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Fighting Mad

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Golden Gate's Environmental Law and Justice Clinic
links law students and grass-roots community activists
in the battle for change in beleaguered communities.



Fighting

BY TEGAN M. MCLANE

Home owners Francine Carter and Linda Richardson are angry when they look around their neighborhood.

Within a three-mile radius, students from Golden Gate University's Environmental Law and Justice Clinic have catalogued 280 sources of hazardous materials polluting the Hunters Point environment or threatening to—including two Pacific Gas and Electric power plants, a sewage-treatment plant and a United States Naval Shipyard, a site so polluted it is on the Federal Environmental Protection Agency "superfund" list for priority cleanup.

"I almost died when I found out how bad it was," said Linda Richardson, who bought her Hunter's Point home five years ago. "I invested every nickel and dime we had in this place. If I'd known then what I know now, I never would have bought it. Now I'm stuck."

When Richardson and her neighbors found out last year that their community was facing a new environmental hazard—a San Francisco Energy Company power plant to be built just a few hundred yards from their homes—they enlisted Golden Gate's Environmental Law and Justice Clinic to represent them.

The case has become a learning experience for law students and for residents.

The clinic, which opened its doors in January 1994, gives law-student interns valuable hands-on experience by allowing them to provide

badly needed, free legal services to poor communities fighting pollution, environmental hazards and social injustice.

The clinic provides free legal services and education on environmental justice issues to Bay Area communities that bear disproportionate environmental burdens. Those communities are often low-income communities of color. "We are partners with residents, community groups and public interest organizations in the struggles for environmental justice," said Anne Eng, one of the law professors who runs the clinic. "While we have an expanded, progressive role in the cases, we recognize the leadership of the community."

Clinic Directors Cliff Rechtschaffen, a former deputy attorney general, and Alan Ramo, former legal director for Citizens for a Better Environment, and Staff Lawyer Eng supervise the clinic's cases. But it is the law students themselves who represent the clients in hearings and negotiations. Eng calls them the "core of the clinic's staff."

Currently the clinic is sole counsel or working as part of a coalition of lawyers on 20 different cases, including two major lawsuits against the Navy, charging illegal toxic discharge into the Bay from facilities at Hunters Point shipyard and Treasure Island; and several investigations into companies' compliance with community-right-to-know laws, which require businesses to report to



before the decision is made," Rechtschaffen said.

Recently, the California Energy Commission's sitting committee issued a permit for the power plant. SAEJ and the clinic swung into action, lobbying the San Francisco Board of Supervisors, who also must approve the proposed lease for construction of the plant on Port of San Francisco property.

Fighting environmental racism is what we do.

-Annie Eng

SAEJ Executive Director and President of the Morgan Heights Home owners' Association Claude Wilson is guardedly optimistic that the supervisors will not okay the port lease in an election year.

If the plant is eventually built, the legal team has forced planners to redesign the facility in a way that halves toxic emissions, according to Ramo who said he considers the power-plant case already a victory."

Victory or no, the case illustrates an alarming trend toward locating environmentally dangerous facilities in already overburdened, low-income, minority neighborhoods.

Hunters Point resident Francine Carter said plans to lay a 400-mile natural gas pipeline from the Mojave Desert through her neighborhood also have been discussed. "I'm afraid they're going to put something down there, where we have all these leaking underground storage tanks from service stations, and we're all going to go up in smoke," she said.

"We are living in an area so filled with environmental hazards, one can only attribute it to environmental racism," Carter asserted.

Fighting environmental racism is "at the heart of what we do," said Eng of the clinic. Corporations discriminate against minority communities in subtle ways: publishing community information only in English or scheduling public hearings during the day when working class people cannot attend. Few environmental lawyers in private practice focus on this issue.

The clinic has been a frontrunner in establishing justice for people who don't have a voice.

-The Rev. Willie Carter
Community Tabernacle
Church of God in Christ

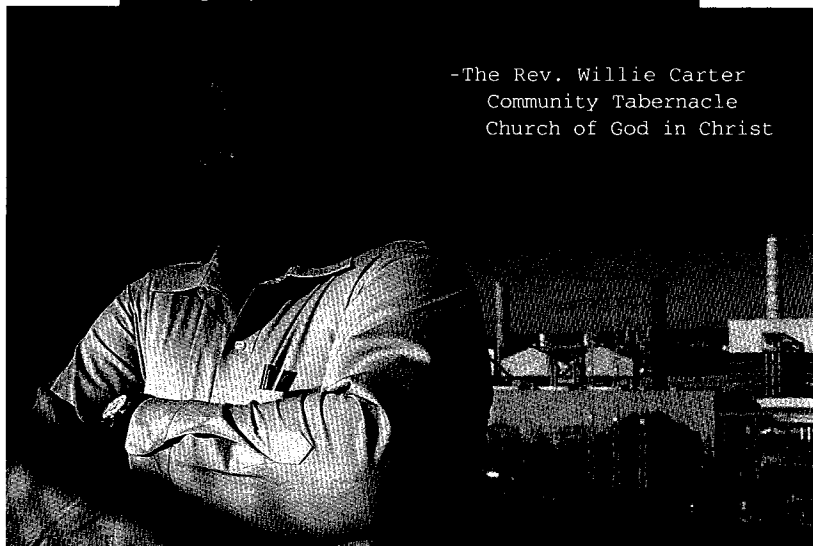
the government hazardous materials handled and routinely released into the environment.

The fight against the power plant, underway for more than a year, remains the clinic's biggest case. In it, students have argued that the plant is not needed and that the facility would pollute the environment; and perhaps most worrisome, 50 tons of cancer-causing particulate emissions annually from the plant could exacerbate health risks in a community already disproportionately exposed to harmful pollutants and suffering from high rates of bronchitis and asthma.

To back up their arguments, the clinic prepared a toxics profile which inventories the community's contaminated sites and potential hazards. That profile led to a complete health assessment for the Bayview-Hunters Point area, literally a door-to-door survey conducted by the community activists and the San Francisco Health Department, which quantified the unsettling high cancer rate.

A fundamental part of the clinic's strategy is to involve the residents.

"They're empowering us to ask questions," said Richardson, who now serves on the board of the Southeast Alliance for Environmental Justice (SAEJ), a newly formed coalition of seven Bay View-Hunters Point home owners' groups. The SAEJ model has been "quite successful in organizing the community, informing them, galvanizing political pressure and raising the issues



Mad



Golden Gate students have catalogued
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Yet the need is “tremendous,” according to Ramo.

Even with UC Berkeley’s Boalt Hall and Stanford University’s Environmental Law Clinic now providing similar services, there is plenty of work to go around. “It’s vital that clinics like ours exist in this political climate,” concurred Rechtschaffen. “It’s very unpopular to be poor. And it’s very unpopular to have the government pay for legal representation for poor people. The role we serve is increasingly important. These communities have fewer and fewer resources to fight these important legal battles.”

The clinic is funded by the Law School and grants from the U.S. Department of Education, the EPA, the Corporation for National Service and several private sources. Clients pay only expenses and filing fees.

“A company can afford to hire someone to write a 3,000-page document arguing their point. It’s hard for low-income communities to rebut that,” said David Briley, a May 1995 Law School graduate who worked two semesters on the power plant case. “I learned how to go out and contact an expert and get him to work for our client for free.”

Representing underdog communities as they do, it’s easy to understand the hoopla surrounding clinic’s victories, which include:

- Helping Ukiah residents convince the EPA Appeals Board in Washington to insist that local authorities reexamine their earlier decision to grant

Masonite Corp., one of the area’s largest stationary air polluters, a permit to modify its facility. Residents wanted a hard look at whether Masonite could upgrade its emission-control technology and reduce emissions by 125 tons annually;

- Prevailing upon Chevron to invest millions of dollars in new pollution-control technology and in Richmond community programs and job training for local residents, as it expands its facility there; and

- Persuading the Bay Area Air Quality Management District to require stricter emission controls on auto painting shops, during the fight for clean air in one West Berkeley neighborhood. (*See sidebar.*)

The clinic’s educational victories are much quieter, but no less important.

Already some three dozen aspiring lawyers have worked in the clinic, spending 20 to 30 hours a week doing the jobs of real lawyers. Each student is assigned two or three cases or projects a semester. A typical

caseload might include researching and preparing a brief on one aspect of an ongoing high-profile case like the Hunters Point power plant; investigating whether a company has violated community-right-to-know laws and whether there is, in fact, grounds for legal action; and preparing outreach materials on the rights of tenants to lead-safe housing and on community right-to-know laws.

Coupled with the assigned readings and a weekly seminar in which students discuss each other’s cases, the clinic is an intense experience, but one Eng said the students enjoy and some even repeat.

Both current students and recent graduates agree that the clinic has afforded them opportunities they would never have had in a more traditional internship. “We get the whole case perspective and a lot of hands-on experience,” graduating senior Kathleen Aberegg said.

Students conduct initial interviews with potential clients, decide which cases to take, collect data, strategize, draft comments, speak at public hearings and finally, monitor the outcome.

They also work directly with clients—mostly low-income residents—so they get a chance to practice something many lawyers do: sensitivity and respect for diverse communities.

“We help students to develop a deeper understanding of different cul-



tures, to learn to recognize the resources and the leaders in a community of color, and to appreciate the social fabric,” Eng explained.

Sometimes it takes several meetings with clients before students see beyond the environmental issues to discover, “wonderful cultural resources. For example, Bay View-Hunters Point has the highest home-ownership rate in The City,” she said. “It also has the greatest percentage of residents who are long-term residents with strong community ties. Some of the people we’ve worked with have lived in the community for more than 30 years.”

“There’s a lot of emphasis on etiquette,” explained Andrea Marcus, a new clinic intern who was preparing for her first community meeting with the clients in the power plant case. “(Our clients) are dealing with an adversarial system. We just had a reading on the dynamics of dealing with people who typically feel alienated by the system. And even though we are representing them, we are part of the system.”

Even as students research ways to mitigate the plant, the clinic teaches them to be mindful that “the people who live there aren’t interested in mitigating it,” Marcus said. In fact, said resident Linda Richardson, “We want to take this all the way to the U.S. Supreme Court.”

The clinic also teaches students how to work with clients. “You can’t talk off the top of your head with clients. You really need to know what you’re talking about,” said Vicki Clark, a May 1995 graduate and one of the clinic’s first interns.

Claude Wilson, president of the Morgan Heights Home Owners’ Association and executive director of SAEJ, said it’s obvious to him the students have done their homework. “They are the ones, truly, who are deciding on the direction that we will pursue.” Wilson said he trusts students to “tell us whether what we want is realistic and give us an idea what to expect, how the process will work.”

“(The clinic) worked with our community very beautifully. They showed respect for the neighbors’ decisions, put everything in very simple language, and they were tolerant of all sorts of questions that were not necessarily related to the subject,” says Raquel Pinderhughes, whose group, West Berkeley Residents Against Toxics, was one of the clinic’s first clients.

“Not all the residents had worked with lawyers before. (Working with the clinic) broke people’s stereotypes of what it was to deal with attorneys—of attorneys being paralytic, using language you can’t understand, charging a lot of money and telling you what to do.”

Tegan McLane is a Pleasanton-based free-lance writer who specializes in environmental issues.

Early Victory

helps Bay Area
breathe easier

One of the Environmental Law and Justice Clinic’s first cases—a fight to bring a discount auto painting franchise in West Berkeley into compliance with Bay Area Air Quality Management District rules—resulted in a new rule that benefits everyone in the Bay Area.

Residents of a low-income, predominately African-American neighborhood that borders Berkeley’s auto row on San Pablo Avenue were sick and tired of the “terribly foul odors” one shop had been emitting for more than 20 years, said community organizer Raquel R. Pinderhughes.

The smell was so bad people were reluctant to be out in their own backyards. Neighbors suspected their persistent coughs and asthma attacks might be related to the paints and stripping agents the shop used, which contain toxic chemicals that can cause cancer and birth defects in people, contribute to smog and deplete the ozone.

Although residents complained loudly and often “the (air quality) inspectors took anywhere from 40 minutes to three hours to arrive, and the smell we had reported had always dissipated before they arrived,” Pinderhughes said.

After “a year of incredible frustration” trying on their own to work with the system to bring the business into compliance, Pinderhughes asked Golden Gate University’s Environmental Law and Justice Clinic for help.

Although “our intention was never to shut (the franchise) down,” she declared, midway through the clinic’s efforts, the shop did close. The franchise did not renew its lease, and its location was taken over by the building’s owner, who ran an auto body repair shop.

When the new shop applied for its permits, the clinic found a window of opportunity to negotiate a good neighbor agreement with the owner and to convince the Air Quality Management District to lower the cap on the amount of toxic paints the shop could use.

Clinic student Vicki Clark presented her research on the toxic nature of auto paint and methods that can be used to control the emission of paint fumes to the Air Quality Management District, and it agreed to cut the shop’s allowed emissions by 80 percent. Clark’s testimony also helped convince the district to readdress regulations governing auto painting shops throughout its eight county region.

Dan Belik, a principal air quality specialist, said the district didn’t ban toxic paints—as the clinic originally requested—because shop owners and paint manufacturers convinced him it would be nearly impossible for repair shop to match paints when a toxic element like cadmium is the vital component that gives the paint its color.

But thanks in part to the clinic, the district decided to require facilities in its eight-county jurisdiction to use filtration systems when they are spraying with primers and top coats that contain toxic elements. Shops can comply by doing the work inside paint booths, preventing public exposure to toxins and keeping dust particles off the fresh paint jobs.

Belik said the most compelling evidence for the new ruling was the “well-versed and eloquent” testimony from the residents.

Raquel Pinderhughes credits the students for helping her neighborhood finally make itself heard. “I know having lawyers at the table helped, I don’t think (the owner) would have even come to the table if we didn’t have lawyers, or signed our agreement. It really was the student attorneys who negotiated for us. I could have put on a suit and pretended I was a lawyer, but I couldn’t have pulled it off,” Pinderhughes said.

“There are times when it still stinks, but the levels of odor (and emissions) are much lower. The difference is extraordinary, and the effects have been radiating. Many auto body shops on the strip now know what occurred, and they have been more careful,” Pinderhughes said.