grossman, encouraged my efforts to develop a blueprint for an environmental law practice. During my first year at the Clinic, while I was developing the program concept, I was assigned to do general legal services. I interviewed over 500 clients in five different Chicago neighborhoods. I was in court virtually every day, and often twice a day.

The Environmental Law Program received its first grant, of $20,000, in 1989 from the John D. and Catherine T. MacArthur Foundation. The proposal we developed for an environmental law program closely reflected the Clinic's institutional values. For instance, we believe legal services should be community-based. In this way, we not only serve clients, but also participate in the building of an infrastructure of human services within neighborhoods. Because of our relationships with law schools and volunteer attorneys, we are also in a position to leverage resources for communities, on the street level.

Another value which the Environmental Law Program derives from the Clinic is to serve clients instead of dictating to them. We are a client-driven program. We serve our clients as they effectuate their strategies. We try to make every group more effective in accomplishing their purposes by providing quality legal services.

For example, among our current cases, we are attorneys of record in three cases involving the siting of incinerators, and two cases involving allegedly non-complying landfills. We are representing clients in the remediation of a toxic site, the proposed dumping of asphalt into a wetland, the discharge of high temperature wastewater, and the presence of lead-based paint in public housing. In each of these cases and dozens of others, clients have requested our services to effectuate legal strategies to complement and enhance their existing organizing efforts. Legal advocacy is essential because the environmental issues they are addressing are, in significant part, framed in the language and processes of law.

The Environmental Law Program also derives a strong commitment to legal education from the Clinic's inherent values. This year, I will perform 40 seminars on environmental issues, mostly in schools, churches and community organizations. We publish a quarterly newsletter called *The Chicago Environment* about topical environmental issues in our target communities, which reaches 2,000 readers. We continue to publish our series of instructional, "how-to" environmental manuals. Last year we published two manuals, one about groundwater contamination in Southeast

**Our entire budget is roughly equivalent to the salary of a senior partner in a Chicago law firm.**
Chicago, and the other describing how Illinois residents can self-enforce environmental laws before the Illinois Pollution Control Board. We are also one of three founders of the Calumet Environmental Resource Center, a public repository of documents about environmental conditions in this region.

If you will indulge me, I would like to offer three insights derived from our experience.

First, environmental issues affect every aspect of the life of low-income people. I remember a comment made to me by an industry representative who wanted to know why my clients, residents of a public housing community, were so involved in environmental issues. "Don't they have better things to worry about," she asked? Based on my observations, the answer is no. We cannot speak meaningfully about safe, habitable housing without being conversant in the language of lead-based paint, safe drinking water, indoor air quality, asbestos, radon, and the routine use of household chemical products. How can we speak about community redevelopment without addressing issues arising from the liability associated with contaminated sites? Education and the environment are linked because abandoned, contaminated sites erode the tax base needed for schools. Environmental issues are civil rights issues. The seeming esoterica of issues like ozone non-compliance can be a key to regional economic life. Please note that in this list I have not even mentioned equally important health, safety and aesthetic issues which are the traditional touchstones of the environmental movement, nor the values inherent in the preservation of species or ecosystems, nor the envisioning of a future built on principles of sustainable development.

Second, it is extremely important for us to be attentive to the testimony of people living in places like Southeast Chicago. Ultimately, environmental racism is not a set of statistics, it is the best description many people have to explain their experiences in dealing with businesses, governments and environmentalists, and to account for the conditions in which they live. Moreover, listening carefully to the testimony of people in places like Southeast Chicago is more than mere hospitality; it may be the key to the future of the environmental movement. While I was in seminary, we were versed in "liberation theology," which asserts that the truest theology occurs in, and arises from, the experiences of disenfranchised communities. Based on my observations, it is not difficult to make connections between liberation theology and liberation ecology.

Third, it is my hope that people who are thinking about issues of race, poverty and the environment will celebrate and encourage the marketplace of ideas emerging from the experiences of diverse communities. For instance, I am in awe of the work which has been done to create a common vision of the overarching principles of environmental justice. However, people of good will should be allowed to differ on how to apply these principles in concrete situations without being accused of forsaking their convictions or betraying one another. Trust fund or proportional liability? Civil rights or citizen suits? Legal action or political organizing? Speak to Waste Management or picket Waste Management? I would insist that people of good will can differ without being divided, and should debate such questions openly, without rancor or suspicion.

We maintain an environmental law practice in a community-based legal clinic because of demonstrated client demand, unyielding support from our Board of Directors, staff and volunteers, and support from environmentally-concerned organizations from throughout the country. Many of the readers of this article contribute to our efforts. I take heart from speaking to others involved in similar endeavors. I would love to hear from you.

Keith Harley is an environmental poverty lawyer with the Chicago Legal Clinic, and director of the clinic's Environmental Law Program. His pioneering work in urban environmental justice law has been nationally recognized.
Lawyering for Environmental Justice
Center on Race, Poverty & the Environment
California Rural Legal Assistance Foundation

California Rural Legal Assistance Foundation's Center on Race, Poverty & the Environment works with low-income communities throughout California fighting for environmental justice, and provides technical and legal assistance to poor peoples' lawyers nationwide. This article gives an overview of CRPE's work, looking at the five central areas of CRPE activity: community work, administrative advocacy and litigation on behalf of low-income communities in California; technical assistance to community groups; technical and legal assistance to legal services lawyers nationwide; training lawyers and community activists; and creating educational materials.

Highlights of the past year include community victories in Malaga and Rosamond; the filing of a historic civil rights complaint on behalf of Latino farmworkers in Buttonwillow, Kettleman City, and Westmorland; a landmark settlement of litigation enforcing the anti-cancer Delaney Clause of the Federal Food, Drug and Cosmetic Act, that sets out a five-year timetable to curtail the use of 84 cancer-causing pesticides in the U.S. food supply; and significant training and resource provision to lawyers and communities nationwide.

Building Local Power

CRPE works with community groups in low-income rural communities throughout California who are fighting environmental hazards. Our philosophy is to work with communities to develop a holistic approach to each local problem, involving community organizing, network and coalition-building, administrative advocacy, and, if need be, litigation. Although we are skilled lawyers with years of experience in environmental justice litigation, we only go to court when all other avenues have failed. Taking a case to court usually symbolizes failure because it means that our client community has lost in every other forum. Because of our community-centered approach to advocacy, we understand both the backseat role that litigation should play in environmental justice struggles, and the need to take our clients cases into court when they ask us to do so.

Project staff work with dozens of communities statewide. Our advocacy could be broken down into three categories: community-based advocacy in ongoing campaigns requiring significant time and resources, which we have devoted to a number of communities in the past year; community-based advocacy around a discrete project or event; and major impact litigation and policy work not tied to any particular community struggle. Highlights of some of our recent work include:

- Buttonwillow. For the past three years, we have worked with the community group Padres Hacia una Vida Mejor in their opposition to a massive toxic waste dump expansion by Laidlaw which, if successful, would be the second largest such dump in the U.S. In December, CRPE filed an historic civil rights administrative complaint on behalf of Padres and two other California community groups, charging that the State's statutory system for siting, operation and oversight of California's three toxic waste dumps has lead to racially discriminatory results, in violation of Title VI of the Civil Rights Act of 1964; all three of California's toxic waste dumps are in Latino, farmworker communities. CRPE also worked with Padres to design and implement an organizing drive, building on our successful Kettleman City model, to get people involved in the environmental review process for the dump expansion. The result of a one-month intensive effort was 285 letters of comment, in Spanish, on the Environmental Impact Report issued for the project — more than twice as many letters as Kern County had ever received on any project. Kern County's refusal to respond to even one of these letters led to legal and administrative actions by Padres. When Kern County approved the dump expansion in December 1994, Padres was forced to go to court, and CRPE filed a civil rights and environmental lawsuit which is currently in federal court.

- Salinas. Working with the group Residents of Sanborn Courtr, CRPE opposed the siting of a toxic waste recycling facility just one block from a migrant labor camp. All 32 families in the camp (Sanborn Court) are CRPE clients. To educate residents, CRPE staffer Elisa Fernandez prepared fact sheets on the hazards associated with the facility. Community worker Hector de la Rosa organized excellent turnout at the public hearing. Along with the residents own comments, CRPE submitted extensive comments on behalf of the labor camp residents on the draft permit and environmental review documents, including hiring an air pollution expert to refute the state's flawed air modelling. When the state issued a permit for the facility, CRPE filed an administrative appeal on behalf of the community group, and ultimately sued the state. The date the suit was filed was Cinco de Mayo, a day commemorating resistance and of particular significance to the mostly Mexican labor camp residents.

- Malaga. We continued our work with the community
group Concerned Citizens of Malaga, working to block an auto speedway complex proposed next to this historic farmworker community. CRPE filed suit on behalf of Malaga residents in 1992. Malaga residents won an impressive victory in February 1994 when the judge overturned the County’s permit because of a failure to adequately analyze the speedway’s environmental impacts.

Torres-Martinez Reservation. Community worker Claudia Galvez of CRLA’s Coachella office worked with residents of the Torres-Martinez Reservation near Thermal as part of their on-going struggle against sludge dumping on the reservation. Galvez built key links to the farmworker community which resulted in many farmworkers joining Torres-Martinez’s blockade of the sludge dump site. Through the work of CRPE organizer Marina Ortega, we assisted members of the Torres-Martinez Band in organizing around the sludge dumping and the ultimate blockade of the dump. Ortega was a key strategist around the blockade, which succeeded in pressuring federal officials to intervene and close the dump.

Rosamond/Lancaster. Our work with Desert Citizens Against Pollution (DCAP) included submitting technical and legal argument to EPA against the continued burning of toxic waste in a nearby cement kiln. DCAP scored a stunning victory on March 31, 1994, when EPA announced it was denying the cement kiln’s permit to burn toxic waste. (EPA’s decision was challenged in court by the incinerator company; we are currently monitoring the situation along with DCAP).

Shafter. We worked with local community to determine the extent of groundwater contamination by pesticides and industrial solvents. CRPE organizer Gary Rodriguez helped the community group Grupo de Smith’s Corners develop a comprehensive, long-term strategy for clean up and community protection, now being implemented. The community scored a major success when a long-sought grant from the federal government was awarded, enabling the low-income neighborhoods with which we work to be connected to city water rather than relying on contaminated wells.

Other community struggles. In addition to these more intensive efforts, project staff worked with a variety of communities to provide technical and legal assistance, key resources and contacts, and general organizing assistance. We work with groups throughout California; some of the groups we’ve worked with in the past year are mentioned here. We worked with California Indians for Cultural and Environmental Protection in San Diego County to strategize on sludge dumping, lead contamination and medical waste incineration issues arising on Indian land in Southern California and review tribal contracts for various development projects. With Citizens for a Better Environment and the Boalt Hall’s Environmental Law Community Clinic, CRPE filed suit on behalf of residents of Mojave and Southern Kern Residents Against Pollution to block the burning of tires in a cement kiln. We also participated in legal strategy sessions for the Labor/Community Strategy Center, in Los Angeles and Wilmington, and the West County Toxics Coalition, in Richmond, around their campaigns to clean up oil refineries.

Impact Litigation/Policy Work

In addition to direct work with and representation of community groups, CRPE staff also worked with a coalition consisting of the State of California, the international AFL-CIO, the Natural Resources Defense Council and Public Citizen on our ongoing suit against EPA forced that agency to abide by the "Delaney Clause" in the Food, Drug and Cosmetics Act. In October 1994, settlement was reached that requires EPA to adhere to a five-year timetable to withdraw authority for the use of 84 cancer-causing food use pesticides.

We also organized a coalition of environmental and immigrants’ rights groups to develop a joint policy statement on immigration and the environment. This document is our attempt to counter growing anti-immigrant statements and activities by a number of right-wing environmental groups here in California and nationally. The effort brought together for the first time immigrants’ rights and environmental justice activists, to hash out our common issues and create a common agenda. The statement was used as an education tool by a number of groups during the statewide campaign against Proposition 187, the anti-immigrant initiative on the November 1994 ballot. It has served as an educational document with environmental and immigration groups alike. (While not acting in his CRPE capacity, CRPE Director Ralph Abascal is lead counsel in one, and co-counsel in the other, state court challenges to Proposition 187’s exclusion of undocumented aliens from California’s educational systems.) CRPE was formally recognized for its work when Luke Cole was honored by California Communities Against Toxics, the grassroots coalition of 60-plus environmental justice organizations statewide, for legal work in support of California environmental justice struggles at CCAT’s annual meeting in August 1994.

A Resource for the Movement

Aside from providing representation of community groups in local struggles, CRPE also provides services to a variety of community groups without becoming involved in ongoing campaigns. This includes technical assistance and providing resources.

CRPE staff work with dozens of groups over the phone to solve discrete problems, explain complex laws or technical data, analyze a strategy or legal question, or review a proposed group action. This level of service was provided to many groups in 1994, including community groups from the California Indian Basketweavers Association to the Citizens Coal Council, from Groups for Alternatives to Stop Poisons (GASP) to the Southwest Organizing Project.

CRPE maintains an extensive library and archive of environmental justice material, including case histories, news and journal articles, government reports and studies, legal briefs and cases, books, cassettes and videos on environmental justice. We make this library
available to people nationwide who call CRPE. Hundreds of individuals, community groups, poor peoples' lawyers, non-profit organizations, government agencies, media workers, and students contact CRPE each year looking for information, a referral or an answer to a question. We routinely provide resources to support organizations, such as mainstream environmental or public interest law groups, as well as government officials and agencies on the federal, state and local levels.

**Building the Capacity of Poor Peoples' Lawyers**

One of the primary functions of CRPE is to enhance the ability of poverty lawyers nationwide to assist community groups in environmental struggles. Because we believe that such struggles should be community-based, and community-led, CRPE has as its mission to assist legal services offices, which are by design in low-income communities across the country. Our work in this area falls into three broad categories: building the network of environmental poverty advocates so that more resources are shared with and among such advocates, offering technical and strategic assistance to poverty lawyers in ongoing environmental justice fights, providing resources to poverty lawyers, and co-counseling cases with other groups in selected cases. Each of these efforts builds on the others, and works to strengthen the growing network of community-based lawyers with the capacity to take on and win environmental justice cases on behalf of their communities.

CRPE's primary mode of provision of technical assistance is through phone contacts made by poor peoples' lawyers and others across the country. Through these phone contacts, we learn of the specific problems advocates and communities are facing, discuss solutions, and provide information. Some of these phone consultations are quick, others turn into weeks of consultation. In the past year we have worked with poverty law offices from Greater Boston Legal Services (working on access for linguistic minorities to an environmental review process) to the Sugar Law Center (civil rights work to block an incinerator), from Memphis Area Legal Services (legal and strategic advice on a local struggle against egg production facility) to civil rights attorneys in Texas (exploring civil rights approaches to statewide toxics problems).

CRPE inaugurated the Environmental Poverty Law Working Group (EPLWG) in 1992 as an informal network of poverty, civil rights and environmental lawyers engaged in community-based environmental justice lawyering. Our database contains over 400 lawyers and technical specialists from all 50 states who work on environmental cases for poor people and people of color. Through EPLWG, we can put advocates and community groups in contact with knowledgeable attorneys for consultation on an ever-expanding range of issues.

**Training Poverty Lawyers**

The training segment to CRPE's work is essential to replicate our unique environmental poverty law approach. By teaching others our model, we build the capacity of legal services to tackle environmental justice cases and bring new advocates into the movement. In the past 18 months, CRPE staff trained other poverty lawyers in the theory and practice of environmental poverty law through a series of workshops and training sessions throughout the U. S., including sessions in North Carolina, Washington, Arizona, Tennessee, Texas and California, as well as a training in Atlanta in September 1994 which brought together legal services advocates from eight southeastern states.

As part of its mission as a national support center on environmental justice issues, CRPE has sought to influence the creation of legal knowledge in the environmental justice arena through work with law professors. We also spend time educating potential new advocates at the law school level. Both of these activities build the movement through the development of compelling legal and political theories, as well as in the development of new young advocates (law students).

Because of their unique knowledge of environmental justice legal issues, CRPE staff have also been called upon by the Bay Area law school community to teach law school seminars on environmental justice; CRPE director Ralph Abascal taught the first law school course in the country on environmental justice in 1992. In 1994, Cole taught seminars on the subject at the University of California at Berkeley's Law School and at Stanford Law School, while Abascal taught a similar seminar in 1995 at Hastings Law School.

**Educational Materials for the Movement**

CRPE continues to develop training and resource materials on environmental justice advocacy, producing and distributing materials for our clients, for attorneys, for movement activists, and for the general public. These include training manuals, educational articles, and our national journal *Race, Poverty & the Environment*.

CRPE attorneys have drawn on the lessons of the past 25 years of environmental justice legal advocacy to come up with CRPE's litigation hierarchy, which we describe in the recently published "Environmental Justice Litigation," 21 *Fordham Urban Law Journal* 523 (1994). In 1994, CRPE staff contacted activists around the country to document their experiences using Title VI of the Civil Rights Act of 1964 in administrative complaints to the EPA. Based on their experiences, and those of CRPE, we wrote a manual for citizen activists and attorneys on using Title VI administrative complaints in the environmental justice arena. This manual will be published in its entirety by the University of Oregon's *Journal of Environmental Law and Litigation*, and excerpted in the journal for poverty lawyers, *Clearinghouse Review*.

All of our work is guided by our goals of capacity building, empowerment, and justice. We look forward to continuing to work with grassroots groups fighting for environmental justice. ¡Adelante!

You can contact CRPE at 631 Howard Street, Suite 300, San Francisco, CA 94105; 4151777-2752; fax 415/543-2752.
Farm Land, Hog Operations and Environmental Justice

North Carolina's Land Loss Prevention Project
by David H. Harris, Jr.

As environmental injustice often leads to the loss of land by persons of color, the Land Loss Prevention Project (LLPP) took up the issue of environmental racism two years ago. LLPP is a nonprofit, public interest law firm created by the North Carolina Association of Black Lawyers in 1983 in response to its deep concern about the unprecedented decline in the number of minority landowners and small farmers. The mission of LLPP is to utilize its legal expertise and skills through community education, legal representation, attorney training, and advocacy to address legal and economic problems associated with the loss of landowners and homeowners. LLPP has a staff of eight, including five attorneys, and is governed by a multi-racial 18-member board of directors, comprised of lawyers, farmers, and advocates.

LLPP's work in the environmental justice arena has included community education, legislative and administrative advocacy, litigation, collaboration, and coalition-building between grassroots groups and environmental and civil rights organizations and attorneys. In North Carolina, we see the beginnings of effective coalitions to address these problems. This article outlines the environmental injustice of intensive livestock operations, and LLPP's legal strategy using nuisance law.

**Intensive Livestock Operations**

The proliferation of intensive livestock operations in rural communities of color and poor communities is a prime example of neglect in economic development, making those communities prime targets of polluting industrial activities. Of all types of intensive livestock operations, swine operations pose perhaps the greatest threat because of the rapid growth of the industry and the fact that hog waste contains more concentrated organic matter than human waste.

Large-scale hog operations — housing 1,000 to 60,000 hogs in one location in confined feedlots — have proliferated dramatically in the South. In North Carolina, for example, since 1974 the number of farms raising fewer than 50 hogs has plunged from 17,000 to fewer than 4,000. The number of operations raising more than 500 hogs has meanwhile soared from 20 to nearly 200, giving North Carolina the largest and most concentrated hog industry in the region. According to North Carolina Department of Agriculture statistics, the number of hogs on all North Carolina farms rose 33 percent from June 1, 1992 to June 1, 1993, while nationwide growth was five percent. In a short span of time North Carolina rose from being number five to the second largest hog producer in the country.

The proliferation of intensive hog operations (IHOs) in rural counties raises grave public health concerns to those persons who live near or downstream to those operations. Ten thousand hogs requires the same amount of waste treatment as a city of 17,000 people? Taken together, the eight million hogs currently produced in the South each year require as much waste treatment as the waste produced by 15 million people — more than the population of Virginia, North Carolina, and Arkansas combined. Despite these facts, in many southern states, waste management requirements for residential septic tanks are stronger than for IHOs.

Public health issues include groundwater contamination, air pollution, human respiratory problems (especially for those who work on these “farms”), increased pest population, noxious odor problems, and non-point source pollution. Because of the environmental problems, neighboring farmers and landowners also have grave concerns about the detrimental effect of these operations on their property values and quality of life. These public health and pollution problems and the decline in land values lead to the loss of land.

**Land Loss Prevention Project Response**

In April 1993, three state legislators introduced legislation in the North Carolina House and Senate regarding intensive swine operations. The bills, based on a first draft written by LLPP at the request of a legislator, were designed to regulate waste management and disposal practices of these operations to protect water quality and quality of life. One bill was considered by the House Agriculture Committee in June 1993. During the consideration of this legislation, LLPP provided continuous updates to people and organizations in the
communities of Eastern North Carolina, and worked with them to get their concerns heard. This work helped these communities to voice their concern to their representatives, which influenced the outcome of this debate.

Because of this effort, the General Assembly produced a compromise to direct North Carolina State University (NCSU) to perform a technical study of the odor problems caused by intensive swine operations and to compile information on the impact of these operations on ground and surface water supplies? The study was due to be completed and released in January 1995.

Although this result is far from the goal of the original bill introduced, it represented a victory for the communities that live under the air and water pollution threat of intensive swine operations. When this bill was originally introduced, the members of the Agriculture Committees promised a "fast death" for it. The intense lobbying of rural residents, through telephone calls, letters, and public rallies, forced the Agriculture Committees to look for ways to study and address the concerns of people who live near intensive hog operations.

It will be interesting to see the results of the NCSU study. LLPP is monitoring the progress of the study, continuing technical discussion with legislative staff and others, and preparing to draft another proposed bill for 1995.

In 1994, LLPP, working with various grassroots and environmental organizations, drafted a proposed environmental justice bill for possible consideration during the 1994 Session of the North Carolina General Assembly (our State Legislature). The proposed bill was similar to the environmental justice executive order signed by President Clinton on February 11, 1994: but with several important differences. Most of the "iffy" language had been taken out. There was a clearly defined duty to consider demographics in making siting-approval decisions. There were stronger public notice requirements. The bill clearly conveyed upon individuals living in affected areas a private right of action to seek administrative hearing review and judicial review of agency decisions.

The Environmental Review Commission (ERC) of the General Assembly heard testimony on environmental justice issues from various community residents and experts and considered introducing the proposed environmental justice bill during the 1994 Session. The ERC decided not to introduce the bill during the Session, chiefly because key supporters of the bill were not at the meeting to vote.

The exercise before the ERC provided environmental justice advocates and community leaders with valuable information: (1) who would be in the opposition (most business interests, including electrical and agribusiness); (2) areas of the proposed bill that need improving; and (3) what additional research data would be needed to support the bill.

The community groups that LLPP is working with will seek introduction of the bill during the 1995 Session. Further, a similarly worded proposed executive order is pending before the North Carolina Department of Environment, Health, and Natural Resources and the Governor's Office.

Litigation is usually not the answer, but is a means to an end, and a catalyst at best. The solution fashioned must be holistic and inclusive. As many members of the community as possible should be involved in the decision-making process. Request of a citizens group known as Halifax Environmental Loss Prevention (HELP), LLPP submitted to the Commissioners a legal opinion letter detailing the Commissioners' legal authority to regulate intensive livestock operations within county borders, including the right to issue a moratorium on the construction or expansion of an operation until certain environmental and public health questions have been answered. After conferring with the Institute of Government at the University of North Carolina at Chapel Hill, our opinion letter outlined a statutory framework showing that North Carolina statutes clearly confer upon county governments broad general regulatory powers to protect the public health of the county's citizens. We also submitted to the Commissioners a proposed ordinance to extend the moratorium until the NCSU study had been completed.

However, the Commissioners met on January 4, 1994, and decided not to extend the moratorium. We have submitted the proposed ordinance to the Institute of Government for its review and plan to use it in other counties at the request of community groups. We will also continue to work with community groups in approaching county boards of commissioners and county health boards.

Nuisance as a Legal Strategy
LLPP's use of nuisance law to assist communities of color in addressing critical environmental justice issues is a technique that can and should be employed by any attorney, legal services office, civil rights or environmental organization, or community organization seeking to eradicate environmental injustice in any area of the country.

Before discussing litigation strategies, I feel compelled to remind lawyers of several important points. First, litigation is usually not the answer, but is a means to an end, and a catalyst at best. The solution fashioned must be holistic and inclusive. As many members of the community as possible should be involved in the decision-making process. Request of a citizens group known as Halifax Environmental Loss Prevention (HELP), LLPP submitted to the Commissioners a legal opinion letter detailing the Commissioners' legal authority to regulate intensive livestock operations within county borders, including the right to issue a moratorium on the construction or expansion of an operation until certain environmental and public health questions have been answered. After conferring with the Institute of Government at the University of North Carolina at Chapel Hill, our opinion letter outlined a statutory framework showing that North Carolina statutes clearly confer upon county governments broad general regulatory powers to protect the public health of the county's citizens. We also submitted to the Commissioners a proposed ordinance to extend the moratorium until the NCSU study had been completed.

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making process and be allowed to "take ownership" of the struggle and ultimately their own communities. The local residents must decide what course of action is best for them, after being given all information on available options. The strategies, in most cases, cannot be limited to litigation, but must include administrative and legislative action (local, state, and perhaps federal), community education and the development of sustainable community economic development strategies?

Where federal and state statutes fail, tort law is often a vehicle for attacking polluters. The common law theory of nuisance is one such vehicle. "Nuisance" has been generally defined as "anything done by one which annoys or disturbs another in the free use, possession, or enjoyment of his property, or which renders his ordinary use or occupation physically uncomfortable."10 Neighbors of a hog farm may sue the owners of the hog farm for nuisance on the basis that the hog farmer's use of his/her land unreasonably interferes with the neighbors' use and enjoyment of their own land." So-called "right to farm" statutes or common law rules12 provides very limited protection to farmers from nuisance suits. For example, the North Carolina statute prohibits civil actions for private or public nuisance against agricultural operations;13 if: (1) the nuisance is based on changed conditions in the surrounding community; (2) the agricultural operation has been in operation for more than one year; (3) such operation was not a nuisance at the time the operation began; and (4) the nuisance does not result from negligent or improper running of an agricultural or forestry operation.14 If any of these conditions are not met, the neighbors can sue. Therefore, where the neighbors lived in the area before the agricultural operation began or before the agricultural operation became an intensive livestock operation, the right to farm statute does not bar a nuisance action.14 Given the courts' narrow interpretation of the right to farm laws, this law does not prevent the neighbors from suing a recently established IHO.

Conclusion

For a long time the nexus between race and bad environmental practices has been ignored with horrible adverse consequences for communities of color. Environmentalists and those fighting for civil rights must continue to join forces to fight for solutions. What is at stake in this struggle is the health, welfare and quality of life for all persons. We must no longer tolerate the NIMBY (Not in My Backyard) attitude; instead, we must recognize the NIABY (Not in Anyone's Backyard) attitude. Environmental racism exists; it is real. It is also unstoppable. African Americans and all people must fight for environmental equality. Because environmental equality is a civil right, a moral right, and of all a human right.

David Harris is Executive Director of the Land Loss Prevention Project. He gratefully acknowledges the assistance of North Carolina Central University Law School students Woodrena Baker-Harrell, Meleisa Rush-Lane, and Jimonique (Jim) Simpson-Reaves for their invaluable assistance in preparing this article.

Notes

1David Cecelski and Mary Lee Kerr, "Hog Wild — How Corporate Hog Operations are Slaughtering Family Farms and Poisoning the Rural South," Southern Exposure 9, 13 (Fall 1992).
2Id. at 12.
3Id. at 9, 10.
4Id. at 13.
5Id.
7993 N.C. Sess. Laws c.561, s 45.
9In a recent paper, this author wrote the following definition of sustainable community development, a definition borrowed from David Grant of the Rural Southern Voices for Peace:
10Economic development, rural economic development, and rural development activities mean sustainable community
development. The term "sustainable community development" is that type of economic development activities that builds sustainable communities — communities that organize their economic activities in a way that satisfies their needs without jeopardizing the needs of present and future generations of all life. It recognizes that an enduring, healthy, and just economy recognizes ecological integrity and economic justice. Economic activity is said to be sustainable to the extent that it:
(1) builds community;
(2) supports worker equity;
(3) protects non-human species;
(4) values and preserves local culture;
(5) reduces production of toxic waste;
(6) promotes regional self-reliance;
(7) reduces per capita energy consumption;
(8) reduces consumption of historical/architectural treasures;
(9) conserves natural "capital" such as fossil fuels, virgin forest, intact ecosystems, scenic vistas and pristine water and soil;
(10) promotes regional self-reliance;
(11) protects the quality of life for future generations;
(12) reflects humankind as part of the ecosystem;
(13) conserves renewable energy sources (such as solar, wind, biomass, etc.);
(14) provides meaningful work and livelihoods;
(15) provides access to capital;
(16) reduces, refuses, recycles or composts waste;
(17) plugs economic "leaks" via energy efficiency, recirculation of money in the local economy, etc.; and
(18) plugs economic "leaks" via energy efficiency, recirculation of money in the local economy, etc.; and
(19) plans wisely around a region's "carrying capacity" for human activities.
14Id.
Texans Challenge High Voltage Lines

Texas Rural Legal Aid
by Enrique Valdivia and Ashley Bracken

East Town Creek is Kerrville's invisible neighborhood, unseen by tourists and most of Kerrville's citizens. That is, until someone decided this largely Black and Latino neighborhood would make an ideal location for the utility lines needed to provide power to Kerrville's affluent South side. According to Lester Whitton, chairman of the Kerrville Public Utility Board (KPUB), "Selection of the route was based on scientific facts, sound engineering principles and environmental considerations and economics." An East Town Creek resident had a simpler explanation: "This isn't a very rich neighborhood. I think they knew that and they knew we might not be able to fight it."

On June 4, 1992, the Kerrville planning and zoning commission granted KPUB a conditional use permit to build high voltage utility lines suspended on five-foot-wide, 90-foot-tall metal towers. The lines were to be built by the Lower Colorado River Authority (LCRA) headquartered in Austin.

Adriano Gonzalez, with the assistance of Texas Rural Legal Aid, sought to challenge issuance of the permit. Mr. Gonzalez asked for a public hearing before the city council, and the city council scheduled a special meeting for July 9, 1992. Since more than 100 people were expected to attend, the council decided to hold the meeting at the Municipal Auditorium.

Mr. Gonzalez and other residents were understandably concerned about the adverse effect the new power lines would have on property values and aesthetics in their neighborhood. But even more disturbing were the health risks associated with exposure to electromagnetic fields (EMF) and the way the neighborhood had become a dumping ground for the city's and the county's least desirable projects.

Land use classifications dating back to the 1920s and 1930s were grandfathered in when Kerrville created a planning and zoning commission in the 1970s. In effect, this codified a segregationist land use scheme. East Town Creek's Carver Park, for example, is still identified as a "Negro Park" on the city's plat maps. A 1970 HUD study found that the majority of the city's sub-standard housing was located in East Town Creek. More than twenty years later, that is still the case. The area is also home to the city's largest public housing complex, underground fuel tanks, a municipal warehouse and KPUB/LCRA power lines.

The new power line debate underscored recent publicity about the possibility that exposure to EMF contributes to the development of leukemia in children. Epidemiological research shows a higher than expected incidence of childhood leukemia and nervous system cancer among individuals who reside in homes near electric lines. LCRA technicians have measured the EMFs created by the power lines already in East Town Creek and found them to be at dangerously high levels. Some power line proponents claimed the new lines would actually reduce EMF exposure because the towers would keep the lines and transformers further away from peoples' homes.

East Town Creek residents were not without friends in high places. Explaining his opposition to issuing the power line permit, Mayor Joe Hemng Jr. said, "to run this line through some of our poorest, forgotten neighborhoods cannot be ignored." He suggested arrogance rather than economics had been the main factor influencing the decision to place the lines in East Town Creek. Hemng was not allowed to participate in the July 9th special meeting because the city attorney determined the Mayor had a conflict of interest — Herring's father owns property in the neighborhood.

The crowd attending the city council's special meeting was more than twice as large as expected. This was perhaps due to the extensive media coverage of the Kerrville power line saga, including articles in the Austin American Statesman. In the assembly were a television crew from San Antonio's Channel 5 and LCRA's general manager Mark Rose.

Asking to be allowed to speak out of turn, Mr. Rose stunned everyone by announcing LCRA was withdrawing its request for permission to build the power line. Instead, Rose proposed to bring power to Kerrville South by building a new substation there. Rose said he made his decision that morning as he was driving to Kerrville from Austin. Although he acknowledged it was ultimately up to the city council to decide where the lines should go, LCRA's proposal to run them through East Town Creek had created more problems for LCRA than it solved.

Because of the controversy, East Town Creek gained some visibility and the new power lines were never built. But the invisible menace posed by existing utility lines remains. The next step will be to monitor the kind of information the public receives about EMF. KPUB proposes to update Kerrville citizens on the EMF from its power lines by including an article explaining EMF in the monthly customer newsletter. Echoing a former White House resident's statement about killer trees, KPUB chairman Whitton has declared, "the EMF people are exposed to from the earth is much greater than that from power lines." Clearly, our work is not over.
New Environmental Poverty Law Project Battles a Garbage Incinerator

Brooklyn Legal Services

by Jim Freeman

The Williamsburg and Greenpoint communities in Brooklyn are currently fighting against a municipal waste incinerator designed to burn 3,000 tons of New York City’s garbage a day. After years of administrative hearings, several lawsuits, and a large community demonstration, construction of the facility looms closer, yet neighborhood residents and activists have no doubts of prevailing not only against the incinerator, but other local environmental hazards as well.

Even before the siting of the 44-story high incinerator in the Brooklyn Navy Yard, Williamsburg-Greenpoint was already the most polluted community in New York City, packing the largest sewage treatment plant on the East Coast, oil and gas tanks and pipelines, nearly forty garbage transfer facilities, an older municipal waste incinerator and the city’s only radioactive waste storage facility into a densely populated area next to the East River. As with other environmentally afflicted urban neighborhoods, its industrial zoning, proximity to transportation networks and low land values has made it an attractive place to locate “dirty industries” such as wood finishing and chemical distribution and mixing. Several local community groups have been working to address these problems for years, but their efforts have been hampered by a lack of resources and inter-group tensions.

Williamsburg-Greenpoint is ethnically diverse, home to Latinos, Hasidic Jews, African-Americans, Poles, and Italians; it is also one of the lowest income neighborhoods in the City. Like other inner city neighborhoods, it has seen a rise during recent years in racially-motivated crimes and unrest between different ethnic groups, exacerbating the mistrust and isolation that already existed. This neighborhood tension has produced political fragmentation and a lack of cooperation on issues affecting the entire area. The result was little community input during much of the state permitting process for the Navy Yard incinerator, despite the significant threat it represented. After languishing in an administrative backwater for a few years the incinerator came up for final approval in the New York City Council in early 1992. Pro-incinerator politicians played off Williamsburg-Greenpoint against other communities in the Bronx, Staten Island, and Brooklyn who were potential incinerator recipients if Williamsburg was not chosen. The Council approved the siting of the Navy Yard incinerator just downwind of Williamsburg, across the street from several major housing developments for thousands of families and less than a quarter mile from a high school.

The city’s decision may have provided the spark that ignited local opposition. The community responded by holding an environmental town meeting in June 1992, attended by nearly 1,000 people representing all the groups in the neighborhood. The result was the Community Alliance For the Environment (CAFE), a coalition of community groups, tenant organizations, churches, and environmental activists, with legal and technical assistance provided by Brooklyn Legal Services Corporation A (Brooklyn A) and the New York Public Interest Research Group (NYPIRG). CAFE petitioned the State Department of Environmental Conservation (DEC) for inclusion in the incinerator permit proceeding and an opportunity to comment at a public hearing.

DEC, which had never (and still has not) held a public hearing on the incinerator in Williamsburg itself, reacted by denying CAFE party status and cutting short the public notice and comment period, claiming there were “no new issues” which required a hearing. The motive behind this fast-track procedure? It appears that DEC hoped to evade the offset requirements of the 1990 Clean Air Act Amendments by granting the permit before November 15, 1992, thus “grandfathering” the incinerator in before the Clean Air Act requirements took effect on that date. CAFE responded by filing a lawsuit through Brooklyn A and by beginning the process of political organizing against the incinerator.

CAFE’s lawsuit, filed in federal district court under §1983 of the Civil Rights Act, claimed that the members of CAFE had been denied their due process rights by DEC’s refusal to grant their request for party status and its curtailment of the public comment period. It also alleged that DEC was impermissibly biased towards the City’s application to build the incinerator. After several pre-trial hearings, the case was dismissed in February of 1993, but not before DEC agreed to extend the public comment period, which prevented DEC from meeting its November 15 deadline. More importantly, the lawsuit focused attention on the incinerator battle and provided a rallying point for the community. On the eve of Martin Luther King day of 1993, over 1,200 residents of...
Williamsburg and Greenpoint: Latinos and whites, African-Americans and Hasidic Jews, marched shoulder-to-shoulder over the Williamsburg bridge carrying the banner of CAFE in a candlelight vigil against the incinerator. On the other side they joined with people from Manhattan's Lower East Side, who also opposed the incinerator, at a rally that attracted politicians and news reporters.

Williamsburg-Greenpoint's legal power received a boost with the creation of the Environmental Justice Project (EJP) at Brooklyn A in the spring of 1993. Brooklyn A, a long-standing presence in Williamsburg-Greenpoint with close ties to many neighborhood groups, was present at the founding of CAFE and acted as its "in-house" counsel. The EJP was designed to bring full-time environmental legal expertise to Williamsburg at the community level, and to enable Brooklyn A to help CAFE and other neighborhood groups in combatting local environmental hazards.

The battle against the incinerator has seen some surprising developments on both political and legal fronts. An independent historical researcher uncovered evidence that a mass gravesite of American sailors and soldiers lay directly underneath and around the proposed incinerator site. During the American Revolution, these men were imprisoned under horrible conditions on board British ships anchored in the Wallabout Bay (now the Brooklyn Navy Yard), and thousands were buried in shallow graves on the shore of the Bay. Other historical records highlighted the role of emancipated African-American sailors who served on American ships during the War, and of Spanish and Caribbean soldiers who fought in the Battle of Brooklyn and were imprisoned in the Bay as well. Outreach to local historical preservation societies and veterans' groups resulted in a truly remarkable coalition, which held an ecumenical service Memorial Day weekend to honor the dead and protest the building of incinerator on their graves. This evidence attracted the attention of the New York State Office of Historic Preservation, which requested that further investigation be done. The evidence will also be presented by Brooklyn A on behalf of CAFE in a letter to the U.S. Army Corps of Engineers, which has jurisdiction over the waterside portion of the incinerator.

Brooklyn A also filed a lawsuit in state court on behalf of CAFE which challenges the incinerator under New York City's Fair Share criteria. The criteria were adopted in 1990 as part of the City's charter and were designed to ensure that government facilities were distributed evenly among neighborhoods and between the five boroughs. The criteria mandate an examination of the number and kind of government facilities already present in a target neighborhood, and a comparison with other potential sites. A recent state court decision put teeth into the previously untested criteria by invalidating a plan to site a City garage and refueling station on the Lower East Side without first determining whether the neighborhood was already unduly burdened by City facilities. With two of the three incinerators approved under the City's solid waste management plan slated for Brooklyn, the facts strongly support a Fair Share challenge.

The latest development is a new bill passed by the New York state legislature in July which requires partial offsets for the Navy Yard incinerator. After missing the November 15, 1992 deadline, DEC promulgated a regulation which exempted from the offset requirements all facilities whose permit applications were complete by November 15. The new bill reverses that regulation to some extent, and requires the City to prepare a community health study to measure risks posed by the incinerator's emissions before it begins operation.

In the months ahead, Brooklyn A will be working with NYPIRG to make sure the bill is properly implemented by DEC and the City. CAFE is marshaling political support to request a DEC hearing on the incinerator in Williamsburg, so that the people most affected by the facility will have a chance to express their concerns to administrative and legislative officials. With the help of NYPIRG, CAFE also made incineration a visible issue during the 1993 mayoral campaign and is building ties with other potentially affected New York City communities. There is also hope that the EPA, which has announced a moratorium on hazardous waste incinerators, will require the incinerator to comply with the offset requirements of the Clean Air Act Amendments.

The Navy Yard incinerator battle represents a community's struggle to unite and oppose a hazardous facility against uphill odds. Williamsburg-Greenpoint's history of heavy industry and its presently depressed economy will continue to make it vulnerable to environmental hazards; already a sizeable cogeneration facility has been sited for the Navy Yard close to the proposed incinerator. The community now has the organization, leadership, and legal and technical expertise needed to counter these threats, and the victories of the past year offer some promise of prevailing in the future.

Jim Freeman is a staff attorney with Brooklyn A Legal Services, and initiated that program? Environmental Justice Project.
The Legal Education of a Community Worker

An Interview with Hector de la Rosa

by Heather Abel

In the Salinas office where he has worked, consulted, and advised for 13 years, Hector de la Rosa talked with Heather Abel about how he came to California Rural Legal Assistance (CRLA), where he has developed and constructed his role as community worker — liaison in the field between farmworker attorney. CRLA has 20 such community workers in its 17 offices throughout California. Hector’s legal education has consisted of seasons picking food, five years fighting for better living conditions for his own family, and a lifetime of living and working in the farmworker community.

Hector’s family migrated to New Mexico in the winter of 1957. Leaving a comfortable job in Mexico, his father, “the adventurous type,” brought his family to the migrant trail.

We’d go to Texas, pick cotton. Then we’d go to Arizona for the carrots. Then Oregon for the strawberries, then Idaho, and then Washington state. We would do the rounds.

In the heart of the Central Valley of California and far from cold and snow, Soledad became his winter base.

But we couldn’t find a home. So somebody said, “Why don’t you go to the labor camp.” They would charge us $23 monthly. It didn’t have no showers, no toilet — all those were communal. You had to go out to the barracks where there were showers and toilets.

The six people in his family ate and slept in one room. It was a big change for me. “Wow, what happened to my nice home?” In the labor camp, I had to go out to the stalls where the toilets were and at night you had to take a flashlight to see what was dirty, where you were going to sit down.

These new living conditions infuriated Hector, but he had no idea how to begin to make changes. He began by asking questions of everyone he met: the man who took their rent check, a builder who promised to build him sixty new houses for $10,000 each, a member of the Housing Authority who told him that his requests were impossible. He initiated a committee of residents of the labor camp, and kept hoping for a breakthrough.

I heard in the radio one day, while I was working in the fields, “There is a brand-new program in Salinas. It is called the ‘War on Poverty.’” If you have any problems whatsoever, come to this meeting that we are going to have. Tell us your problems. The government has given us money for communities.” Determined to get his share of the money, he drove his small committee to Salinas and listened to the new Executive Director talk of non-profit status, incorporating, boards of directors.

Towards the end of the meeting I got tired of listening to a lot of B.S. and I raised my hand, “Look I didn’t understand but I just came here for one thing in mind. We are 60 families in Soledad and we want a house. So if you are giving out money I want you to give us $10,000 per family. And make out the check right now.” They sort of laughed, “This guy is crazy.”

After the meeting, the Executive Director tried to reason with Hector, asking him to be patient with the War on Poverty. Hector saw he wasn’t going to get any money and refused.

Weeks later, the Executive Director sent his brother, a staff community worker, to Soledad. One day I come home from work in the afternoon and there is this fat guy there waiting for me. Albert.

Albert says, “My brother says you went to that meeting there.”

“Yah, but he didn’t want to give ‘em no money.”

“Well he sent me over here to talk to you. What do you want the money for?”

“Forget it!”

“No, tell me.”

“You see this camp? I would like this camp to be torn down and new houses built.”

“Well, that’s going to take some time, but it can be done. Have you a committee?”

“Oh yeah!”

“Get the committee together and I’ll talk to the group.”

“That’s just cheap talk. What’s the use?”

At that point Albert told Hector about the Board of Directors of the Housing Authority, suggesting that Hector turn to them with his demands. All this was new to me. He was sort of like my teacher. At first I was skeptical, because I just wanted the money. But I said I’d try it his way.

The all-Anglo Board were not responsive. They were all old fogeys who said, “Do you realize young man how much it would take to fix that camp? Thousands upon thousands of dollars, which we do not have.”

Our families kept going to the meetings. One day, we collected cockroaches in jars and put the lids on tight. The old fogeys all said, “No, no, no, no, no, no. If you want better conditions go back to where you came from. No, no, no.”

We said, “Do you want to live with these things here?” We opened the lids and put the jars on the table. We lived with the cockroaches. It was so infested that they would drop from...
the ceiling.

The Board was convinced. However, the all-Anglo City Council refused to authorize the grant proposal.

The Mayor stood up and pounded his fist on the table, "You know," he said, "I will not vote for this proposal because what I want these people to do is come here, pick up the crop, and then get the hell out of here."

After that we would pack the city council with our sixty families. Babies would be crying all over the place. "If you are not going to attend to our problems, we are going to bring the problems here to every council meeting."

We began a complete assessment of how many Hispanics voted, the voting patterns of years past. There was 275 'others' and 75 Hispanics that voted. The population was 60% Hispanic, and 40% 'other.' It was an eye opener.

We got the names of every person on the roll. We registered the citizens to vote and then couldn't go. Fortunately the polls started at 8:00. They did the tallying by hand. We stayed as witnesses. This was it for me. If there was any justice, this was going to be it. At 12:00 midnight... We won by 1 vote.

I'd been working on that for 5 years. It took a hell of an organizing drive for that to happen. Burns submitted the proposal. We got sufficient money to tear down the labor camp and build a new one. And this is where I live today.

Years after he won homes for the migrant workers, Hector was known as a leader in his community. Attorneys at CRLA, opening an office in Salinas, recognized Hector's talents and expertise.

Two lawyers went to my home in Salinas, in pin-striped suits. My first thought was FBI. "What did I do wrong?"

"We're attorneys for a newly funded program, California Rural Legal Assistance, and we were wondering if you wanted to work there."

"Well no, no thank you. I want to be a mechanic. I wanted to be a mechanic all my life and now that I have the opportunity, I don't want to lose it."

But they took me out to lunch and asked me what I was involved in. They said, "Now you have attorneys to help you do research, legal defense."

I told them that I would help them out interpreting, because they didn't speak Spanish, but I would volunteer. After I got out of work I would come to the attorneys in Soledad — one afternoon a week — and interpret between them and the farmworkers. That's how I began at CRLA. Later on, they started paying me.

I didn't really get in CRLA till I lost my job as a mechanic. I asked, "What are my duties?" They said, "Just do what you're doing." So I went and helped out the farmworkers.

I helped the farmworkers with phone calls. But when the farmworkers came in with bigger problems I would also advise them. For example, when farmworkers came and said, "oh my aching back" we decided to do something about the short-handled hoe.

We were going against the major industry in this valley. I had first-hand experience of the pain of short hoes because I had been a farmworker. I could totally relate. At the time we had a new attorney, just out of law school. And he was a go-getter. He was a surfer, he was a hippy. We took him out in the fields and he said, "Man, I could do this all day." After a while he stood up and said, "Man, this is terrible, we should not force this on anyone."

He was ready to take on the battle. That fight lasted five years. It went all the way to the governor.

CRLA has been my university. Through his many years as a community worker at CRLA, Hector has experienced major changes in his role and in legal services.

Community workers are sort of like the servants. In the beginning of CRLA, all the workers were Anglos. They used the community workers as translators and gophers. There are all kinds of egos in attorneys. Some are big, and some are not so big. Some use community workers as servants, some use us as co-workers. When the attorneys were dependant on community workers for translation, they went along with us. Then we had this influx of Chicano yuppies. It was the generation of farmworkers who pushed their kids to go to college. The kids came out as the first wave of Chicano professionals. They were attorneys and came to CRLA saying, "I'm going to be the big shot. Who needs the Anglo attorney. Who needs the community worker? I speak Spanish and I am the attorney. I can talk to the clients, I can organize the clients. Who needs the community worker." This was a phase
Environmental Justice and Civil Rights

NAACP Legal Defense & Education Fund
by Alice L. Brown

For over fifty years, the NAACP Legal Defense and Educational Fund ("LDF") has been the legal arm of the civil rights movement for African Americans. The organization is particularly noted for the ability of its lawyers to devise effective litigation strategies on important issues of public policy. The careful sequence of cases leading up to the Supreme Court’s decision in Brown v. Board of Education (1954), which held unconstitutional segregation in public schools, is the outstanding model of using litigation to shape national policy.

Since its inception, LDF has been dedicated to litigation and civil rights advocacy in an number of arenas. Lawyers with LDF have brought cases to obtain voting rights for African Americans, challenge racial disparities in the application of the death penalty, promote and obtain equal housing and employment opportunities, and protect and promote a host of other civil and political rights for all Americans.

Over the past several years, LDF increasingly has been called upon to (1) investigate environmental matters as they impact upon African Americans and their communities and (2) advocate for environmental equality on behalf of African Americans. These requests for assistance come from around the country, and cover a range of issues, including challenges to the location of hazardous waste incinerators in predominantly minority neighborhoods, litigation to enforce various federal and state requirements relating to lead testing, screening and abatement, and lobbying in support of environmental legislation at the federal and state levels.

What follows is a description of some LDF activities on the environmental justice front.

Combatting Childhood Lead Poisoning
Childhood lead poisoning, one of the most common health hazards facing American children today, can have devastating effects on neurological and physical development. Decreased intelligence, under-achievement in reading and spelling, impaired visual-motor functioning, hypertension and anemia are only some of the adverse health impacts associated with harmful lead exposure. And, although all children are at risk, minority and poor children are disproportionately injured by lead toxicity. In fact, nearly 70 percent of poor African American inner-city children are estimated to be contaminated by levels of lead that are excessive enough to require medical intervention.

Against this backdrop, a coalition of legal organizations that included LDF, the Natural Resources Defense Council, the National Health Law Project, the American Civil Liberties Union, and the Legal Aid Society of Alameda County, filed a lawsuit in 1991 using the federal Medicaid law to force the state of California to screen eligible children for lead poisoning. In the suit, Matthews v. Coye, the plaintiffs — two African American children and an Oakland-based environmental advocacy group called PUEBLO (People United for A Better Oakland) — sought to compel the State Department of Health Services to comply with a provision of the federal Medicaid statute that calls for mandatory blood lead screening of all Medicaid-eligible children younger than age six in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program.

The plaintiffs had been denied lead testing as part of the Medicaid protocol administered by the health department. In the year before the lawsuit was filed, California had tested
only 283 of 570,000 eligible children, primarily because the department left the decision of whether to test to physician discretion. After a year of litigation, the department abandoned its claim that testing was an unnecessary expense and agreed to provide blood lead screening for all eligible children, as required by law.4

The goal in Matthews was to change a practice that deprived poor children, particularly poor children of color, of Medicaid benefits that could help protect their physical and mental health. After Matthews, similar suits were brought in other states to obtain better screening for lead poisoning and to identify those in need of medical intervention. One such case is Thompson v. Raiford, a nationwide class action representing both individual clients and organizations based in five states.

The object of Thompson was to force the U.S. Department of Health and Human Services (HHS) to require effective screening for childhood lead poisoning in all states participating in the Medicaid EPSDT program. Prior to Thompson federal government guidelines recognized that all children ages 6 months to 72 months were considered at risk and should be screened for lead poisoning. Those guidelines, however, also allowed states "to have the option"5 of using the less expensive, and less accurate, erythrocyte protoporphyrin (EP) test, a test which does not detect low, yet harmful, levels of lead.

Under a consent decree that settled the case in 1993, HHS, through the Health Care Financing Administration, issued guidelines to the states specifying that the most accurate method for screening lead — the blood lead test — is the only acceptable laboratory screening test for performing blood lead level assessments. "The erythrocyte protoporphyrin test," according to the HFCA guidelines, "is no longer acceptable as a screening test for lead poisoning."6

Challenging Discriminatory Land Use Decisions

Cases involving lead poisoning, testing and screening are not the only environmental matters that LDF has sought to address. Houston v. City of Cocoa, a case that LDF co-counseled with Central Florida Legal Services and the New York City-based law firm of Berle Kass & Case, is a prime example of how civil rights and environmental causes of action can be combined to protect the interest of communities of color. In 1989 several residents of an African American community located in Cocoa, Florida, brought a lawsuit challenging the City’s plans to rezone, redevelop and displace their historic neighborhood whose origins went back to the 1880s. The complaint, filed in federal district court against both the City and the Cocoa Redevelopment Agency, combined statutory and Constitutional civil rights claims under Title VIII of the Fair Housing Act of 1968; Title VI of the Civil Rights Act of 1964; the Civil Rights Act of 1866; and the Fourteenth Amendment to the Constitution with environmental and historic preservation claims under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

In addition to the court action, the plaintiffs filed an administrative complaint with the U.S. Department of Housing and Urban Development (HUD). They alleged that the City of Cocoa had violated HUD regulations governing Community Development Block Grant (CDBG) recipients by failing to develop an adequate plan for the relocation of low-income households that would be involuntarily displaced by the expected private development within the redeveloped area.7

The defendants moved to dismiss the NEPA and NHPA causes of action alleging that (1) NEPA and NHPA could not apply to the City because it is not a federal agency; (2) NEPA protects only the natural environment; and (3) neither NEPA nor NHPA provided a private right of action. The district court was not persuaded by defendants’ interpretation of the reach of these statutes and accordingly, it denied the motion.

The court’s decision upholding the claims under NEPA and the NHPA helped lead to a negotiated settlement that included the related HUD complaint. In the end, the African American residents prevailed at protecting their community. Among other things, the City agreed to provide zoning incentives for the development of new low-income housing within the neighborhood, to designate $675,000 of future CDBG grant monies and Redevelopment Agency funds to housing rehabilitation and to provide grant money to a not-for-profit organization for the development of new owner-occupied low-income housing and a community center. Moreover, in

Coalitions of a variety of groups (environmental, civil rights, and legal services, for example) working together to challenge environmental injustices have been able to obtain results, even in light of the limitations on litigation generally and civil rights causes of action in particular.
recognition of the historic structures remaining and the significance of the neighborhood to the African American community in Cocoa, the City agreed to designate a section of the neighborhood as an historic district.

Several other LDF actions that fall under the rubric of "environmental justice" have involved transportation-related issues and Title VI of the Civil Rights Act of 1964. Title VI mandates that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 19

On two separate occasions over the last several years, LDF has had occasion to represent the James City (North Carolina) Historical Society. In one instance, the plans for a federally assisted bridge and highway project of the State Department of Transportation were modified after LDF filed a Title VI complaint with the Office of Civil Rights (OCR) of the Federal Highway Administration, and an alternative route with significantly less discriminatory impact was adopted. In the second instance, after LDF filed a Title VI complaint with the OCR of the Federal Aviation Administration, a federally funded airport extension was required to (1) comply with regulations governing treatment of people displaced by such projects and (2) take measures to preserve cultural sites.

Conclusion

What emerges from this description of LDF's environmental justice work is at least twofold: first, there is a place, indeed, a need, for civil rights organizations, and, in particular, civil rights law firms, to participate in this arena. Second, coalitions comprised of a variety of groups (environmental, civil rights, and legal services, for example) working together to challenge environmental injustices have been able to obtain several noteworthy results, even in light of the limitations on litigation generally20 and civil rights causes of action in particular. 21

Although this article primarily focuses on the use of litigation, LDF recognizes that litigation, especially in the context of environmental matters, is often not the only, or even the most powerful, weapon in the arsenal of social justice activists. As Luke Cole has pointed out on numerous occasions, "...environmental justice struggles are at heart political and economic, not legal, [thus] a legal response is often inappropriate or unavailable." 22

With this admonition in mind, the environmental justice movement needs a variety of individuals and institutions - community-based, regional, and national - with a variety of skills and approaches - advocacy and legislative, technical and scientific, academic and legal - to fight the multi-faceted struggles that must be waged in order to obtain equal protection under the law for poor and people of color communities. LDF is ready, willing and able to bring its resources and expertise to bear in this vital endeavor.

Alice L. Brown is a fellow with the Human Rights Program at Harvard Law School, and formerly Assistant Counsel at the NAACP Legal Defense and Educational Fund in New York.

Notes

'Centers for Disease Control, Department of Health and Human Services, Preventing Lead Poisoning in Young Children (Oct. 1991).

'The act provides that Medicaid is "screening services...shall at a minimum include laboratory tests (including blood lead level assessment appropriate for age and risk factors)."

Guidelines relevant at the time required states to "screen all Medicaid-eligible children ages 1-5 for lead poisoning...Children with lead poisoning require diagnosis and treatment, which include periodic reevaluation and environmental evaluation to identify the sources of lead." Health Care Fin. Admin., Dept. of Health and Human Services, State Medicaid Manual § 5123.2D (incorporating 1990 revisions).

'Matthews, No. C-90-3620 EFL.


There is a place, indeed, a need, for civil rights law firms to participate in this arena.


30 C.F.R. Part 570.306.


"See generally Aryeh Neier, Only Judgment: The Limits of Litigation in Social Change (Wesleyan University Press, 1982).


During the past few years discussion of "environmental justice" or "environmental racism" has expanded from the realm of a few grass roots organizations to become one of the trendiest issues of the day. Nearly everyone seems to be jumping into the fray — including the "big ten" environmental organizations, the EPA, Congress, corporate America, and on up to President Clinton. Likewise, within the legal community, the issue has moved from the discussions and litigation of a handful of activist attorneys to become the subject of numerous conferences, seminars, law school symposia, and so on.

Despite all of the current fascination with this subject, however, the legal community has probably accomplished little in providing assistance to poor communities and communities of color who bear the brunt of this society's environmental degradation. As a staff attorney with the Center for Constitutional Rights (CCR), I wish to explore here, albeit briefly, our grappling with the question of how progressive litigation organizations can best support communities engaged in these struggles, especially given the gulf between the limited resources of organizations such as ours and the enormity of the need.

By way of background, CCR is a non-profit legal organization that provides legal support to movements for social change. Starting with its origins in the civil rights struggles of the South in the mid-1960s, CCR has been involved in many progressive legal struggles of our time, including reproductive rights, anti-Klan work, voting rights, international human rights, and U.S. government misconduct. CCR was among the first legal organizations to identify and begin litigating around these struggles, especially as they affect communities of color. Such efforts grew directly from our involvement with grass roots struggles, where the constituencies we have traditionally worked with began to identify environmental hazards foisted on their communities in the context of the struggles around racial, economic, and political equality. Our early work in this area included a federal Clean Water Act challenge in 1982 to the government's failure to clean up a toxic waste dump in a predominantly African American neighborhood of Memphis (Greene v. Ruckelshaus).

Since 1986, we have been working with the people of the Pacific nation of Palau in their struggle to keep out U.S. nuclear weapons. Our work (like many others) was further spurred by the release in 1987 of the Commission for Racial Justice’s Toxic Wastes and Race report, documenting the grossly disproportionate number of hazardous waste sites in communities of color, and after one of the researchers of that study joined our staff, CCR began making environmental racism a specific area of our litigation docket.

In the course of expanding our work in this area, we have sought to develop some sort of coherent approach in responding to the many requests for legal assistance. What role could CCR, as a civil rights-oriented legal organization (as opposed to, say, a community-based legal services office), play in this movement?

In the summer of 1990, I asked some of CCR’s law student interns to research the use of equal protection arguments around the siting of environmentally undesirable facilities, or what I termed "reverse exclusionary zoning." They found that there were only a handful of reported cases, starting with Bean v. Southwestern Waste Management Corp., which utilized equal protection challenges in this context, and that all of the cases had foundered on the "intent" hurdle -- for example, the inability to prove that the placing of a hazardous waste dump in a black neighborhood occurred because of an overtly racial motivation. Such proof is necessary, of course, in the aftermath of several Supreme Court decisions, such as Washington v. Davis and Arlington Heights v. Metropolitan Housing Development Corp., that held that disparate "impact" alone is insufficient to demonstrate a failure of equal protection.

One of CCR’s interns, Rachel Godsil, went on that year to transform her research into one of the first published law review articles analyzing the use of equal protection arguments in the context of environmental racism. Subsequently, a plethora of academic writing on this subject has been published.

Yet for all the intellectual discourse, are the issues really that complex? Fundamentally, isn’t environmental racism simply another manifestation of the disparities found in so many other aspects of society — such as health care, housing, employment, and education? After all, we live in a nation whose founding fathers (and I use that arcane term deliberately here) institutionalized a system of affirmative action for white males with property. Not only were women, African-Americans, Native Americans, and non-property owning whites excluded from the economic dinner table, they were denied political power — particularly the right to vote. That only two centuries after the adoption of the U.S. Constitution...
the enormous disparities along the lines of race, class, and gender continue is hardly surprising, given the massive political and economic Head Start program provided to a single sector of society at the nation’s founding.

Unfortunately, long-term historical perspectives are too often left out of the picture. Instead, we, in the environmental justice movement, find ourselves engaged in endless debates with each other and with our adversaries about the extent to which discriminatory patterns can be demonstrated to be "intentional" or whether they are merely the unintentional, benign byproducts of a supposedly value-neutral, laissez-faire marketplace — as if the latter somehow makes it more acceptable. The counterattack on the "environmental racism" movement too easily seizes on this "intent" question as a means to dismiss the issue entirely. For example, in a recent article in the Wall Street Journal? New York Law School professor David Schoenbrod claims that:

Although minority communities have a disproportionate share of environmental problems, research suggest that the cause is not necessarily racial discrimination. Environmental hazards are likely to be placed in any community that either lacks political power or is willing to accept risks because they create jobs.... Moreover, in many instances, the environmental hazards did not come to minority neighborhoods, but rather the minority populations came to the hazards.

This kind of reasoning, of course, completely ignores the question of why certain communities lack political power or are forced to accept poisoning in exchange for jobs. Is it somehow a mere accident that particular sectors of the population are poorer and powerless?

Whether or not a particular hazardous waste company decided for "invidious" racial motivations to site its facility on the wrong side of the tracks, it is certainly true that at sometime it was "intended" that some persons, among them blacks, Hispanics, and Native Americans, would be politically and economically marginalized in the first place. While Professor Schoenbrod goes on in the above article to decry the "race-conscious decision-making mandated" by the President’s recent executive order on environmental justice, he conveniently ignores the history of race-conscious decision-making that has underlain this society ever since the arrival of Caucasians and Africans in the New World.

The challenge for progressive legal organizations such as ours is in the paradox of a legal and political culture that on one hand trumpets core values such as "equality,""fairness" and "due process," while at the same time vehemently adheres to so-called "free market" ideals which have tended to perpetuate existing inequalities along the lines of race, class, gender, sexual orientation, age, and national origin, among others. As Richard Kluger noted in his classic recounting of the Brown v. Board of Education school desegregation case, Simple Justice (at p 53.): "The legal rights of economically crippled people have probably always been frail in every land that called itself free, but the vulnerability of the weak has been especially acute in the United States, where good economics has so often determined what is good law."

If equality and equal protection are to have any meaning in a society in which certain members have been given a very substantial headstart, it requires that we make every effort to redress the effects of longstanding past inequities. This surely means moving beyond arguments around the "intent" issue, and the "siting" issue, and addressing environmental racism both within the context of the institutionalized racism that suffuses all aspects of our society (jobs, housing, voting, etc.) and in finding remedies that can begin tipping the scales at least a bit closer towards equilibrium. Within the legal community, this means not only coming up with creative, new, "impact" litigation strategies or legislation, but also, for example, in a commitment to some rudimentary basics, such as providing or finding means to provide legal representation to those communities who usually lack such tools.4

In attempting to meet these goals, CCR’s case selection has tended to follow some loose criteria:

a) We are strongly committed to taking cases that support movement building, because we do not believe that political change takes place solely through the courts (if at all), but rather, by the self-empowerment of oppressed people organized to demand political and civil rights, and the fulfillment of those rights (to which lawyers can sometimes assist in handling the mechanics of civil society’s rules).

b) We also take cases that provide legal support where there is no other means of obtaining representation, such as legal services or pro bono services of lawyers.

c) We take cases where CCR can make a contribution within areas of particular expertise, such as constitutional law or international human rights.

d) We take cases which we think can
dramatize and educate about the issues joining race, poverty, and the environment.

Since 1990, CCR's environmental racian docket has grown to be local, national, and international in scope. Some of the new cases we have taken on include:

- Williamsburg Around the Bridge Block Association v. Guiliani: New York City's sandblasting on bridges that run through poor neighborhoods caused toxic lead dust to rain down on communities of color, raised soil lead levels to as high as 30,000 parts per million (the "safe level" is 500 parts per million) and doubled the already elevated blood lead levels in children.

The wide-spread lead contamination has brought an unprecedented unity of diverse communities in seeking adequate testing and treatment of their children and measures to prevent a repeat of this disaster. For example, in Williamsburg, the Community Alliance for the Environment was formed, bringing together the Hispanic and Hasidic segments of this neighborhood, two groups that are often in conflict over scarce housing resources and other issues.

Lead poisoning has a disproportionately severe impact on urban poor communities and communities of color: in 1988, 59% of the identified cases of lead poisoning in New York City were African American children, and 27% were Latino children. In 1991, among children with family incomes below $6,000 living in larger cities (over 1 million), 80.4% of white and 96.5% of African American children were projected to be affected with dangerously elevated blood levels.

In re Matter of the Application of Southern Missouri Waste Management Association, Inc.: CCR assisted grass roots and Native American organizations in opposing a plan by four counties in South Dakota to jointly build and operate a dump on privately owned land within the boundaries of the Yankton Sioux Reservation. Although the organizations had written and petitioned the local and state authorities in opposition, and packed public hearings on the plan, South Dakota seemed intent on an expedited approval of the dump. CCR filed for an administrative hearing on behalf of the Ihanktunwan Game, Fish and Wildlife Services Committee of the Yankton Sioux Tribe, as well as Voices Organized to Save the Environment, the latter an organization of both Native Americans and non-native persons working together for the first time. At a four day hearing in December 1993, CCR helped present expert geological and engineering testimony, and the Native organizations brought in a

after all, we live in a nation whose founding fathers (and I use that term deliberately) institutionalized a system of affirmative action for white males with property.

busload of their members from 200 miles away to speak in opposition. Nonetheless the State board voted 6 to 2 in favor of the dump, and an appeal has been filed to the State Court.

Hinchey et al v. Trustee of Power Authority of N. Y.: This case seeks to stop the planned construction of massive hydro-electric dams to be built on the lands of the Cree Indians in the James Bay region of Quebec. The Cree have been actively opposing these projects, and their efforts have included litigation, lobbying, and various demonstrations, including a canoe trip by tribal members from northern Canada down to New York City to draw attention to the impact that exports of "cheap" Canadian hydropower to service the electric needs of New York will have on their way of life.

The flooding of vast areas (over 1,000 square miles) would destroy the traditional hunting and fishing grounds and rivers of the Cree, who are dependent upon the lands for their income and nourishment and for the survival of their culture and religion. Much of the power generated from these dams will be sold to New York. There are also effects in the U.S. on the environment and the economy: the power imports produced by capital intensive hydro-electric projects deprive New Yorkers of jobs in the growing energy conservation field and will result in the export of billions of dollars.

Plaintiff's, including the Grand Council of the Cree Indians, individual members of Congress, and various environmental and energy groups, challenged the contract for electric sales from Hydro-Quebec to the New York State Power authority, based upon the compact clause of the US constitution, which requires that compacts between a state and a foreign state be approved by Congress.

In a related state court action, Sierra Club et al v. Power Authority of N. Y., a coalition of organizations, including the Cree nation, challenged the Power Authority's refusal to prepare an Environmental Impact Statement on the contract between New York and Quebec for power from hydroelectric dams.

After years of organizing, lobbying, and litigation, the newly appointed head of the Power Authority recently cancelled the contract with Quebec, due to, among other things, its devastating impact on the environment and the Cree, and settlement negotiations are in progress.

In Iron Cloud v. Sullivan, CCR sued the Indian Health Service ("IHS") and others to stop the safety testing of unlicensed hepatitis A vaccine on Native American children and infants without the informed consent of their
dismissed the case as moot, noting, however, that

"We...have grave doubts that the
information provided by the govern-
ment afforded those solicited an
adequate basis for informed consent
[but that] we have every confidence that
the government has learned from this
experience and will be less cavalier in
the future in its approach to seeking
voluntary informed consent from
prospective subjects for experimental
pharmaceutical tests to be conducted on
Indian reservations or anywhere else."

In response to a concurrent adminis-
trative review petition, however, the
FDA revealed that it modified its
procedures in obvious response to the
lawsuit, for which plaintiffs are now
seeking attorney fees.

In Save The Audubon Coalition vs.
City of New York, CCR assisted
community organizations who sought to
prevent the demolition of the Audubon
Ballroom in Harlem, the site of
Malcolm X's assassination, for the
construction of New York City's first
major commercial genetic engineering
manufacturing facility. The community
was concerned about both the cultural
importance of preserving the site of
Malcolm X's assassination and the
potentially adverse health effects from
commercial genetic engineering,
including emissions that would occur in
a closely inhabited urban setting among
a large impoverished population whose
resistance to biological injury is already
compromised. Moreover, they
believed that they were shut out of
any meaningful participation in the
decision-making process, and that
their community had been targeted
for a potentially hazardous facility.

CCR's lawsuit challenged the failure
to comply with the procedural
requirements regarding public comment on the Environmental
Impact Statement, and the utter
failure to address the potential
public health impact of the biohaz-
dards and hazardous chemicals used in
the manufacturing processes.

In addition, CCR has been
involved on a national level in
developing a network of other
progressive lawyers and movements
concerned with environmental racism.
CCR staff members served on the
advisory board of the first National
People of Color Environmental Leaders-
ship Summit in 1991, and have helped
to organize (and teach at) environmental
law seminars for civil rights attorneys
seeking to begin litigating in this field,
as well as environmental law classes for
non-lawyer community activists.

CCR sees the issues of race and
poverty to be fundamentally related to
environmental issues in society as a
whole. While inner cities generally
have the highest levels of exposure to
environmental hazards such as lead, air
pollution, and heavy industries, the
impact of race and class in this society
is such that persons of color often lack
the mobility to avoid exposure to such
hazards. Moreover, environmental
issues frequently involve the "NIMBY"
phenomenon ("Not in my Back Yard"),
which usually means that environmental
hazards will be sited in the back yards
of those sectors of society with the least
access to political power or legal
resources. As long as society continues
to inflict the environmental cost of
modern human activities on the
powerless, achieving a goal of an
environmentally sound and sustainable
world is impossible.

Matthew J. Chachere is a staff
attorney working on environmental
justice issues at Bronx Legal Services.
He was formerly with the Center for
Constitutional Rights.

Notes
1. Our early briefs sought to place the
case in the larger context of the higher rate
of exposure of African Americans to toxics,
by citing, among others, the June, 1983
Government Accounting Office report that
found that 75% of the hazardous sites
studied were situated in predominantly
African American communities.
2. Rachel Godsil, Remedy Environmental
Racism, 90 Michigan L. Rev. 394
(1991)
3. Schoenbrod, Environmental 'Injustic'e' is About Politics, not Racism, Wall
4. This is really no different from the
need in so many other social inequalities. In
eviction proceedings in New York City, for
example, only 10% of tenants are repre-
sented by counsel, while 90% of landlords
have lawyers. So even assuming some
"equal right" to minimally decent housing,
the overwhelming disparity of legal
resources prevents any such right from
becoming a reality.
5. Williamsburg/Greenpoint in Brooklyn
is one of the most heavily polluted inner city
neighborhoods in the country. Several
studies have documented both the high
number of hazardous industries in the
community and the poor air quality. The
142,000 residents of Williamsburg/
Greenpoint are breathing some of the dirtiest
air in America, with a level of toxic and
suspected cancer-causing chemicals roughly
60 times the national average. Industry
reports to the federal and state governments
for 1987 and 1988 indicated that at least
1,450 tons of toxic chemicals were released
into the air over the densely populated
Brooklyn neighborhood in 1987. In
addition, City studies have indicated that
residents of Williamsburg run a greater
risk of leukemia and stomach cancer
than other city residents, and that
neighborhood children had a particularly
high rate of cancer.
6. Centers for Disease Control,
Preventing Lead Poisoning in Young
7. Based upon the report of the
Agency for Toxic Substances and
Disease Registry ("ATSDR") of the
Public Health Service, The Nature and
Extent of Lead Poisoning in Children in the
United States: A Report to Congress
(July 1988) and a review and update of
that Report by the Report's co-author,
Paul Mustak, Ph.D., Proceedings of the
First National Conference on Labora-
tory Issues in Children Lead Poisoning
Prevention (1991) at 79-104.
The Human Side of Environmental Racism: A Visit to Columbia, MS

National Conference of Black Lawyers

by Wendy R. Brown-Scott

In November of 1993, I had the opportunity to visit Columbia, Mississippi, a small town nestled between Hattiesburg and Jackson. Like most towns in the state, it is racially segregated. And like many manufacturers of undesirable products, Reichhold Chemical Company chose the Black section of Columbia to build its plant—a plant which was allegedly producing Agent Orange during the height of the Vietnam War. The story of Reichhold and Columbia began in the 1960s and, although the plant is gone, it continues to haunt the people of that town today. The person who helped me understand this story is Charlotte Keyes.

I first heard of Charlotte Keyes from Chokwe Lumumba, who initially informed me of the struggle in Columbia and encouraged the National Conference of Black Lawyers (NCBL) to investigate. As I listened to Chokwe recount what he knew of the Columbia situation, images of Fannie Lou Hamer came into my mind. I pictured Charlotte as an older, robust, seasoned leader reaching out to as many as would hear about the injury and pain suffered by her friends and family, miles and light years from the eyes of America and the media.

After months of work, travel and planning workshops for the 1992 NCBL Annual Conference in Jackson and the December 1992 training for lawyers on Race Discrimination in Environmental Policy Making, I finally reached Charlotte by telephone shortly before the Jackson conference. She agreed to attend the meeting of the Social, Political and Economic Justice (SPEJ) Section to explain the situation in Columbia and solicit NCBL’s support. I was little prepared for my first meeting with Charlotte. Instead of the mature Fannie Lou Hamer I had envisioned, Charlotte was a young Black woman in her 20s, slight of build. She entered the meeting with several relatives and friends from Columbia who had formed “JPAP,” Jesus People Against Pollution. Also joining us was Connie Tucker, one of the organizers for the December 1992 Southern Organizing Committee (SOC) conference on Environmental and Labor Justice, scheduled in conjunction with the NCBL training program.

It didn’t take long for Charlotte to captivate her audience. Charlotte described in vivid detail the day of the 1977 chemical plant explosion which happened when she was in grade school, the brief “evacuation” (less than 24 hours) of the community residents and the subsequent mental and physical health problems experienced by the residents as a result of the explosion. In fact, the damage was so extensive that, after litigation brought by the Environmental Protection Agency, the site was declared a "Superfund site." The EPA determined that it could "clean up" the site by removing the remaining contaminates from the area. The residents, however, demanded to be relocated because they do not believe that a "cleanup" is good enough. One visit to Columbia is enough to understand why nothing short of relocation will do.

As a result of the 1977 explosion and contamination of the site by hundreds of chemicals, there have been at least 27 lawsuits filed. It has even been alleged that biological warfare chemicals were being manufactured or used which have been banned by international convention. Several suits filed after the explosion have been settled—but investigation has revealed that no record of the terms of these settlements is on file with the courts. According to Charlotte, these “settlements” were fraudulently obtained in order to cover up the extensive damage suffered by the residents of Columbia and the human tragedy caused by Reichhold Chemical’s outright disregard for human life.

Listening to Charlotte’s powerful and compelling presentation and plea to support the relocation effort was one thing.

Visiting Columbia was another.

In late October, 1992, JPAP, SOC and the residents of communities in Mississippi, Alabama, Georgia and Florida met in Columbia to share strategies, strengthen their biracial and interstate coalition, and inform other interested persons or groups about the environmental injustices occurring in communities of color, especially in the south and southwest. As Co-Chairperson of the SPEJ Section, I led a delegation of attorneys from the Tulane Law Clinic, the Washington, D.C.-based Lawyers Committee for Civil Rights Under Law and a member of my home church, Beecher United Church of Christ in New Orleans.

When we arrived in Columbia, we were greeted by close to 200 fellow ralliers who had gathered for the day’s activities. After listening to factual accounts and fiery words of inspiration, singing freedom songs and eating a home-cooked lunch (the fish was imported to Columbia because our hosts did not want us to eat potentially contaminated food), we marched through town to city hall.
On the steps of city hall, representatives from various grassroots organizations expressed solidarity with the people of Columbia and told stories of their successful and ongoing struggles against similar corporate foes. Following the rally, we boarded buses and headed for the former site of the Reichhold plant. What we saw was more than I had anticipated.

The site is surrounded by the homes of about 750 people who are predominantly African American, poor and educationally disadvantaged. During previous excavation work on the site, where more than 170 chemicals are buried, the surrounding community experienced disproportionate and unexplained illnesses.

Many residents complained of rashes, open sores, headaches, hypertension, respiratory ailments, and incidents of spina bifida and other birth defects, lupus, cancer, miscarriage and premature deaths. As a result of these health problems, the residents demand relocation, as well as life-time medical treatment and monitoring from the EPA and other appropriate federal agencies. None of these requests have received anything more than acknowledgement letters and pledges to "study the matter." The organizers took us to a wire fence which was supposed to separate the community from the contaminates. Posted on the fence were skull and crossbones signs warning residents to keep out. On the side of the fence where the plant once stood was an empty field. Although innocuous in appearance, the ground was loaded with poisons — poisons which the EPA claimed were not on the side of the fence where the residents still lived.

An apartment complex for senior citizens and disabled persons, constructed after the explosion, but before the fence, was built less than 50 feet from the fence. Trailers where families with small children resided stood less than ten feet from the fence. Common sense immediately led us to conclude that there is no way that the EPA can credibly claim that this fence was a definitive demarcation of where the contamination ended. And if the physical proximity of the fence did not convince you, meeting and talking to the residents would.

A small number of people from our group was invited to visit with some of the residents who had fallen sick after the explosion. I met a woman who, after eating greens planted in her yard (the fence was about one block away), became severely ill. Her skin color had changed to a sallow phlegmatic color and felt like scales. She was bed-ridden and could not move about. She told us in a weak, yet resolute voice how after eating the greens grown in the garden the skin on her body began to change. When I rejoined the group (somewhat disoriented) and described what I had seen, a long-time resident of Columbia whispered to me, "She was at least five shades darker before the greens, darker than you or me."

Other residents showed us similar skin conditions and complained of other serious and unexplained health problems. Several cancer deaths, depression and even suicides were reported.

We returned to the church where the day's activities had begun and those remaining talked about what could be done to assist the residents of Columbia. The mood had changed from the almost festive celebratory feeling generated during the morning and afternoon rallies. We, who had experienced from only a few hours what the residents of Columbia live with daily, were forever under the chemical cloud spread by Reichhold Chemical Company. And we too were now responsible for helping the people of Columbia in their just struggle to be moved from under the cloud, despite the fact that they would have to give up what they had known as home for so long — before the explosion.

"Environmental racism" is commonly defined as racial discrimination in environmental policy making and the enforcement of environmental regulations and laws; the deliberate targeting of minority communities for toxic waste and other waste producing facilities; and the exclusion of people of color from leadership in the environmental movement. We see environmental racism as responsible for the adverse physical and psychological health consequences caused by living in proximity to toxic chemicals; the loss of property rights and value that results when polluting industries locate in residential communities; the loss of community and the sense of belonging created by racist policies and the general lack of political support for the communities that struggle to prevent further degradation of their quality of life.

Columbia, Mississippi is only one of many Black, Hispanic, Asian, Native American and poor white communities adversely impacted by racial and economic exploitation.

Other communities in need of assistance include Gainesville, Georgia, where eight out of the ten toxic chemical producing industries are located in the Black community; Noxubee County, Mississippi, where groups are fighting to keep out an incinerator slated for the African American sector of the county; and various communities in Louisiana's "Cancer Alley" located between New Orleans and Baton Rouge.

Federal legislation, entitled the Environmental Justice Act, has been proposed and is aimed at assuring that polluters do not continue to dump on poor communities of color. Legislation is necessary, because even suits where plaintiffs have established a correlation between race and proximity to environmental hazards have been rejected. Courts refuse to find discriminatory intent — required in order to establish a fourteenth amendment violation — and so legislative intervention is required to aid communities in their legal and political battles against those who would violate their human right to a clean environment.

If you are interested in working with the Section on this, or other issues, or would like more information on the Environmental Justice Act, contact Wendy Brown at (504) 865-5911.

Wendy R. Brown-Scott is Co-Chair of the National Conference of Black Lawyers, an associate professor of law at Tulane Law School.
The Sierra Club Legal Defense Fund opened its Louisiana office in the spring of 1991 as a concrete commitment to providing free legal services to individuals, community groups, and hundreds of environmental organizations working to protect our air, land, water, wildlife, public health, and natural resources. Now, four years later, the problem that called us to make that commitment remains: Louisiana's runaway pollution. Louisiana is still at the top of the heap in terms of toxic discharges, and the poor and people of color are still the most affected. The past several years have, however, seen some signal victories, victories that will significantly reduce toxic discharges in communities of color in the future.

Grassroots and Toxics Work

The Louisiana office was founded with the intent of providing legal support for the grassroots environmental movement that has sprung up in response to the flood of toxic pollution that is annually pumped, dumped, and injected into the air, water, and land—particularly in the Deep South. That support can take more traditional forms such as filing litigation; it may also take the form of education or simple counseling. Particularly in working with grassroots groups, we try to emphasize that legal action is generally just one part of an overall plan, with the ultimate aim of leaving a group or a community that has not only won an issue, but is stronger and more politically aware. Environmental justice work encompasses many of the issues that are most important to our community including pollution, disparate impacts on communities of color, and the right of communities to have a say in their future.

A David and Goliath struggle—and David won!

One of our most significant victories involved a plan by Formosa Chemicals & Fibre Corporation, a Taiwanese conglomerate, to build a massive rayon and pulp manufacturing complex in the African-American community of Wallace, Louisiana, on one of the last undeveloped stretches in the Mississippi River Comdor. This facility would have been the largest rayon plant in the world, putting out vast quantities of dioxin and other pollutants into the air and water. State and local officials backed Formosa's plan to the point of giving it massive tax breaks; the company would have received over $400 million in tax breaks from the state, parish, and school board for a $700 million project.

The Legal Defense Fund worked with the River Area Planning (RAP) Group, an organization made up of local residents opposed to Formosa, as well as other environmental groups to get out the facts about what the plant would mean in terms of pollution of all kinds, jobs, and the future of the community. The RAP Group held monthly informational meetings in the community, with speakers from communities impacted by industrial facilities, information on Formosa's shocking record of environmental law violations everywhere it has done business, and information on the proposed plant. Because of the community pressure, the U.S. Environmental Protection Agency required Formosa to prepare an environmental impact statement ("EIS") to assess the full impact of the facility on the community. We obtained early drafts of the EIS, summarized their inadequacies, and distributed this information to the community and the media.

Formosa announced in October of 1992 that it was canceling plans for the plant. Initially, it cited permit hassles with the EPA and a lawsuit by an adjacent landowner as reasons for the cancellation, but in subsequent media coverage Formosa finally acknowledged that "opposition organized by environmentalists" weighed heavily.

We have remained involved with the citizens of Wallace to help them look for new ways to develop the economy of their area, so they will not be vulnerable to companies that offer the trade of jobs for toxic pollution. In order to accomplish this, RAP has continued to hold regular meetings to discuss development ideas and resources. Community members are exploring options for capitalizing on projected tourist development and obtaining...
job training. The community has also implemented youth leadership workshops to train young people from the parish and surrounding areas to take an early and effective role in issues like the Formosa fight.

In the end, the Formosa fight has had one very positive legacy — it has left citizens in Wallace and the surrounding areas who have experience in reaching their fellow citizens, petitioning their government, and even dealing with the media. If that can translate into a toxics-free, sustainable future in that community, then we will have really won the Formosa case.

**Tackling the Nuclear Industry**

The Legal Defense Fund is working with Citizens Against Nuclear Trash (CANT), a grassroots, multi-racial organization, to halt the siting of an uranium enrichment facility in their rural community near Homer, Louisiana. And this facility is not your ordinary run-of-the-mill polluter; it will process uranium for ultimate use in nuclear reactors. Every uranium processing plant in this country has caused horrendous toxic and radioactive injury to the environment and to the people who live near it. The members of CANT are not willing to be the next victims of such a facility, and are particularly disturbed that their poor, African-American community — which is not close to either the source of the raw material for the proposed plant or the markets for the end product — was targeted for such a dangerous plant. CANT’s situation is one of the most egregious examples of “environmental racism” in Louisiana.

In June of 1989, a consortium of companies known as Louisiana Energy Services (“LES”) announced plans to construct the first privately owned uranium enrichment plant in the United States, less than 100 yards from Forest Grove, a low-income, African-American community on the outskirts of Homer. Less than two miles away from the plant site is another African-American community, Center Springs. These are old, well-established communities, founded over 100 years ago.

The LES plant would produce and store on site approximately 4,000 tons of highly toxic radioactive waste per year, which will remain dangerous for billions of years. In addition to the storage problem, polluting wastewater from the LES plant would be discharged into a stream which is part of a pristine watershed which presently receives no industrial discharges at all, and is the source of subsistence fishing for many local citizens.

CANT recently submitted comments criticizing a draft EIS prepared by the Nuclear Regulatory Commission ("NRC") to assess the potential environmental impacts of the proposed facility. The draft EIS failed to consider any impact of the facility on Forest Grove and Center Springs — the communities closest to the proposed site. In fact, neither of the communities appear on any of the numerous maps included in the 400-page document although more distant, predominantly white communities of similar size are noted.

CANT has intervened in the licensing proceeding for the proposed facility before the NRC, and eight objections raised by CANT have been accepted for hearing, including CANT’s claim of environmental racism in the siting of the plant, which will be a novel issue for the NRC. As a result of CANT’s vigilance and hard work over the past year, the NRC has delayed licensing the plant by two years.

**Using Title VI**

The Legal Defense Fund has been representing a group in Noxubee County, Mississippi called African Americans for Environmental Justice, to challenge the administration of the state hazardous waste program for exposing their community to disproportionately high environmental risks, in violation of Title VI of the Civil Rights Act of 1964. The non-white population of Mississippi as a whole is approximately 35 percent of its total population. Noxubee County, by contrast, is approximately 68 percent non-white. The poverty rate in Noxubee County is extremely high, and unemployment runs as high as 12%.

The economic base of Noxubee County and the surrounding region is primarily timber and farming, and as a result the area produces very little hazardous waste. In fact, according to documents prepared by the Department of Environmental Quality, in 1990 the entire State of Mississippi produced only about 45,000 tons of hazardous waste requiring offsite disposal. Nonetheless, there have been proposals to site two hazardous waste landfills and a hazardous waste incinerator in Noxubee County, which would bring hundreds of thousands of tons of toxic waste into the county each year.

To attempt to get the impacts on Noxubee County taken into account in the siting process, we were forced to turn to Title VI, which forbids discrimination in the administration of programs using federal funding. Under the EPA implementing regulations, programs receiving EPA funding may not be administered in a manner that has the practical effect of subjecting individuals to discrimination. Mississippi’s hazardous waste permitting program, which derives most of its funding from federal sources, is doing just that by failing to consider the social and economic consequences of hazardous waste facility siting. Consequently, we filed an administrative complaint with the U.S. Commission on Civil Rights and the EPA’s Office of Civil Rights, seeking to have Mississippi’s program reformed.

We are handling a similar administrative complaint under Title VI involving the siting of a hazardous waste facility in Carville/St. Gabriel, an unincorporated, mostly African-American community in Iberville Parish, Louisiana. Like the Mississippi DEQ, the Louisiana DEQ has treated the permitting process as essentially a checklist. It has failed to adequately take into account cumulative risk, discriminatory impacts, and socioeconomic factors. This complaint is being investigated by the EPA Office of Civil Rights as well.

**Sharon Carr Harrington is an attorney with the City of New Orleans. She was formerly staff attorney and outreach coordinator for SCLDF’s New Orleans office.**
For the People

Legal Environmental Assistance Foundation, Inc.

by B. Suzi Ruhl

The Legal Environmental Assistance Foundation, Inc. (LEAF), a public interest law firm, exists to help disadvantaged people protect their health and communities from pollution of the water, land and air. It was founded over 15 years ago, in 1979, for the express purpose of providing legal services to those people — primarily low-income people of color — threatened by pollution but who are unable to secure legal assistance.

LEAF concentrates on the human side of environmental problems. We are the only public interest law firm in Florida, Georgia and Alabama focusing on pollution problems. We focus on the needs of the citizens who are suffering and use their cases to effect state and national policy. Citizens come to us with tales of egregious inequities concerning existing environmental pollution and plans for new polluting facilities. Their priorities become our priorities. We mobilize communities to protect their right to public health and safety through aggressive citizen empowerment programs. We also reduce pollution in other ways: by pushing the frontiers of the law through strengthened case law, test cases and new legislation; and, by overcoming the inaction of the government through tightened regulations and stringent administrative procedures.

Through the years LEAF has developed a varied approach to achieving its goals, including citizen education and empowerment; monitoring and challenge of government programs; advocacy in permitting and rulemaking; creation of model legislation, rules, and ordinances; and, filing lawsuits.

LEAF’s formal programs are Justice and Empowerment, Pollution Prevention and Reduction, and Energy Advocacy. Briefly, the Justice and Empowerment program mobilizes and trains citizens to understand their rights and accept the challenge of protecting the quality of life in their own communities. LEAF helps citizens to discover power over threats to their environment and well-being and helps them exercise that power. The chief tools LEAF uses to enable citizens to protect their communities are media alerts, workshops, publications, the Resource Action and Information Network (RAIN), the Clean Water Crusade, and model citizen comments.

The Pollution Prevention and Reduction program is designed to protect health, water, land and air by encouraging pollution prevention and the reduction of the discharge of toxic substances into the environment. To foster pollution prevention, LEAF uses model legislation and ordinances, rulemaking petitions and testimony, and model citizens comments. To encourage pollution reduction, LEAF ensures compliance and enforcement by filing petitions for declaratory rulings and government program withdrawal, brings citizen suits, evaluates government programs, challenges and comments on permits, and performs environmental audits.

LEAF’s Energy Advocacy program promotes energy efficiency for a coalition of Florida environmental groups. As with all of our programs, the general objective is to protect people’s health from exposure to contaminants. Our specific objective is to promote the use of energy efficiency and conservation as an alternative to the construction of power plants. LEAF’s tools include intervention in need determinations, rate case challenges, rulemaking petitions and testimony, and collaboration with utilities.

LEAF’s involvement with a specific project usually begins with a call for help directly from a citizen, from a grassroots community group, or another public interest organization. The target of the citizen grievance may be polluters themselves, the government, or the legal system — whichever party is primarily responsible for the specific problem. Our goal is to prepare traditionally disenfranchised citizens to competently make their way through the maze of administrative and legal processes they need to navigate in order to protect their communities from environmental contamination.

Although LEAF is generally called in to a community for assistance with a site-specific problem, the assistance we provide enables the community to better fend for themselves...
in the future. Metaphorically, we do not give them a fish; we teach them how to fish. For example, LEAF was called in by concerned citizens after 15 years of inaction by EPA and the City of Atlanta on suspected contamination of the City reservoir from an abandoned organic chemical manufacturing operation. LEAF conducted an environmental audit which confirmed citizens’ concerns. We conducted a day-long workshop to arm citizens with knowledge of their rights under the federal Superfund law, Freedom of Information Act, and Safe Drinking Water Act. We taught them to evaluate health studies, complete a database for the site, draft a preliminary assessment petition and connected them with a group of community-based environmental organizers. As a result, the City has now begun to resolve this problem, and the citizens are using what they learned to evaluate and take action on other facilities. Their work with LEAF on one project has empowered them to seek justice in other situations.

Overall, the real heart of LEAF’s work is in the day-to-day transfer of knowledge — legal and technical — which when merged with citizens’ understanding of local needs creates a momentum to abate existing pollution problems and strives to change a system that perpetuates such pollution.

The strength of LEAF’s approach is founded in our experience in environmental protection, expertise in law and health, commitment to environmental justice, and capacity to work with citizens threatened with pollution. Through our fifteen years experience, LEAF has identified key arguments which must be made to close loopholes, established dynamic relationships with pollution victims and other professionals to influence decision-making, and developed novel legal approaches based on unused rights to force compliance by industry and government with laws and rules.

Our accomplishments reflect the impact LEAF has had on protecting the health of low-income people from pollution. The following example illustrates the nature of LEAF’s work:

LEAF and low-income citizens of Quitman County, Georgia convinced the Board of County Commissioners to amend their Solid Waste Management Plan to prevent the siting of a biomedical waste incinerator. Further, the Commission adopted two model ordinances prepared by LEAF which prohibit the siting of biomedical waste incinerators and other facilities not expressly identified in the County’s solid waste management plan. In addition, based on LEAF’s lawsuit, the Quitman County Superior Court invalidated a permit issued by the Environmental Protection Division of the Georgia Department of Natural Resources authorizing the construction and operation of a biomedical waste incinerator in Quitman County, Georgia. The Court agreed with LEAF that the EPD misinterpreted provisions of State law which prohibit the issuance of permits for new biomedical waste facilities if existing facilities have adequate capacity to the biomedical waste generated in Georgia.

Although local or regional in nature, our accomplishments have wider applicability, and the precedent-setting nature of our work often gives it national impact. Some examples of our successes are:

- The Florida Legislature passed LEAF’s Model Environmental Equity and Justice Act. Florida Governor Lawton Chiles signed the bill on May 13, 1994. This law establishes a Commission to identify environmental injustices and its causes and propose legislative and administrative remedies.
- Because LEAF took legal action against Florida for non-compliance with federal Underground Injection Control rules, EPA is now scrutinizing all state underground injection programs in the country. In addition, LEAF has helped community groups throughout the country prevent the permitting of underground injection disposal facilities.
- Because LEAF prepared model Toxic Use Reduction legislation for citizen activists, the Florida and Alabama legislatures are now considering pollution prevention as an essential element of environmental protection.
- Because LEAF prepared model ordinances which prevent contamination of underground sources of drinking water, seven predominantly minority communities in Georgia now have protected drinking water supplies.
- Because LEAF sued Georgia’s Hazardous Waste Management Authority, the state’s hazardous waste incinerator will not be located in Georgia’s poorest, least educated, and highest minority county.
- Because of LEAF’s legal challenge, three new power plants will not be built in Florida.
- Because LEAF sued the U. S. Department of Energy (DOE) for discharging toxic chemicals into a river in Tennessee used by subsistence fishers (in 1984), federal agencies were required to comply with hazardous waste laws, and DOE established a major program to properly cleanup and manage its hazardous waste.

LEAF has made significant contributions through our citizen education, justice and empowerment, and pollution reduction programs. The problems do seem endless. Yet, with an awakening America, and awakening Americans of every race and color, we are succeeding. LEAF’s job is to keep providing the tools to people who want to use them. We believe fervently that we are making a difference. When we remember the thousands of faces of the people who have taken our tools and forged their own victories, we know we are making a difference.

B. Suzi Ruhl is the president of LEAF, and a long-time board member of Citizens Clearinghouse for Hazardous Wastes.
From White Knight Lawyers to Community Organizing

Citizens for a Better Environment - California

by Richard Toshiyuki Drury and Flora Chu

The recent attention to "environmental justice" has brought support from mainstream environmental organizations and the broader legal community, with dozens of lawsuits filed on behalf of community groups in the last five years. However, not all of this attention has been welcomed by the environmental justice community. Many long-time activists believe that litigation is a disempowering tool that transfers power from community members who are directly affected by pollution to a handful of lawyers speaking for the community. Many highly mobilized community groups have withered as they pumped all of their resources into protracted litigation. Environmental justice activists have raised against "white knight" lawyers who move active community struggles into the courtroom where the community is no longer able to direct or even participate in the battle.

This article outlines a community-based environmental justice strategy pursued by the West County Toxics Coalition (WCTC) in Richmond, California, with legal and technical support from Citizens for a Better Environment (CBE) and other Bay Area groups. After taking part in, and analyzing, the campaign, we conclude that while existing legal strategies for environmental justice are inadequate at best, lawyers can best use their skills by helping to open channels for community action. Lawyers are often most effective not when they attempt to solve the problems of the community through litigation, lobbying or advocacy, but rather, when they work together with affected community groups to help them identify effective ways to solve their own problems through community organizing. This role will usually not involve litigation. Instead lawyers are more likely to identify industry or governmental targets that the community might be able to pressure through community action. Lawyers may also be able to identify and make more accessible so-called "public" fora (generally used only by industry, government, and professional environmentalists) so that they may be used as organizing opportunities where the community can speak for itself. Finally, lawyers should be "translators" of legal documents, processes, and technical terminology.

To achieve the goal of environmental justice, lawyers must serve not as "white knights" out to save the victim community, but as resources to be integrated into a broader struggle for community empowerment.

The West County Toxics Coalition Struggle

Chevron USA, Inc. is the nation's most profitable oil company. The Chevron refinery is the largest industrial complex in the City of Richmond, currently processing 245,000 barrels of oil per day. The refinery is also Richmond's largest polluter, releasing 68,000 pounds of air pollutants each day, including numerous highly toxic and carcinogenic chemicals. The Chevron refinery has a long history of serious accidental and ongoing chemical releases, which have had a disastrous effect on the neighboring community of North Richmond. In response to the toxic threat, for the past decade North Richmond residents have organized to combat Chevron and other polluters, forming the West County Toxics Coalition.

In mid-1993, Chevron quietly unveiled its "Clean Fuels" project. Research by staff scientists at CBE revealed that the so-called "Clean Fuels" project was actually "green" cover for a massive refinery expansion. The result would be hundreds of tons of additional pollution in the Richmond skies and entirely new accident risks for the low-income, African American fenceline communities. While the project would produce cleaner burning fuels for the rest of California, it would also mean more pollution and accident risks for local residents — once again transferring pollution from across California into the already overburdened City of Richmond.

In a series of meetings at the WCTC office in Richmond, CBE's scientists and lawyers discussed this information with active community members. The community leadership was clearly concerned about the project's local health and safety impacts — but the concern was far deeper than that. Community members saw this project as being only one in a long line of similar projects that had the cumulative impact of bringing upon Richmond an ever worsening spiral of urban blight, toxic health risks, residential flight, and declining property values.

The CBE staff discussed with community members various approaches to address the problems identified. The attorneys examined legal avenues, the scientists technical approaches, and the community members community organizing strategies. In the end, we settled on a hybrid strategy that incorporated all three of these approaches — law, science, and community organizing.

The community members drafted a detailed plan for the project, including state-of-the-art pollution control and safety equipment. But the revolutionary elements of the package were those designed to remedy the project's impacts on the quality of life in North Richmond. These measures included local hiring commitments, a community health clinic (long a priority due to toxic chemical-related health problems), funding for the local school system, restoration of waterways and other areas surrounding the refinery, and the creation of a
community development fund to redirect Chevron's corporate giving to the areas the refinery had the most directly impact on.

Members of the community groups approached every neighborhood association and many other groups in the City of Richmond to obtain their support for the WCTC plan. Without exception, every neighborhood association signed on in support of the plan, even groups from the wealthier white areas of the city that had little history of working with the predominantly African American North Richmond community. WCTC members engaged in direct door-to-door community organizing in support of the plan. Coalition members also met with every local politician who would vote on the Chevron project. Our message to public was that the "environment" is not just fish and wildlife, but also the urban habitat where people live, work and play. Just as the city would require Chevron to restore or protect a wetland or animal habitat threatened by a proposed project, so the city should require the oil giant to protect the human environment of North Richmond which would become more polluted and more dangerous as a result of the refinery expansion.

While the community members were engaged in their intensive organizing, the CBE scientists identified technologies to make the refinery cleaner and safer. The scientists also identified numerous deficiencies in Chevron's health risk assessment, accident risk calculations, estimates of pollution to be generated by the project, and other aspects of the Chevron proposal.

The third leg of our strategy was legal. The legal team developed a "permit condition" strategy. Chevron would have to obtain a conditional use permit from the city in order to proceed with the refinery expansion project. Our strategy was to get the city to add the community's entire plan as a permit condition for Chevron's project.

Our primary legal vehicle was the California Environmental Quality Act (CEQA). CEQA is similar to the federal National Environmental Protection Act (NEPA), except it applies also to non-governmental projects that will impact the environment. In a nutshell, CEQA requires that prior to granting a permit for a proposed project a governmental agency must issue an environmental impact report (EIR) analyzing the project's adverse impacts, and discussing ways to minimize those impacts. The agency must circulate the EIR for public comment, and must consider and respond to public comments, usually through a public hearing process. In light of those public comments, the agency must decide whether to allow the project to proceed, and must impose "feasible" measures to reduce or eliminate the project's adverse environmental impacts.

CEQA was an ideal statute for our campaign because it created a public forum for decisions that would otherwise have been made behind closed doors between government and industry. Each of the public hearings held on the Chevron project were opportunities for community organizing. WCTC and other groups brought to the hearings progressively larger turnouts of one hundred or more supporters, about half of whom testified. The time between meetings was an opportunity for additional community outreach, lobbying of city officials, and media work.

To the surprise of Chevron, and even of some in the community coalition, in a 6-3 vote, the city planning commission adopted the entire community package after weeks of one-on-one meetings between community activists and planning commissioners, a series of legal and scientific opinion letters, and hours of testimony at the public hearing from supporters of the package from every corner of Richmond. It was one of the first major defeats for Chevron in its almost 100 years in the city and was cause for tremendous celebration by the community groups.

For the first time Chevron found itself on the defensive. Now Chevron had to lobby the nine city council members to reverse the planning department's decision. The oil company scrambled to save the estimated $60 million cost of the community package, engaging in a letter writing campaign, lobbying and media work. Chevron brought in San Francisco's largest law firm to barrage the city with letters.

The crucial element lacking in Chevron's campaign was community support. Less than five percent of refinery employees live in Richmond and there has long been tension between the predominantly white refinery workers and the neighboring African American community. Chevron found a single community group that relied heavily on Chevron money to take a high profile position in support of Chevron at public hearings. Ultimately, though, the most important showing of public support came from Chevron workers, even though only one in twenty lived in Richmond. Chevron strongly encouraged workers to attend the final city hearing on the project, convincing many that their jobs were at stake. Throughout our campaign, we had made overtures to union leaders, providing evidence that Chevron intended to bring in non-union workers from out of state to construct the project. In the end, the unions sided with Chevron. Over 1,000 angry pipe-fitters and refinery workers packed the city council hearing to sing Chevron's praises, dwarfing the community groups' otherwise impressive turnout of almost 200, and intimidating many active community members.

As is often the case, the public hearing turned out to be a sideshow. Chevron had cut a deal with key city council members, unveiled only minutes before the hearing. While the compromise package included many of the key elements of the community proposal, including funding for Richmond schools, a community health clinic, and an emergency warning siren system, important elements were lacking, such as advanced pollution control technology, safety equipment, and the community development fund. Nevertheless, it was an unprecedented victory for the community that would require Chevron to direct almost five million dollars toward community projects. The
package would never have materialized without the community organizing and other work that forced Chevron into the position of having to make serious concessions.

Despite the landmark victory, the community groups were determined to fight on. It seemed that the most discouraging aspect of the compromise package was that community leaders like Henry Clark of the WCTC had been excluded from the negotiations leading up to the deal. Community leaders also felt that the community development fund, pollution control and safety measures were bottom line issues that could not be sacrificed.

Our strategy up to this point had been to select fora that were open to the public, allowing community members to speak for themselves, and emphasizing our strengths in community organizing and mobilization. After the city council decision to accept Chevron’s compromise package, the obvious choice would have been to file a CEQA lawsuit alleging deficiencies in the city’s environmental impact report for the project and a failure to require Chevron to adequately mitigate the project’s impacts. But a CEQA lawsuit would shift the focus from community members to lawyers. Once in court our legal team would take center stage, filing motions, pleadings, and making oral arguments on behalf of the community. Such a litigation strategy ran directly counter to our goal of having community leadership. Despite the landmark victory, the community leadership played the central role and was our primary lever. The scientists and lawyers served as resources for the community members, rather than leaders of the campaign. Perhaps the single most important role played by the lawyers was in identifying public fora, decision makers, and pressure points around which the community could organize.

Some of our mainstream environmental allies, steeped in the "impact litigation" tradition, did not understand the significance of the campaign that did not create any new case law for others to follow. Our "impact" was in creating a model for community directed collaborations between lawyers, scientists, and individuals directly affected by pollution.

Richard Toshiyuki Drury is staff attorney at Citizens for a Better Environment - California. He was lead counsel in the Chevron campaign discussed in this article. Flora Chu is director of the Stanford Law School Environmental Law Clinic and is former Staff Attorney for the Santa Clara Committee for Occupational Safety and Health.
An Open Letter
from Bay Area Environmental Justice Activists
to Environmental Law Clinic Proponents
at Boalt Hall Law School, Golden Gate Law School & Stanford Law School

Dear Law Clinic proponents:

We write to you as representatives of 12 community groups and organizations, from the communities of Berkeley, Oakland, Richmond, San Francisco, San Jose, and Sausalito, made up of African American, Latino, Asian/Pacific Islander American, and white community organizers, activists, health professionals, lawyers and educators.

As long-time Bay Area environmental justice activists, we are excited by the swell of interest in environmental justice clinical programs from three of the Bay Area’s law schools. Based on our daily work in communities facing environmental degradation throughout the Bay Area, we know the desperate need for more resources and attention to be focused on the environmental problems of the poor and of communities of color. We are gratified that the dangers facing these communities have been recognized by local law schools, and that the schools have responded in so positive a fashion.

Our excitement and gratification is mixed with trepidation, however. All of us have had many experiences with outside institutions which, with the best of intentions, have come to Environmental Law Clinics:

The profusion of new law school-based environmental justice clinics is a boon and a danger to the movement. To explore this contradiction, we print a December 1993 letter from San Francisco Bay Area activists to the three clinics popping up there. The letter succeeded in bringing the clinics to the table to discuss environmental justice principles (It is not coincidental that all three clinics have hired signatories of the letter as staff). We then offer articles on two of the more successful clinics in the country, those at Tulane and at Berkeley.

Environmental Law Clinics: A New Resource

It is important to recognize from the outset that while institutions such as yours may share some common concerns about environmental justice with our communities, this concern on your part rarely translates into having the same priorities we have. While environmental justice clinical programs can be presented as a bold new model—a way to bridge academy and community interests—there are risks involved for our communities. What initially appears to be a forum for shared interests and resources primarily results in the benefits being reaped by the academy, while community groups can become marginalized in benefits and acknowledgements. Legal clinics, like any well-intentioned social program, can foster a "dependency mentality"—as opposed to an empowering one—in its clients. Extreme caution must be taken to avoid the creation of clinical programs which emphasize communities' deficiencies as a means of creating a role for themselves. Instead, clinics should capitalize on the momentum and perseverance of communities' struggle for self-determination and healthy empowerment to reframe the clinical approach and provide a new paradigm for collaborative work useful to all involved.

We have met together and as a group come up with the following guidelines for you as you develop your clinics to work with our communities. The implementation of these guidelines by your clinics is essential if the clinics hope to complement the work of environmental justice organizations and, in turn, receive our guidance and support. We will be happy to meet with you to explain or expand upon any of these guidelines and recommendations.

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1. Each clinic should have a community-oriented environmental justice mission, which adheres to the

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2. Recognizing that our community struggles are political, and not legal, law students should be required to have some training in the principles of community organizing, as well as some understanding of social movements in general and orientation to environmental justice in particular.

3. Each of your schools should coordinate efforts with other schools, so as not to sap energy from communities or compete for funding. A hallmark of the environmental justice movement is collaboration and networking rather than competition; it would strengthen our efforts if we could approach one single entity for help rather than knocking on three doors.

4. The clinics should be accountable to the communities they serve. To encourage this accountability, we suggest the three law schools establish a joint community oversight board made up of community activists from around the Bay Area, including the communities represented by the signatories of this letter — Berkeley, Oakland, the Peninsula, San Francisco, San Jose, the South Bay. Such a board is necessary to guide and monitor the work of all three clinics to make sure they support the needs and goals of environmental justice organizations. The joint board would work with all three clinics to establish priorities, develop policy and oversee work; we envision a working board which meets quarterly with staff and students from all three clinics to discuss progress. Many of us have been approached by one or more of your schools to act as advisers or board members; rather than sapping our energy working on three different boards, we prefer to devote our energy to one board which would serve all three clinics. We prefer to work collectively, as the community of activists that we are, rather than in individual, one-on-one consultations with each of your institutions. (We choose this method of accountability rather than a token seat or two on your clinics’ boards. Those boards are already populated by several lawyers whose firms actively work against the interests of our communities in environmental matters; we thus feel that a separate body to offer guidance and oversight is appropriate.)

5. Each clinic should incorporate into its structure a forum in which community activists and leaders are acknowledged as experts on issues affecting their communities. Speakers from communities should be compensated as would any other speaker at the law school. Additionally, a curriculum which holds class meetings or trainings outside the academy in the community, and which permits participation by community members, is necessary. The Environmental Health Center in New York, founded by Nick Freudenberg and directed by Marjorie Moore, is one example of an institution which is both a training center for academic use and a resource for community empowerment.

6. Each clinic should place a priority on involving law students of color in the clinical program, and developing those students into effective advocates. Law schools must recognize the dearth of environmental lawyers from communities of color, and help remedy that lack.

7. The directors of your clinics should be people of color with experience in the environmental justice movement. This will demonstrate to us, the communities in which you want to work, that you have a commitment to environmental justice and a seriousness in combatting institutional racism. We understand the difficulty in finding a highly experienced environmental lawyer of color with community-based experience; we suggest that you 1) consider hiring a non-lawyer to direct the clinic; 2) hire a recent graduate of color who might not have years of experience as an environmental lawyer; or 3) hire an experienced lawyer of color, who might not have environmental experience, but who might be an expert in a related field such as civil rights. One criteria for hiring should be a strong commitment to, and hopefully a history of, grassroots organizing with communities of color. Hiring criteria should also value bringing diverse experiences into the clinic, rather than simply traditional "credentials" such as a law degree.

8. Again recognizing the context of environmental justice struggles, we suggest that the following principles be followed in working with communities:
Respect for individuals.
- Recognition of, and respect for, a community's expertise and experience.
- Help people help themselves.
- Empowerment of client communities should be a goal of representation.
- Cases should be community-led and client-driven, rather than attorney-driven.
- Cases should be generated by communities and brought to the clinics, rather than the other way around.

However, at the same time, clinics should continue to "pound the pavement" to make their services more accessible to the community, rather than simply waiting for clients to come in.

- Cases should be pursued in a way which helps build the capacity of the community group involved, and which does not jeopardize group process and collective action.

9. Each clinic should have the capability to serve clients who do not speak English; such people make up much of the potential client base in the Bay Area. This capability would be greatly enhanced by recruiting law students who are bilingual to work in the clinics. The languages which we encounter frequently in our work in Bay Area communities include Spanish, Chinese (especially Cantonese), Vietnamese, Korean and Tagalog. There are especially diverse linguistic needs in the Asian American community. Wherever a clinic situates itself, a language assessment should be done to determine what the dominant languages are within a collaboratively identified area in which the clinic expects to be involved. The Center for Third World Organizing, in Oakland, uses a highly effective model of language outreach. They have developed a systematized approach for interpreters, translation equipment and participation which leaves little room for marginalization. CTWO can provide technical assistance to legal clinics on language diversity and outreach. Capacity to serve clients who speak languages other than English should be a baseline for clinic operations. Failure to have such capacity will indicate to us a lack of seriousness in approaching environmental justice problems.

10. Law students working in clinics should be required to take multi-cultural awareness classes or anti-racism training, especially if they are not from the communities with which they will be working. Issues of racism and classism differ from community to community, so students should learn that there is not one generic template which covers all the symptomology and root causes of such issues.

11. The clinics should be as open and clear as possible about the limitations of the work they will be able to undertake in communities, so as not to build up false or unrealistic expectations on the part of community groups and residents.

12. If there are law courses required as pre-requisites for involvement by students in the clinics, those courses should reflect courses which students of color take. As the environmental law field has not traditionally embraced the issues that are most important to people of color, you may not find many students of color in current environmental law courses. Many students of color, however, take civil rights and similar courses, which could be counted as satisfying the pre-requisites.

13. The clinics should do outreach to rural areas in order to network with rural organizations and communities, which are more isolated in terms of technical assistance resources.

14. Clinics should emphasize such community-building strategies as public participation in administrative and legislative fora, as well as simply focusing on litigation. Clinics should also engage in community education about the issues and cases they are working on.

15. The clinics should adopt and use the Principles of Environmental Justice from the October 1991 People of Color Environmental Leadership Summit as a guiding framework for the work of the clinics.

We look forward to working with you and the other Bay Area law schools to make these clinics a reality — and a sensitive, productive part of our struggle for environmental justice.

The letter was signed by 20 SM Francisco Bay Area environmental justice activists, including Leticia Alcendor, People Organized to Demand Environmental Rights; Carl Anthony, Urban Habitat Program, Earth Island Institute(UHP); Magdalena Avila, El Pueblo Para El Aire y Agua Limpio; Francis Calapotara, Center for Third World Organizing; Pamela Chiang, Southwest Network for Economic & Environmental Justice; Jack Chin, Asian Pacific Environmental Network(APEN); Wendell Chin, Southbay Anglers for Environmental Rights; Flora Chum, Santa Clara Center on Occupational Safety and Health (SCCOSH); Henry Clark, West County Toxics Coalition; Luke Cole, Center on Race, Poverty & the Environment; Anne Eng, UHP; Running-Grass, Three Circles Center for Multicultural Environmental Education; Mandy Haws, SCCOSH; JoLani Hironaka, SCCOSH; Helen Kim, Asian Immigrant Women Advocates; Pam Tau Lee, APEN; Yin Ling Leung, APEN; Lisa Pagán, People Organized to Demand Environmental Rights; Peggy Saika, APEN; and Alicia Sheppeck, UHP.

All of us have had many experiences with outside institutions which, with the best of intentions, have come to "save" or "rescue" our communities — often without our communities' knowledge or consent.
Louisiana's Legal Eagles

*Tulane Environmental Law Clinic*

by Bob Kuehn

The Tulane Environmental Law Clinic is a program of the Tulane Law School in New Orleans, Louisiana, providing legal assistance to Louisiana citizens. Louisiana has serious environmental problems — having repeatedly been ranked as first in the nation in the releases of toxic pollution and with more than its share of active and abandoned waste sites — and government officials have too often turned a cold shoulder to the health and environmental concerns of citizens. Historically, Louisiana has had few private attorneys willing to provide pro bono service to citizens harmed by pollution and waste. This is particularly true when it comes to representing citizens who oppose the efforts of well-financed, well-connected businesses that discharge pollution or harm the state's fragile, rapidly dwindling natural resources.

The Clinic has two primary purposes: 1) to train law students, through representation of real clients, to be effective environmental lawyers; and 2) to provide free legal assistance to indigent persons and local citizen groups in Louisiana seeking to protect and restore health and the environment for the benefit of the public, where those citizens are otherwise unable to obtain representation from private law firms. Through the Clinic, Tulane Law School seeks to bridge the gap between law school and legal reality by teaching students important lawyering skills, while at the same time providing much-needed services in the field of environmental law.

Under the rules of local courts, students who have finished two years of law school may appear, under the supervision of members of the bar, in courts and before government agencies on behalf of these citizens. In all Clinic cases, the students are responsible for developing and maintaining contacts with clients; investigating and developing the facts; identifying, interviewing and preparing the necessary witnesses; analyzing the legal issues; drafting documents, pleadings and briefs; and presenting the case to the agency or court. The students do not work as law clerks or assistants to the Clinic's lawyers. Rather, the students function as student attorneys and, in accordance with the student practice rules, are responsible for client representation under the supervision of the Clinic's lawyers. When a hearing or trial is held, it is the student attorney who prepares the case and presents the evidence and arguments to the court or agency, not the Clinic's staff attorneys.

Since opening in January 1989, the Clinic has represented over 100 different community organizations of every size and from every corner of Louisiana. The organizations range from established local and statewide environmental organizations to neighborhood civic and housing organizations whose primary focus is not environmental protection but the well-being of their neighborhood or community. These organizations have a combined membership of well over 30,000, and share a desire to protect the health, welfare and environment of their communities as well as an inability to obtain legal assistance without the aid of the Clinic. Prior to representing any group on a particular case, the Clinic must be satisfied that the individual or organization cannot obtain legal representation from the private bar.

The Clinic has an extensive outreach program and devotes particular attention to ensuring that its resources are available to minority and low income groups. The Louisiana Advisory Committee to the U.S. Commission on Civil Rights found in October 1993 that many communities of color in Louisiana bear a disproportionate share of pollution and are in need of assistance. Within the past few years, the Clinic has represented over a dozen organizations of people of color, including the Vietnamese-American Voters Association, the United Houma Nation and the Documented Houma Tribe, and African-American organizations such as the Ascension Parish Residents Against Toxic Pollution, Neighbors Assisting Neighbors, Geismar/Dutchtown Residents for Clean Water and Air, North Baton Rouge Environmental Association, Gulf Coast Tenants Organization, Association of Community Organizations for Reform Now, Congo Square Foundation, and Southern Christian Leadership Conference.

The environmental problems the Clinic has confronted in its representation of low income and people of color communities have been many and varied: illegal grain dust emissions; the permitting of solid waste landfills and hazardous waste facilities; odor and dust problems from neighboring industries; tax breaks for polluting industries; and transportation and storage of dangerous chemicals.

The Clinic is presently pursuing the complaint it filed on behalf of seven community groups with the U.S. Environmental Protection Agency under Title VI of the 1964 Civil Rights Act regarding the state of Louisiana's handling of the permit applications of Supplemental Fuels Inc. and other companies. The complaint was filed when, after six months of fighting with the state to get an opportunity for a full and fair review of the community's concerns about the Supplemental Fuels hazardous waste permit application, it became apparent that the state was more interested in satisfying the financial concerns of the company than in protecting the health and welfare of the community. After months of pressure, the state
environmental agency finally denied the permit, but the agency has granted the company another hearing. Meanwhile, the EPA, which originally seemed to be taking an aggressive attitude towards the issue, now seems to be taking a “wait and see” attitude, hoping the whole problem will just go away.

Over the past five years, Clinic students have appeared in over 130 cases before state and federal trial and appellate courts, before local, state and federal agencies, and before local and state legislative bodies. The docket of the Clinic is as varied as the environmental problems facing the state and involves issues of pollution control (for example, air and water pollution; solid, hazardous, oilfield, medical and radioactive waste; and energy conservation), natural resource protection (wetlands, coastal zone management, and wildlife and fisheries), and urban environmental law (for example, abandoned housing, illegal dumping, traffic, noise, non-conforming billboards and incompatible land uses). The Clinic also assists citizens each year by drafting local ordinances and bills for the state legislative sessions.

Over the past three years, Clinic students have drafted over 35 bills, which the citizens then take to sponsoring legislators.

The Clinic devotes particular attention to cases that involve the protection and expansion of citizen rights and remedies, such as rights to hearings, open meetings, public records, and access to courts and agencies. These cases have impacts beyond the immediate parties, since an increase in available rights and remedies generally means that all citizens can play a greater role in government decisionmaking and better protect the well-being of their communities.

In 1993 alone, the Clinic handled over 50 cases, and its present docket consists of 35 cases, including an appeal of a decision to reopen an old landfill, suits opposing hazardous, solid and radioactive waste disposal permits, reviews of applications to dredge and fill wetlands, challenges to tax breaks for polluters, new regulations to address medical waste and water toxics, and enforcement of environmental laws.

In addition to casework, the Clinic has presented more than nine citizen conferences on environmental issues. The Clinic’s 1989 program on “Minorities and the Environment” was among the first programs of its kind on this issue. Other program topics have included: underground injection of hazardous waste, oil and gas waste, aerial spraying of pesticides, medical waste incineration, historic preservation, landfill siting, pulp and paper mill pollution, and alternatives to pesticides.

The Clinic has also distributed over 500 copies of its “Citizen’s Guide to Environmental Decisionmaking in Louisiana” to citizens around the state. This 200-page guidebook, written by Clinic students and edited by the staff, provides citizens with a comprehensive guide to the environmental decisionmaking process.

The Clinic is run by a director (Robert Kuehn), who is also a member of the Tulane Law School faculty and teaches classes in hazardous and solid waste regulation, environmental enforcement and environmental advocacy, and two environmental law fellows (Daria Diaz and Charles Ellis), lawyers who work in the Clinic and help supervise the students.

The Clinic also has a community outreach program coordinator, Audrey Evans. The outreach program coordinator has a Rolodex and mailing list that is the envy of many, and she helps ensure that citizens are familiar with the Clinic’s services, provides information to citizens on agency public participation procedures, and identifies new cases through contacts with affected groups. The coordinator also works with the students to ensure that the clients actively participate in cases, particularly where public hearings and other forms of citizen participation are involved.

Finally, a staff scientist, Jeff Waters, assists the citizens and students in identifying technical and scientific issues in the case, obtains evidence for use in the case, reviews the technical aspects of the Clinic’s written and oral work, and assists where possible as an expert in proceedings and hearings.

The success of the Clinic has not gone unnoticed and has led to repeated attempts by alumni, businesses and government officials to have the Clinic shut down or restricted. Last year, the Governor, upset by the Clinic’s criticism of his attempts to roll back a tax on hazardous waste, called the President of Tulane and threatened to take action against the University unless the Clinic was silenced. To his credit, the President of Tulane deflected the Governor’s threats and has allowed the Clinic to continue educating law students and assisting citizens. Recently, the head of the state’s environmental agency, also upset by criticism from the Clinic, sought to have the Clinic’s activities restricted by the state Supreme Court. The court, however, found nothing wrong and declined to take any action.

On the other hand, the Clinic has received numerous local, state and national awards for its work. For example, in 1990 the Clinic received the Governor’s Conservation Organization of the Year Award (from our previous, not current, governor), which noted: "In its 2 years of operation, the Clinic has given new hope and clout to Louisiana's conservation/environmental community.” The Clinic also received a Special Merit Award in 1991 from the National Environmental Awards Council in Washington, D.C., for "its innovative law training program and proven success in meeting community legal needs.... This is a crucial program for Louisiana, a state with serious pollution problems and badly underfunded state agencies.” And in 1993, the Clinic was inducted into the Citizen’s Clearinghouse for Hazardous Wastes Grassroots Honor Roll and Hall of Fame for its work in "advancing the goal of environmental justice for all people.”

Bob Kuehn is the director of the Tulane Environmental Law Clinic, which can be reached at 7039 Freret Street, New Orleans, LA 70118; phone 504/865-5789; fax 504/862-8721.
The Environmental Law Community Clinic opened in Berkeley, California in January 1994. It was organized by students and faculty members of the School of Law at the University of California, Berkeley (Boalt Hall). The idea behind ELCC is to contribute to the environmental justice movement by increasing the legal resources available to the movement through combining the education of law students with the provision of services to community groups. Students do the work at ELCC for course credit, under the supervision of the clinic's director, who is a lawyer.

Paradoxically, in carrying out its mandate to support the innovative work of environmental justice groups, ELCC in some ways operates more like a small private general law practice than like a typical public interest environmental or legal organization, or most law school clinical programs. ELCC, like all law school clinical programs, does not charge fees for its services, which is of course a significant difference from a real private law practice. However, the work that ELCC does is not the result of its own analysis and decisions about programmatic priorities, but the result of the needs expressed by its client groups — a client-based focus that is part of traditional models of legal practice. Unlike most law school clinics, ELCC does not work only within predefined legal areas (such as unemployment compensation, or government benefits, or criminal defense). ELCC intends to respond to clients' needs by providing the legal services that are required for the particular project or campaign, regardless of how the legal system or law school teachers might characterize the needed legal work.

In its first few months of existence, ELCC has worked on a wide variety of projects. They include an administrative appeal of an air pollution permit, as part of a campaign by the West County Toxics Coalition to make the giant Chevron refinery in Richmond, California begin to behave like a good neighbor to the African-American community near it. (The legal work on this project was done by a coalition of lawyers, including ELCC, the Golden Gate University Law and Justice Clinic, Citizens for a Better Environment, the Lawyers Committee for Civil Rights of the San Francisco Bay Area, and California Rural Legal Assistance.) The Clinic has provided research and drafting help to PODER! and the San Francisco Lead Coalition in their work to create an ordinance on childhood lead poisoning prevention that is actually responsive to community needs. ELCC has also provided advice and drafting on real estate law issues for community garden projects in African-American communities, in which high school students work with older community residents to produce food, learn about gardening, and develop their own leadership skills. Other projects include a challenge to a sewer permit, international law research on the electronics industry, and testimony at public hearings.

The range and variety of projects ELCC has participated in during its relatively brief existence are a result of the strength and vigor of the environmental justice movement in Northern California. The needs of the movement create the agenda for ELCC's work, but they do not guarantee that ELCC will do the work in a politically useful and responsible way. It has become clear through the experience of many political movements, engaged in many different struggles, that lawyers have to be watched carefully to keep them from imposing their own ideas on their clients' campaigns and strategies. The vigilance and good will of ELCC's clients are thus key in helping the Clinic to continue to play a constructive role in their work.

Four elements of the Bay Area environmental justice movement and ELCC's structure provide continuing feedback on the politics of ELCC's work. First is the ongoing interest of a number of Bay Area environmental justice groups in the roles of ELCC and the two other law school clinics in the region — one now open at Golden Gate University in San Francisco, and one planned at Stanford University in Palo Alto. Their identification of issues and potential pitfalls in the work of all the clinics provides a necessary framework for setting directions for the clinics and evaluating their performance. Second is the presence of lawyers and legal organizations already experienced in working on environmental justice issues, who both work with ELCC on specific cases and are available for consultation and advice. Another is the participation of Boalt Hall law students who are interested in environmental justice issues but are not working at ELCC. They are organized as the Committee on Race, Poverty, and Environmental Justice; part of their program is serving as a student advisory committee to ELCC. They look at ELCC from outside, but nearby, providing an additional perspective on what ELCC does and how effectively it does it. Finally, and in some ways the most surprising, is the fact that ELCC is set up to teach law students. The students are supposed to ask questions, think, and actively participate in all aspects of their work. They challenge each other and the lawyers involved in their cases to more fully understand not only what they are doing, but why they are doing it. Few things bring home a possible problem faster than a student asking, "But didn't the clients just say in the last meeting that...? And is what we're planning now really the best way to do that?"
Jurist Quits Sierra Club Legal Defense Fund Board In Dispute

By Dennis Pfaff

Judge LaDoris H. Cordell, believed to be the first black woman to chair a major environmental organization, has resigned from the Sierra Club Legal Defense Fund, apparently in dispute with the group’s top paid official over diversifying the nonprofit law firm’s goals and staff.

The election of the Santa Clara County Superior Court judge to the chairmanship of the 24-member policy setting body of the San Francisco-based legal organization was widely viewed as a step toward involving the Defense Fund more deeply in issues that affected both the environment and civil rights.

"The sense... is that it’s time to make a statement of where we are going." Cordell said at the time. That view seemed to mesh with those of the organization’s new president, Vic Sher, who had stressed the environmental justice issues when he was hired as the group’s president, the SCLDF term for its chief executive.

But in a February 23 letter announcing her departure, Cordell suggested that her relationship with Sher had become destructive to the group’s progress. She cited "the suspiciousness demonstrated by Vic" regarding her chairing the organization as a stumbling block to expanding the Legal Defense Fund’s focus.

Sher responded that he had supported Cordell’s election and that he shared many of her goals for the group.

"LaDoris had differences with me and the board over her role in the organization," he said. "That wouldn’t obscure the fact that on many levels, we shared the same desire for the same ends." While Sher did not expand on the differences of opinion between Cordell and the board, he did say he was sorry to see her go.

Her selection in May 1994 to a one-year term also was seen as a possible end to a long period of uncertainty for the defense fund, which has been involved in some of the nation’s highest-profile environmental cases. Only three months before, the board had hired Sher as its new president, its third new top executive in three years. The longtime litigator responsible for the defense fund’s spotted owl lawsuit in Seattle, Sher succeeded San Francisco attorney Michael Traynor, who took the job in 1991 after a previous president, Fredric Sutherland, died in an automobile accident.

But Cordell’s resignation comes as SCLDF and other environmental groups seek to define themselves amid the competing pressures of conservative politics and the growing environmental justice movement, which demands more attention be paid to threats faced by communities of color.

In her resignation letter, Cordell cited dissatisfaction with the progress the group was making in addressing those latter issues. Cordell joined the board in 1991, partly at the behest of Sutherland.

"When Rick Sutherland requested that I join the board of trustees of SCLDF he was explicit about the reasons for which he was seeking me out," Cordell wrote in her resignation letter. "He wanted SCLDF to move more in the direction of addressing environmental justice issues and towards that end diversifying the membership of the board and the staff. It was his belief that my commitment to the community at large, and to communities of color and women in particular, as well as my candor were qualities that would prove useful to the organization.

"Unfortunately, these very attributes so valued by Rick have proven to be anathema to Vic Sher. In addition, the suspiciousness demonstrated by Vic about me in my role as chairperson is bound to stand in the way of SCLDF’s progress towards the very goals which inspired me to join this organization."

The letter provided no further specifics, and Cordell would only confirm that she had resigned.

Fred Fisher, a member of the board’s executive committee, said he did not believe Cordell was criticizing the defense fund’s commitment to minority environmental issues. The defense fund, he said, has for several years had an office in New Orleans primarily devoted to those concerns and is also committing lawyers in San Francisco and Washington, D.C., to the subject.

"We’ve invested a lot of dough in this and a lot of effort," he said.

In a response to Cordell’s resignation, the executive committee said it was "saddened and disappointed." But it said her leaving does not "diminish our commitment to environmental justice litigation."

Traynor, the former president who remains on the board, said Cordell’s resignation "may be a situation where she and the president didn’t see eye-to-eye on issues and how work should be allocated."

Traynor also expressed support for Sher, saying he is "in very substantial agreement with the programs and objectives [Sher] has set forth."

Dennis Pfaff is a reporter for the San Francisco Daily, where this article originally appeared. It is reprinted with the author’s permission.
"Impact litigation" is the use of creative litigation to put new progressive case law on the books so that others rely in that precedent in future cases. The paradigm example of impact litigation is Brown v. Board of Education, 5 which established that separate schools for different races are inherently unequal, thereby providing a legal remedy to desegregate classrooms across the country. A leading public interest environmental lawyer explained that his organization generally identifies an important legal principle, and then finds a "test" case with ideal facts to establish that principle as a legal precedent. Ideal facts would usually involve clear harm, a sympathetic plaintiff, a weak defendant, and a liberal court. Impact litigation has been the primary focus of most environmental and civil rights lawyers working with non-profit organizations.

In the environmental justice context, impact litigation has been largely unsuccessful. While there have been serious legal obstacles that have blocked impact cases, there are even deeper strategy issues that raise questions as to whether the concept of impact litigation is in itself antithetical to the principles of the environmental justice movement. A lawyer-centered, lawyer-defined litigation strategy disempowers affected communities, relegates disempowered communities to "victim" status, and produces "wins" that may not improve the well-being of the community. One of the primary principles of environmental justice is that people who are adversely affected by pollution must speak and act for themselves. Leaders of the environmental justice movement are largely low income people of color who have organized their neighbors to fight environmental hazards impacting their own communities. Part of the strength of the movement has been the compelling nature of issues that are a matter of life and death for those who are involved in the struggle. This "bottom-up" community empowerment model typifies the environmental justice movement.

Impact litigation, on the other hand, is a "top-down" model which places the lawyer at the center of social change. In impact litigation the community is often disempowered — placed in a legal forum where it cannot fight its own battles, but must rely on the "white knight" lawyer to save the day. The success or failure of the campaign turns on the cleverness of the lawyer and receptiveness of the courts. In this model, plaintiffs often exist in name only and have little or no role in the progress of the case. Decisions are made by "experts" — usually Ivy League lawyers, scientists, and policy wonks — who decide what is in the "public interest," and how the public interest should be pursued.

When we were assembling our legal team for the Chevron campaign, we approached several mainstream environmental groups to solicit their support. Most could not understand the significance of a campaign that was not aimed at establishing any new legal principles or case law. To the contrary, we wanted to rely on the best established, most mundane legal principles possible in order to enhance our political power against Chevron. Worse yet in the eyes of the impact litigator, our goal was to avoid litigation if at all possible in favor of a community organizing campaign leading to a negotiated settlement between Chevron and the community leaders. One veteran environmentalist told us that his organization was not accustomed to working with "those people," and was "afraid they would be irrational." He said that his organization preferred to have its well-trained experts direct the litigation without interference from untrained community people.

Many mainstream environmentalists believe that they are doing "environmental justice" work simply by addressing urban toxics issues in this "top-down" impact litigation mode. Such attempts miss the point of the environmental justice movement since they are disempowering for the impacted community and divorced from those who are suffering from pollution on a daily basis.

In order for lawyers to be part of the solution to environmental racism, the litigation must be part of a broader campaign organized by the people who are directly affected by the toxic pollution problem. In other words, law must be only one of many tools in the environmental justice movement, and the lawyers must not enjoy a privileged position above the community. This will require lawyers to give up some of their power to community people. The Chevron campaign provides one example of how a group of lawyers were able to integrate their efforts with an vibrant grassroots community organizing effort with excellent results. The Kettleman City hazardous waste incinerator campaign provides another example of such a collaboration. In both cases, the results achieved would not have been possible without the active involvement of community members at every level of the legal and organizing strategy. If lawyers want to be part of the environmental justice movement, they must remember that they are just that — a part of a much larger movement that existed long before lawyers decided it was an interesting social trend. Public interest lawyers must get off their white horses and get their hands dirty doing the hard work of building a community-based empowerment campaign, which may or may not involve a legal component. If lawyers are willing to be resources for the community, willing to work in collaboration with the community with the primary goal of community empowerment, then lawyers will provide a beneficial component of the struggle for environmental justice.
The Center similarly compiles and maintains a database of resumes from the environmental community including organizers, educators, scientists, public health workers, lawyers, and policy analysts. EJRC also archives multi-media material (videos, audio tapes, documentary films, photographs and more) in its Archive/Resource Removal and Dissemination project. Finally, the Center is developing, in partnership with affected communities, a culturally sensitive environmental justice curricula and training program to be used in conferences, workshops, and seminars.

In its as-yet brief lifetime, the Resource Center has already accomplished a great deal. Among the Center's early projects was the creation of the People of Color Environmental Groups Directory 1994-1995, an exhaustive North American directory of grassroots organizations.

The EJRC sprang to action again in early 1995 when the Louisiana Environmental Service proposed siting a privately-owned uranium enrichment plant in the midst of two low-income African American communities. EJRC stepped in to prepare and present expert testimony on land use and environmental justice before a three-judge Nuclear Regulatory Commission panel.

The Center has also been instrumental in organizing and hosting a number of hearings and conferences. In January of 1995 EJRC facilitated an EPA Region IV Dioxin Hearing. In the same month they hosted the Interagency Working Group's public hearing on the Environmental Justice Executive Order 12898. This effort included the coordination of no less than three dozen satellite down-link sites for the occasion.

Most recently, the EJRC planned a national Environmental Justice Transportation Conference in Atlanta this May. The conference addressed the environmental justice strategy of the US Department of Transportation. Topics discussed at the conference included the transportation of hazardous and radioactive materials, investments and social equity, land use, civil rights, public involvement, and decision making.

For more information about EJRC's projects and resources, contact the Environmental Justice Resource Center, Clark Atlanta University, James P. Brawley Drive at Fair Street, SW, Atlanta, Georgia 30314; 4041880-6910, fax 4041880-6909.

New Resource on WMX

Toxic Empire: The WMX Corporation, Hazardous Waste and Global Strategies for Environmental Justice.

This 32-page report published by the Political Ecology Group is a case study of WMX Technologies (formerly Waste Management, Inc.), as the world leader in the so-called environment industry. It provides an in-depth look at WMX's activities in the U.S. Based on original research, the paper also analyzes how WMX is globalizing its business.

Written in a popular style, the report examines the environmental destructiveness of WMX's end of the pipe (incinerator and landfill) solutions to corporate waste generation and contrasts them with the alternatives of pollution prevention and clean production. It documents WMX's often legally questionable and racially discriminatory practices. The report charts the growth of a global environmental justice movement in opposition to WMX and other polluting transnationals and proposes strategies for greater international cooperation.

Toxic Empire is intended as an information resource and organizing tool for communities, environmental groups, students, media, and public officials concerned with this company and others like it. To obtain a copy of this report and its high quality graphics, please send $1.50 to the Political Ecology Group, 519 Castro Street, Box 111, San Francisco, CA 94114. Please specify whether you would like the English or Spanish version.

Residents have been subjected to poisonous air emissions from a medical waste incinerator located only 200 years from local elementary schools. The company took advantage of an unorganized community of Mexican immigrants to place both the incinerator and a regional landfill that accepts wastes from several states and maquiladora industries along the Mexican border. These are truly endangered communities.

Suits like this by polluting corporations (and sometimes government agencies) are known as SLAPP suits, Strategic Lawsuits Against Public Participation, and are rarely successful. The point is to harass and disable citizens groups, forcing them to use precious time and money to defend against the suit. SLAPP suits are also used to intimidate communities into silence; corporations sue several individuals or a high profile group in hopes that people will not protest in the future because they fear being sued. SWOP staffers do not think it is coincidental that Joab/Nu-Mex is preparing to re-apply for a permit for the dump in 1996. "Is this SLAPP su[it] an attempt to get rid of the community's allies in the permitting process?" SWOP asks.

The suit against SWOP may be the polluters' opening move in a new backlash against the movement. For this reason, it is important that the Environmental Justice Movement come together in a strong defense. SWOP is asking for support from grassroots groups across the country to help spread the word, and support fundraising efforts. SWOP estimates that the initial cost will be $20,000 and even more if they end up going to trial.

SWOP is a multi-racial, community-based state organization that has been fighting for the disenfranchised for 15 years. In 1993 it received the New Mexico Environmental Department's "Environmental Leadership Award." For further information and to offer help, call SWOP at 5051247-8832, or write them at 211 10th Street, SW, Albuquerque, NM 87102.
of CRLA. The Chicano workers thought that CRLA was their destiny. The community workers said, "No, you are not going to come in and push us around." The Chicano attorneys could have accomplished their goals in CRLA but they rubbed a lot of people the wrong way, including Chicanos. So they left.

I think that it is best if the attorney and community worker are a team and worker together. There are things that each can do. We do not have the luxury of having as many community workers as we did then. At one time there were three in Salinas, and me in Soledad. Now, I am the only one here. I have all the administrative cases — unemployment, welfare, food stamps, Medical. I'm kept very busy in the office. I don't have the opportunity to go to the community like I used to. I don't do organizing in the community, like I did from 1960-82.

Things have changed from those early years to now. When Reagan became president he put his own people in the board of Legal Services. They redrafted the regulations and sent us this revised version. "Thou shalt not get involved in organizing the community."

One of the reason that the board wanted to limit us was because the growers could not differentiate between CRLA and the UFW. Another regulation was, "Thou shalt not register people to vote." These are the inconsistencies. Isn't this a democratic country? Are we not encouraged to vote, to participate in the electorate? But if you encourage people to vote, you get your funding cut. All of these restrictions and cuts in funding changed the role of the community workers at CRLA.

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New from the Urban Habitat Program

The Urban Habitat Program recently published two new reports. The first, Reintegrating the Flatlands: A Regional Framework For Military Base Conversion in the San Francisco Bay Area, is by Martha Matsuoka, UHP’s Economic Conversion Project Director.

During the next decade, more than 10,000 acres of land, waterways, and marsh in the San Francisco Bay Area will be relinquished by the U.S. Department of Defense. Reintegrating the Flatlands helps activists and progressive policy makers create a regional framework for economic conversion strategies that address the needs of the region’s communities of color, low-income neighborhoods, and workers. The report uses sophisticated geographic information computer technology to make visible the social and environmental boundaries of the “Flatlands” communities which will suffer the heaviest impacts.

Sustainability and Justice: A Message to the President’s Council on Sustainable Development, is a collection of analytical pieces and examples gathered as a response to the Bay Area meeting of the President’s Council on Sustainable Development, a twenty-five member body with nine corporate representatives and only one environmental justice advocate. It includes articles by Carl Anthony, Mercer Donahue Edwards, Henry Richmond, Eric Mann, Penn Loh and others, which serve as evidence that the new movement for environmental justice can lead the way towards sustainability in the U.S. These messages and voices from communities of color argue that sustainability requires a fundamental reorganization not only in the way we produce and consume, but the way we govern and regulate these basic activities.

Both publications can be ordered by mail from UHP. Reintegrating the Flatlands includes numerous colored data maps, is 56 pages and costs $20. Sustainability and Justice is 44 pages and costs $5. Send your check to Urban Habitat, Earth Island Institute, 300 Broadway, Suite 28, San Francisco, CA 94133.

CRPE’s Abascal Receives Thurgood Marshall Award

Ralph Santiago Abascal, director of the Center on Race, Poverty and the Environment and general counsel to California Rural Legal Assistance in San Francisco, has been honored by the American Bar Association with its 1995 Thurgood Marshall Award. The award, named for the late civil rights lawyer and Supreme Court justice, recognizes Abascal’s long-term contributions to the advancement of civil rights, civil liberties and human rights in the United States.

The ABA noted that Abascal’s career has involved every major facet of the civil rights struggle, from farm labor to immigration to public benefits to rights for the disabled. Abascal’s work in environmental justice began in 1969 when he brought a lawsuit on behalf of six migrant farmworkers that ultimately resulted in the ban of the pesticide DDT. Abascal was also lead counsel in CRLA’s well-known Kettleman City litigation, that blocked Chemical Waste Management’s attempts to site a toxic waste incinerator near that Latino farmworker community.

Abascal began his work at CRLA as a law intern in 1967, and went to work with the poverty law outfit upon graduation from Hastings Law School the following year. Except for a stint as director of litigation for the San Francisco Neighborhood Legal Assistance Foundation in the early 1970s, Abascal has spent his entire legal career at CRLA, directing more than 50 attorneys in CRLA’s 17 offices statewide.

The ABA’s Rebecca Westerfield, in announcing the award, said Abascal “is a symbol of the contemporary civil rights lawyer in the same sense that Thurgood Marshall represented the first generation of civil rights attorneys. His visionary ability to bring legal principles to bear on fundamental societal concerns is truly remarkable.”
New Environmental Justice Resource Center Launched

by Judith Lurie

The young and prospering Environmental Justice Resource Center (EJRC) is uniting advocates of environmental justice throughout the southern states. Through its varied projects, the Center is making links among community residents, activists, legal workers, health workers, academics, scientists and technicians. The developing network is bringing more information to, and encouraging more participation by, residents of low income communities and communities of color in the South.

The EJRC opened its doors on the grounds of Clark Atlanta University in Georgia in late 1994. The idea sprang from more than a decade of work by its Director, Dr. Robert Bullard, in the area of the environment, social justice, and public policy. The Center’s generous service area spans eleven states of the south and southwest — from Washington, DC to Arizona. The EJRC’s declared goals include the dissemination of scientific, technical and legal education and information to communities bearing the impact of environmental injustice, and to non-governmental organizations in the region. Further, the Center will design community-focused environmental justice model demonstrations for low-income communities and communities of color on pollution prevention, public participation, risk communication, and more.

The Center provides a number of ongoing resources for its service area. Through its Community-Partnership Research project, EJRC conducts applied research projects identified as priorities by communities facing environmental hazards. The EJRC compiles and maintains an Environmental Justice Database/Resource.

SWOP SLAPPed, Help Fight Back

In December 1994, the South West Organizing Project and a number of environmental justice activists were sued by long-time polluter Joab Inc./Nu-Mex. In addition to SWOP, those named in the suit included Richard Moore, coordinator of the Southwest Network for Environmental and Economic Justice, SWOP staffer Lois Head, and sociologist Dr. Robert Bullard of Clark-Atlanta University. The suit is based on a chapter written by Moore and Head in Bullard’s recent book, Unequal Protection: Environmental Justice and Communities of Color. The plaintiff, Joab/Nu-Mex, runs the Nu-Mex Landfill on the Texas-Mexico border near the Latino community of Sunland Park, New Mexico.

Nu-Mex alleges that it has suffered “increased expenses and costs associated with obtaining New Mexico state operating permits for (its) landfill; the loss of revenues the dozens of inspections and periods during which the landfill was partially shut down or unable to operate in its normal fashion.” The company operated a medical waste incinerator at the landfill. Due in part to efforts by Sunland Park residents, in late 1991 New Mexico authorities ordered the company to close the incinerator following lengthy public hearings. Authorities testified that the incinerator constituted “an imminent health hazard” to the neighboring community. The Southwest Organizing Project was an intervenor in the permit hearings and testified for the public record in support of Sunland Park residents, who also testified in large numbers.

The lawsuit cites the following from the account of this struggle in Unequal Protection as evidence of slander:

In Sunland Park, located on the Mexico-U.S. border,