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LAW CLINIC CURRENTS

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and the Women's Employment Rights Clinic · Fall 1998*

Golden Gate University School of Law

Volume 2, No. 1

Powerplant Will Be Shutdown

PG&E, prodded by ELJC and its Hunters Point clients, reversed its plan to sell the Hunters Point Powerplant and agreed to close this facility. Under an agreement with the City of San Francisco, PG&E is required to close the facility when there is sufficient alternative energy available. At that point, the powerplant will be decommissioned, the land sold to the highest bidder (the City holding a right of first refusal), and a deed restriction will prevent any new power generating activities at the site.

PG&E had proposed to sell the Hunters Point facility as part of the State's proposed deregulation of the energy industry. ELJC, on behalf of the Southeast Alliance for Environmental Justice (SAEJ), intervened before the California Public Utilities Commission and challenged PG&E's proposal to sell the Hunters Point facility when initial environmental analysis showed that a private owner would have an economic incentive to increase its operations, thereby increasing pollution.

The City of San Francisco also intervened, challenging the proposed sale. The City, led

by Willie Brown, eventually threatened to seize the power plants by eminent domain to protect the health of local residents.

SAEJ had been concerned with energy issues in San Francisco ever since a private company sought to build a new power plant in Hunters Point. SAEJ was formed out of that struggle and, assisted by the ELJC, defeated the proposed new power plant. SAEJ has now broadened its concerns with the full range of pollution sources in the Bayview-Hunters Point area, attacking the environmental injustice of the concentration of pollution in an area disproportionately inhabited by low income residents and predominantly people of color.

ELJC continues to provide assistance to SAEJ in examining various pollution sources in the area. Of prime concern now is the cleanup of a state superfund site, known as Bay Area Drum. Other sites are also being reviewed by student clinicians. Meanwhile, ELJC continues to monitor implementation of the PG&E/SF agreement and the proposed sale of the Potrero facility near Bayview-Hunters Point.

Professor Donna Ryu Joins WERC

Donna Ryu joined WERC as its associate director in August. After earning her B.A. from Yale University in 1982, she returned to her native state of California to obtain her J.D. in 1986 from Boalt Hall, where she was a founding member of the *Berkeley Women's Law Journal*.

Professor Ryu began her legal career in the appellate department of McCutchen, Doyle, Brown & Enersen in San Francisco. Two years later, she joined an Oakland-based plaintiff's firm then known as Farnsworth, Saperstein & Seligman, which developed into one of the nation's premier employment discrimination practices. During her tenure there, she litigated groundbreaking civil rights class actions.

In 1994, she became a founding partner of

Ryu, Dickey & Larkin, an all-woman civil rights firm. Her firm and WERC co-counseled *Adams v. Pinole Point Steel Co.*, a sex and race discrimination class action against a local steel processing company. "Through the *Adams* case, I had my first experience with the wonderful chemistry of WERC — bright, enthusiastic students led by Marci Seville, a tremendously gifted lawyer, teacher and mentor. Needless to say, I got hooked."

Professor Ryu is now happy to be part of WERC. "In our clinic, students get the chance to obtain real legal experience, and at the same time, be of service to people in need. By getting skills under their belts instead of just textbook knowledge, our students have a leg up over most law school graduates entering the legal jobs market."

Supreme Court Victory In Cuadra v. Millan

On March 30, 1998, the California Supreme Court issued a unanimous ruling that the state Labor Commissioner's method of calculating back wage awards was unlawful. *Cuadra v. Millan*, 1998 17 Cal. 4th 855. WERC litigated this case with California Rural Legal Assistance, the Asian Law Caucus and the East San Jose Community Law Center.

The Labor Commissioner is the administrative agency that accepts employee claims for unpaid wages and holds hearings on those claims. The *Cuadra* case challenged the Commissioner's practice of calculating wage awards back from the date that it eventually held an administrative hearing, rather than calculating awards back from the date the worker filed the claim.

The case began as a writ of mandate filed in San Francisco Superior Court on behalf of three individual workers. The case prevailed in the Superior Court, Court of Appeal and Supreme Court. As a result of the Supreme Court's ruling, the Commissioner's practice has changed statewide and work-

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Ground-breaking Sexual Harassment Case On Behalf of Migrant Farm Worker

WERC joined forces with California Rural Legal Assistance to represent a migrant farm worker who suffered egregious sexual harassment by her supervisor while working for a major California grower in the Salinas Valley. After receiving the worker's charge of discrimination, the U.S. Equal Employment Opportunity Commission ("EEOC") investigated the matter and found evidence of class-wide abuses by the grower. Professors Seville and Ryu, and Graduate Fellow Edna Garcia, have been participating in intensive settlement negotiations before the EEOC as part of an effort to obtain relief for the clinic's

client, as well as to assist the EEOC in obtaining broader systemic relief for similarly situated workers.

"Migrant farm workers are among the most disenfranchised employees," said Professor Seville. "They have limited knowledge of their legal rights, and limited ability to seek redress. For this reason, they are easy targets for illegal behavior by unscrupulous supervisors. This case is an opportunity to show the agricultural industry that failing to pay attention to the rights of migrant workers is risky, and expensive, business."

Class Action Wage Discrimination Case Settles Against Beverages & More

In October 1998, U.S. District Judge Claudia Wilken approved a settlement in *Stiltz v. Beverages & More*, a suit brought by WERC and the Employment Law Center.

Plaintiffs Cynthia Stiltz and Laura Bryant were entry level retail clerks who believed they were paid less than men with similar experience and job duties. They contacted the WERC advice hotline, and clinic students prepared the charge filed with the Equal Employment Opportunities Commission (EEOC). The EEOC investigated the

case but could not resolve the dispute, and a class action lawsuit was then filed alleging violations of the Equal Pay Act and Title VII of the Civil Rights Act of 1964.

After lengthy negotiations, the case was resolved with broad based injunctive relief that changes the salary setting system at all Beverages & More stores, to ensure pay equity between men and women. The settlement also provides for almost \$60,000 in damages to be divided among sixty-three women.

Cuadra v. Millan Case

Continued from Page 1

ers throughout California are now receiving the full amount of wages owed.

Clinic students participated in many different aspects of the case. An outstanding contribution of the students was research in support of a novel motion. The motion requested that the Superior Court judge not stay his order pending appeal, so that the Commissioner would be required to change its unlawful practice while the appeal was pursued. The students' work formed the basis of a successful motion before Superior Court Judge William Cahill that benefited thousands of workers during the two year period between the Superior Court's 1996 ruling and the Supreme Court's 1998 decision.

Seville Receives City Award

In August 1998, WERC Director Marci Seville was recognized by San Francisco's Commission on the Status of Women for her work in the clinic. Professor Seville was the recipient of the "Women Who Make A Difference" award. The Commission on the Status of Women is mandated to work closely with departments and elected officials to develop and implement policies and programs that address the specific needs of women and girls.

Rare Victory Over Workers' Environmental Hazards

Most advocates of environmental justice focus upon what happens outside the factory walls in the community. Rarely are workplace activities related to community pollution battles. However, ELJC brought the community and workplace issues into one case when it represented Ujima Security Council, a community organization in East Palo Alto. Ujima asked ELJC to represent it in a Cal-OSHA proceeding involving health safety violations arising out of an alleged injury to a worker at the Romic Environmental Technologies Corporation.

Romic recycles toxic chemicals in East Palo Alto and sends and receives chemicals at a railroad yard in Redwood City. Ujima was concerned about Romic's activities because of past pollution problems at the site. The Environmental Protection Agency, through a consent decree, had required Romic to clean up a plume of pollution resulting from

past use of solvent in the late eighties and early nineties.

Further, Romic was interested in expanding its site and activities. Ujima had concerns whether the company could competently handle toxic chemicals in an environmentally sound manner. These concerns were fueled by an accident at Romic that Ujima believed symbolized Romic's inability to protect people from toxic chemicals.

In 1995 Rodrigo Cruz, a Romic employee, was given the job of cleaning out railroad cars so that additional chemicals could be loaded. When his air supply failed, Rodrigo was pulled out of the car and lost consciousness. He later claimed he suffered brain damage as a result of the incident.

Cal-OSHA was called to the scene and issued numerous citations, including two willful and serious citations, the most severe Cal-OSHA can issue. However, the

agency seemed close to settling by dropping these citations and considering limiting penalties to less than \$10,000. The Santa Clara Committee for Occupational Safety and Health, another community organization, and Ujima convinced the agency to reject settlement, with Ujima intervening. Romic appealed the citations setting up a regulatory proceeding and pending trial.

ELJC agreed to take the case and together with Cal-OSHA's prosecutor and Cruz's attorney proceeded to conduct a number of depositions and other forms of discovery. ELJC clinicians conducted depositions, prepared subpoenas and wrote motions to compel discovery.

After more than three years, Romic dropped its challenge to the citations before trial this summer. Romic agreed to accept the willful serious and other citations and pay \$100,000 in fines.

Clinic Updates

WERC Gains Experienced Fellow

Edna Garcia began her graduate fellowship in April 1998. She has successfully represented numerous clients before the Unemployment Insurance Appeals Board and the State Labor Commissioner's Office. She supervises the student clinicians and assists Professors Seville and Ryu with different aspects of litigation. "The skills I have learned in the clinic have been invaluable. I leave the clinic each day with a sense of accomplishment and the feeling that I have made a difference. I plan on continuing to work for equality and justice for employees."

Edna was a WERC clinician in spring 1996 and continued as a clinical student worker in Summer 1997. She graduated in December 1997 and passed the bar exam in February.

Fua Transfers To Clinics

Imogen Fua, the new clinical program assistant, started in June 1998 and has already immersed herself in much of the clinic work. Imogen comes to the clinics with existing knowledge of the law school, where she was support staff for the Faculty Center and the Dean's Office for two years.

Imogen graduated from Mills College with a BA in Women's Studies and Psychology. She is currently a part-time student pursuing an MA in International Relations.

Victories in Air, Water and Land Use

ELJC clinicians, under the supervision of attorneys Alan Ramo and Anne Eng, have achieved significant achievements in a number of communities involving air, water pollution and land use issues.

ELJC has for a number of years represented West Oakland Neighbors (WON), a community group in a low-income, predominantly African-American community in Oakland. This community has been threatened by Port of Oakland plans to expand its seaport which would result in a doubling of truck trips to and from the Port and an increase in emissions from on-site Port equipment.

ELJC on behalf of WON challenged the initial programmatic Environmental Impact Report (EIR) developed by the Port. In a consent decree filed last spring, the Port agreed to redo its air quality and traffic mitigation analysis and adopt all feasible mitigation. The Port also provided funds so WON could hire its own environmental consultant to participate in this new analysis. The analysis will be combined with the project-specific EIR for the new berths for the Seaport. The draft is due in this month.

Meanwhile, ELJC worked with the San Francisco BayKeeper organization to address sloppy ship repair activities at the dry dock at the old Hunters Point Shipyard. Astoria Metals, a company occupying the shipyard, had placed debris on its piers threatening to discharge various pollutants directly into the bay. This summer ELJC negotiated a consent decree requiring new

pollution prevention modifications to the work area; additional payments to a mitigation fund; and new obligations of the landlord, the US Navy, to assure that pollution permits were enforced.

ELJC has also teamed up with Communities for a Better Environment (CBE) and the Center for Race Poverty and the Environment to prosecute a Clean Air Act case against Chevron, Ultramar and other Southern California oil companies operating marine terminals. CBE alleges that these companies have not installed vapor recovery equipment at the terminals where they load and unload petroleum products (a bigger version of vapor recovery on gas pumps at local gas stations), violating the federal Clean Air Act. The oil companies deny their violation of the law.

After months of litigation, CBE's case against Chevron is furthest along, surviving a motion to dismiss. EPA has now also joined the fray, issuing an administrative notice of violation against Chevron. The case is still under litigation.

Call for Alumni News

Write to us at: 536 Mission Street, San Francisco, CA 94105; or e-mail us at: mseville@ggu.edu (WERC) or aramo@ggu.edu (ELJC). We'll print your news in the next issue of *Clinic Currents*. See Page 4 for the Alumni Corner.

New Advanced Employment Seminar Is Launched

This fall, for the first time, Professors Seville and Ryu have been teaching an Advanced Seminar in Employment and Labor Law. Half of the twelve students are also WERC clinicians, while many of the other students have practiced in the clinic in the past.

The Advanced Seminar covers many issues of current concern, such as the Supreme Court's decisions last term in the areas of sexual harassment, same-sex harassment, and HIV disability status, and the increasingly complex overlap between labor and employment law, as well as between disability, worker's compensation and family leave laws.

Professor Seville describes the seminar's curriculum as riding the cutting-edge: "We are constantly supplementing the reader

with new case developments because the issues covered in the seminar are the issues being battled out in the courts today." The seminar also focuses on practice-oriented topics, such as summary judgment motions in employment cases, and the development of theories and evidence for proving damages.

Professors Seville and Ryu use simulated exercises to help students obtain a deeper understanding of the subjects; and how they arise in litigation. For example, in one class, students were assigned to act as plaintiff's or defense counsel to conduct depositions, and use the elicited testimony to argue in support of or against a motion for summary judgment under the relevant substantive and procedural standards. In another class, students presented oral ar-

guments on complex fact patterns regarding whether claims were subject to mandatory arbitration. The students are also each expected to facilitate discussion on an issue of personal interest related to the seminar's subject matter.

Professor Ryu is impressed with the results of the interactive seminar: "During the lunch hour before a simulated exercise class, the clinic conference table is a beehive of activity, with students waving sandwiches in hot debate. The exercises engage them and help them stretch in a way that traditional class preparation does not. Every time a student makes a mock argument, or asks a mock deposition question in class, it will make it that less intimidating to rise to the occasion when faced with the real thing. The classroom becomes a safe place to try on their roles as future advocates."

Clinic Alumni Corner

WERC Ann Blessing, Graduate Law Fellow in 1993-94, is working with McGwinn, Hillsman & Palefsky, representing plaintiffs in employment litigation.

Whitney Gabriel, 1994-95 Fellow, first joined Siegel & Lewitter, an East Bay plaintiff's employment and labor law firm and then Bob Atkins, a Federal EEO firm.

Ann Maley, clinic student in 1993-94 and Fellow in 1995-96, is an associate at Siegel & Lewitter in Oakland.

Erin Day, 1996-97 Fellow, is an associate at Hoffman and Lazear, an Oakland employment law firm.

Michelle Smith, clinic student in 1995, is an attorney at the National Labor Relations Board. Her article, "Potential Solutions to the Problem of Pregnancy Discrimination and Maquiladoras Operated by US Employers in Mexico," was published in the *Berkeley Women's Law Journal*, 13 B.W.L.J. 195 (1998).

Anne Yen, 1997 Fellow, and **Cynthia Sandoval**, former clinician, are associates at

the Law Offices of Lucius Cooper, an East Bay plaintiffs' employment law office.

Olivia Wein, former clinician, is a fellow at Consumers Union in Washington, D.C. She and her husband, Harrison, recently became the proud parents of a beautiful baby girl, Emily.

Amber Bell and **Kevin Nolt**, former clinicians, are obtaining their LL.M. degrees in Labor and Employment law from Georgetown University.

Laura Cavanaugh, former clinician, and **Susana Pilate**, current clinician, worked as interns at the Equal Employment Opportunities Commission.

Lilly Ko, former clinician, worked at the State Labor Commissioner's office this summer and is currently working for the National Employment Lawyers Association.

Suzanne Fischer, current clinician, was a summer intern at the U.S. Department of Labor

ELJC **Vicki Clark**, 1996 Graduate Law

Fellow, now has her dream job as a staff attorney at the Environmental Defense Center. She is currently working on land use and CEQA cases. She is also in the process of settling a Prop 65 against local landlord for failure to warn about the presence of lead-based paint. In addition, she is working on an implied dedication case seeking an easement over private property for historical access to the beach.

Jennifer Dhillon, 1997 Fellow, is a solo practitioner specializing in small business law in San Francisco.

Kimberly Kluff, 1997 clinician, is a staff attorney at the Indian Legal Services.

Layne Friedrich, 1997 clinician, works with Lawyers for Clean Water in San Francisco.

Daniel L. Orseck, 1996 clinician, is a Risk Analyst with American International Group (AIG) Environmental.

Traci Fujita Villarosa, 1995 clinician, is the Deputy Corporation Counsel at the Department of Corporation Counsel, Maui.

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