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Clinics

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# LAW CLINIC CURRENTS

*A Publication of the Environmental Law and Justice Clinic  
and the Women's Employment Rights Clinic · Spring 1999*

*Golden Gate University School of Law*

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## WERC Teams Up With CRLA In Victory For Migrant Farm Worker

In another successful partnership with California Rural Legal Assistance, (co-counsel with WERC before the California Supreme Court in *Cuadra v. Millan*), WERC and CRLA represented Blanca Alfaro in a ground-breaking sexual harassment case which resulted in a comprehensive Consent Decree and a total of \$1.855 million in damages for Ms. Alfaro and a class of other applicants and employees. Ms. Alfaro, a migrant farm worker, alleged that she was forced to submit to sexual relations with her supervisor in order to obtain employment at Tanimura & Antle, a major grower in California's Salinas Valley. She also alleged that the grower fired her after she complained about the incidents of sexual harassment.

Ms. Alfaro filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC), which investigated the matter and determined that there was "reasonable cause to believe that [Tanimura & Antle] violated Title VII," not just with respect to Ms. Alfaro, but to a whole class of similarly situated class members. Following the federal agency's determination, Clinic students analyzed case documents in both English and Spanish and researched procedural and substantive law issues. Professors Seville and Ryu, and

Graduate Fellow Edna Garcia, along with CRLA representatives, participated in intensive settlement negotiations before the EEOC as part of an effort to obtain relief for Ms. Alfaro, as well as to assist the EEOC in obtaining broader systemic relief.

These efforts came to fruition on February 8th, 1999 when U.S District Court Judge James Ware approved a Consent Decree with classwide injunctive and monetary relief, which had been agreed upon and submitted by the parties. The monetary relief included a confidential settlement for Ms. Alfaro and a claims fund for class members.

"Blanca Alfaro's courageous stand, as an immigrant, as a monolingual Spanish speaker, and as a hardworking single mother, has helped focus attention on migrant farm workers, who are among the most vulnerable employees in the country," said Professor Ryu.

"By refusing to remain silent, Blanca paved the way for other workers in the agricultural industry to come forward. She also sent a strong message to growers that they are not exempt from the obligation to provide a decent workplace free of discrimination and harassment."

## EPA Awards ELJC on Earth Day

ELJC was one of two San Francisco organizations honored by the US Environmental Protection Agency on Earth Day, April 22nd.

Professors Alan Ramo and Anne Eng were honored with a plaque from Felicia Marcus, the US Environmental Protection Agency Regional Administrator. Along with 22 other California organizations and individuals, ELJC was praised for its efforts to protect and preserve the environment in 1998.

The honorees were recognized as having applied creativity, teamwork and leadership in addressing many of California's most pressing and complex environmental prob-

lems. "Thanks to the efforts of these individuals, our air, water and land will be cleaner and safer for generations to come," said Marcus.

ELJC was congratulated on their instrumental work in helping the Southeast Alliance for Environmental Justice to clean up the Bayview-Hunters Point area, its support for assessment of the disposal and reuse of the Hunters Point Shipyard, its advocacy for accurate accounting of air pollution impacts on local residents and providing legal and technical support for the neighbors of the bay Area Drum State Superfund Site.



*WERC students Maritza Leon and Beth Wolf at work.*

## Join the Clinics

Students interested in hands-on experience and developing their practical legal skills are invited to apply for fall enrollment in the Environmental Law and Justice Clinic or the Women's Employment Rights Clinic. Clinic students handle real cases under the supervision of law faculty. Clinic students represent low-income workers in various types of employment disputes (WERC) or community organizations and public interest groups on a wide range of environmental and social justice matters (ELJC).

WERC is not limited to women students. Men are encouraged to apply. Students can enroll for 4-6 units. The Clinic is open to second and third year students who have successfully completed all first-year courses and Evidence. Applicants should submit a cover letter and resume to Professors Marci Seville and Donna Ryu. Students will be interviewed in May or June.

ELJC is offered for 3-6 units. The prerequisites are Evidence (which can be taken concurrently) and an environmental law course (or permission of the professor). Applicants should submit a cover letter and resume to Professors Alan Ramo and Anne Eng. Students will be interviewed in May or June.

WERC Students have represented clients in areas including unpaid wages, unemploy-

*Continued on Page 4*

## ELJC Updates

**Alviso** The Zanker Road Recycling Site has obtained all of its expansion permits, triggering the settlement agreement between the local community group and the owners of the site. Zanker has now paid \$200,000 for a community center and made its first payments to a community college for job training and a local elementary school for educational activities. In addition, all of the provisions requiring strict adherence to environmental standards are in effect. Zanker also submitted a plan to the Bay Area Air Quality Management District bringing its PM10 emissions below the agency's significance threshold as required in the settlement agreement.

**PG&E** The PUC has finally approved the sale of the Potrero facility to Southern Energy Company. Southern Energy indicated it intended to replace Potrero's outdated power units with two new 250 MW generators. The result should allow Hunters Point, still in PG&E hands, to be shut down by 2001.

## Oakland Port adopts \$9 Million Strategy



*Professors Anne Eng and Alan Ramo accept award on Earth Day.*

On Tuesday, April 20, the year-long effort by ELJC and the West Oakland Neighborhood community organization (WON) paid off with the Port adopting a \$9 million air quality mitigation strategy. "I believe it is the most advanced mobile source mitigation strategy ever adopted by a developer," said Dr. Phyllis Fox, WON's consultant. It embodies new engines or combustion controls

for cargo equipment, a model tug retrofit, new engines or retrofits for AC transit buses, and most important for WON, \$1.5 million for new truck engines or retrofits for trucks located and travelling through the community of West Oakland. The Port will also fund studies of two local stationary sources of pollution to determine if it is feasible to reduce their emissions.

More than one year ago, the Port of Oakland decided to proceed with its Vision 2000 expansion project, taking over the old Navy Supply Center and building new berths and an intermodal railroad terminal to serve the Port. For the community of West Oakland, a predominantly African-American community that is also the poorest in Oakland, the expansion gave a hint of economic benefits and the assurance of worsening air pollution. Among other problems, expansion meant a doubling of truck trips into the Port, resulting in the emissions of more smog precursors and diesel carcinogens into the West Oakland community.

*Continued on Page 4*

## WERC Proposes Legislative Changes Under Governor Davis

With the first California Democratic governor in office since the early 1980's, WERC has become actively involved in legislative reform on several fronts. Working with a coalition of other public interest legal organizations, we have drafted legislative amendments to the California Family Rights Act, the Unemployment Insurance Code, and the Labor Code.

**SB 1149.** The California Family Rights Act (CFRA) is the state law providing leave rights, similar to the federal Family and Medical Leave Act. Through WERC's advice and counseling hotline, we have identified several problems with the current legislation, which the proposed amendments hope to correct. Most often, we find that workers are not covered by CFRA because the employer has fewer than the required 50 employees. We also often see situations where the workers and the employer's management personnel have little or no knowledge of employee rights under CFRA. SB 1149, sponsored by Senator Speier, would amend the CFRA to (1) expand coverage from employers with 50 or more employees to those with 20 or more employees and (2) require training of employer personnel and the distribution of information to employees on their

entitlements under the law.

**SB 546** is an omnibus unemployment insurance reform bill sponsored by Senator Solis. One part of the bill seeks to codify a favorable ruling in a case litigated by the Clinic in San Francisco Superior Court. WERC students and faculty represented a group of Spanish speaking telemarketers at a division of Sprint called La Conexion Familiar (LCF). Sprint/LCF was abruptly shut down just prior to a union election, without the 60 days notice of facility closure required under a federal law known as the "WARN Act" (Worker Renotification Adjustment and Training Act). WERC's clients were denied unemployment benefits because they had received lump sum payments from the employer to offset any civil liability for violation of the WARN Act's advance notice requirements. Although the Superior Court ruled that the workers should receive their unemployment benefits, the decision is not precedential and the California Unemployment Insurance Appeals Board still takes the position that receipt of WARN payments renders workers ineligible for unemployment benefits. The proposed legislation states that WARN Act payments are not "wages" within the meaning of the Unemployment



*Professors Donna Ryu and Marci Seville pose for the camera.*

Insurance Code and therefore do not disqualify a worker from receiving unemployment benefits, along with the lump sum employer payment. Student Beth Wolf prepared the background materials on the Sprint/LCF case that convinced the State Federation of Labor to include this amendment in the omnibus unemployment reform bill.

**AB 633.** WERC has been actively involved in strategy sessions with the Asian  
*Continued on Page 4*

## Client Wins \$26,000 in Unpaid Wages

Susana Pilate and Dana Lofgreen, with the assistance of Graduate Fellow Edna Garcia and Director Marci Seville, won over \$26,000 in unpaid wages for a clinic client. The client originally called WERC's advice and counsel hotline for assistance in collecting unpaid vacation from his former employer. After meeting with the client, WERC determined that he was also owed over \$20,000 in unpaid overtime wages. The employer took the position that our client was not entitled to overtime pay because he was a salaried employee in an administrative, professional or managerial position. Students and faculty studied the state overtime exemption

laws and applied them to the client's day-to-day job duties. They determined that although the client was paid on a salary basis, the majority of his work was non-managerial, thus making him a non-exempt employee under the overtime exemption laws. After filing a claim with the Labor Commissioner's office, the Clinic spent extensive time preparing for the hearing, including witness preparation. In the end, Susana and Dana did an excellent job representing the client against his employer who was represented by an attorney from Littler Mendelson.

## *Clinic Work on Sexual Harassment, Pregnancy Discrimination, and Family and Medical Leave*

In the past year WERC has had increasing numbers of calls about sexual harassment, pregnancy discrimination, and family and medical leave issues. Students are working on the following cases:

- a hostile work environment claim by an older woman who was subjected to physical and verbal harassment by her manager throughout her 20 years of employment at a retail store.
- a sexual harassment claim by a teenager who worked after school at a fast food restaurant.
- a sexual harassment claim by a woman who was shown pornographic drawings and

subjected to repeated sexual comments by a company manager.

- a pregnancy discrimination claim by a worker fired for taking time off due to morning sickness.
- a claim for violation of the California Family Rights Act by an employee who was denied reinstatement to her prior position when she returned to work after having her baby.
- a claim for violation of pregnancy disability discrimination laws and the California Family Rights Act by a woman who was terminated from her 6 year position as a hotel housekeeper while on an approved leave of absence.

## More Victories for WERC

In April, student Corper James represented a Spanish speaking woman who was denied unemployment insurance because her employer terminated her for supposedly fighting with a co-worker. Corper assisted the client in appealing the decision and spent several days preparing her for the administrative hearing. As a result of Corper's thorough preparation, the Administrative Law Judge held that the client was fired for "reasons other than misconduct" and was therefore eligible for unemployment benefits.

Last semester, student Suzanne Fischer represented a woman who worked as an auto delivery driver, who allegedly had been fired for getting into numerous accidents and causing loss to her employer. As a result, she was denied unemployment benefits. Suzanne successfully represented the client at her unemployment hearing. The employer appealed the decision, and the California Unemployment Insurance Appeals Board recently affirmed the decision of the Administrative Law Judge awarding the benefits.

## Upcoming ELJC Events

An informal "wine and cheese" gathering of international environmental attorneys and public interest advocates will take place on June 1, 1999, 3:00-5:00p.m. Room TBA. Martin Wagner of Earthjustice Defense Fund and other advocates will share their perspectives and discuss strategies for promoting human rights and international environmental laws.

The first annual trivial pursuit fundraising event will be held in early October at the Commonwealth Club in San Francisco. This event will also mark ELJC's fifth-year anniversary. Look for upcoming announcements and come celebrate!

## Title VI Complaint Against DTSC

In January 1999, ELJC filed an administrative complaint with the federal government against the Department of Toxic Substances Control (DTSC), pursuant to Title VI of the Civil Rights Act. ELJC filed this Title VI complaint to challenge DTSC's approval of an inadequate cleanup plan which will cause disproportionately impacts and exacerbate environmental pollution problems at Midway Village, a public housing complex located in Daly City, California. Midway Village was built on contaminated land and is next to the PG&E Martin Substation, a state "Superfund" site. The low-income tenants of Midway Village have been affected by severe health problems and burdened by DTSC's failure to address the toxic hazards beneath and around their homes. In a simi-

lar case, ELJC is representing Chester Street residents in West Oakland in their fight against DTSC and the California Department of Transportation (Caltrans) for inadequate cleanup efforts relating to the Cypress Freeway Reconstruction project. When Cal Trans was constructing the new Cypress Freeway, it discovered a vinyl chloride contamination under the Freeway site. Instead of addressing this toxic problem, it left the subsurface contamination in place. DTSC approved the Cal Trans' inadequate remedial workplan and these state agencies have continued to ignore the toxic hazards adjacent to the Cypress site. ELJC agreed to take over the Title VI representation of the Chester Street residents last year. The parties are now exploring mediation.

# Alumni Corner



*WERC students Corper James and Kristina Hillman discuss case strategy for upcoming trial.*

Students are moving on to exciting job placements for summer and fall.

**Juan Araneda** will be a law clerk at the Wells Fargo litigation department.

**Alan Bennett** will be doing asylum and immigration work at the Lawyers Committee for Civil Rights.

**Emile Davis** will be at the Employment Law Center this summer working on disability discrimination cases.

**Teri Healy** is joining the central staff at the Ninth Circuit Court of Appeals as a summer law student.

**Corper James** will work in the legal department of the Oakland Raiders.

**Vanessa Lim** will be working with

Communities for a Better Environment.

**Dana Lofgreen** will spend this summer at the National Employment Lawyers Association (NELA) and will be attending the annual NELA conference in New Orleans in June. In the fall she will be working on wage and hour cases at the California Division of Labor Standards Enforcement.

**Beth Wolf** will be an intern this summer at the Equal Employment Opportunities Commission and next fall at the Employment Law Center.

**Kristina Hillman, Alan Bennett and Beth Wolf** will continue to work in the clinic during the summer, handling case intakes and ongoing cases.

## More About the Clinics

*From Page 1*

ment insurance appeals, family and medical leave, and many types of discrimination (sex, race, sexual harassment, disability, pregnancy, and national/language discrimination). Students assist many individual clients during the semester and may also have the opportunity to work as a team on complex litigation.

ELJC students will represent a community group concerned with several major pollution sources in the Bayview-Hunters Point community of San Francisco, residents in addressing pollution from the Port of Oakland's marine facilities, low-income residents in Daly City addressing toxic contamination at a public housing complex and other matters.

## Legislative Changes

*From Page 2*

Law Caucus, Equal Rights Advocates, Sweatshop Watch and other state-wide community groups to amend parts of the Labor Code to provide more protections for low wage workers. AB 633, also known as the "Omnibus Underground Economy Bill," is sponsored by Assemblymember Darrell Steinberg. The bill would increase damages payable by employers for failure to pay wages after a final administrative or court decision; extend from 30 days to one year the time limit for workers to file administrative complaints of retaliation for asserting rights under the Labor Code; and expand

civil liability for violations of labor laws to include garment manufacturers and retailers who sell a garment with a label they own in whole or in part.

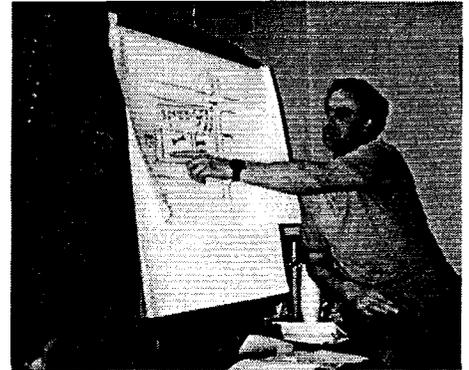
## West Oakland

*From Page 2*

In 1997 WON filed a federal lawsuit under the federal Clean Air Act, the National Environmental Policy Act and the California Environmental Quality Act challenging the failure of the Port to mitigate its air quality impacts. The Port's position had been that since mitigation could not feasibly eliminate pollution, there was no obligation to do any mitigation. WON also filed an administrative civil rights complaint under Title VI of the Civil Rights Act arguing that the Port could have conducted its expansion in a less discriminatory manner by adopting all feasible mitigation and addressing related social and economic problems.

The Port of Oakland quickly agreed to settle the lawsuit with a negotiated consent decree issued ultimately by Federal Judge Susan Illston. The consent decree required among other things for the Port to conduct a new analysis of air quality mitigation, pay for WON to have its own consultant review the analysis and for the Port to engage in a meet and confer process with WON. WON helped design the protocol for the new air quality analysis.

The Port agreed to perform this analysis along with its review of the core portion of Vision 2000 plan, the creation of new Berths,



*ELJC student Joe Como speaking at Bay Area Drum meetings in Hunters Point.*

where shippers would bring in their cargo for transport by truck and rail to the continental U.S. The analysis proceeded with the Port to bring in a new set of consultants.

Significant air pollution will still remain even with the reductions accomplished through this program. In part, the remaining emissions are due to ships coming into the Port. These ships can only be regulated by the US Environmental Protection Agency which is investigating the issue. Trucks will also be subject to increasing regulation by the State Air Resources Board as part of the state's initiative on diesel engines.

The Port will also continue to address the problems of West Oakland. It will seek matching grants to further its air pollution program. And it also promises a community social investment program which WON hopes will address job, education and health care issues.