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Clinic & Co-Counsel Win Case for Residents In Town Made Famous by Erin Brockovich

By Jill Goetz

A group of residents in Hinkley, the rural California town Erin Brockovich made famous in a landmark case against a utility for contaminating the local water supply, has won another environmental case—this one against the county, for its approval of a proposed open-air sewage sludge compost facility. The residents were represented by Golden Gate’s Environmental Law and Justice Clinic (ELJC) and the Center on Race, Poverty and the Environment (CRPE).

In the lawsuit, HelpHinkley.org and the Center for Biological Diversity had argued that the proposed Hawes Composting Facility Project, to be located near the former Hawes Airport (about 8 miles west and upwind of Hinkley), posed potential environmental risks because it would ferment human sewage sludge and other waste products in the open air. The groups charged that San Bernardino County failed to adequately consider mitigation measures—in particular, enclosing the proposed facility—that would reduce potential environmental impacts before it approved the Environmental Impact Report by Nursery Products LLC, the company proposing the facility.

San Bernardino County Superior Court Judge John Vander Feer agreed, ruling that the county must conduct further environmental review and consider the feasibility of enclosing the proposed facility.

“It is extremely gratifying to know that our concerns were validated and the judge sided with us,” says Norm Diaz of HelpHinkley.org. “We understand the need to compost and deal with waste responsibly. But our communities are not the producers of the majority of sewage sludge in Southern California that would go to this proposed facility. If we are forced to deal with other areas’ waste, we should be protected from any possible effects with the use of state-of-the-art technologies.”

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Fall Symposium Includes Address By Environmental Justice Leader
By Jill Goetz

In November, the School of Law hosted its annual Environmental Law and Policy Symposium. The daylong program, “Environmental Justice 25 Years after Warren County,” addressed the seminal protests against a proposed dump for PBCs in Warren County, North Carolina, in the early 1980s, during which the term “environmental racism” was first used, and examined how the environmental justice movement has evolved since then. The more than 100 attendees included representatives from local, state and federal governmental agencies; environmental law practitioners, professors and students; and environmental and community activists. The symposium was presented by the Golden Gate University Environmental Law Journal and the GGU Environmental Law and Justice Clinic. Cosponsors included the As You Sow Foundation; Environmental Law Section of the State Bar of California; Center on Race, Poverty and the Environment; Cornerstone Earth Group; Environmental Law Section of the Bar Association of San Francisco; and Fitzgerald, Abbott & Beardsley LLP.

The morning session of the symposium focused on the historical and social aspects of environmental racism and injustice; the afternoon session emphasized legal strategies for responding to environmental injustice. The Warren County protests and progress of the environmental justice movement were also the theme of GGU’s inaugural Environmental Law Journal published during the summer and including papers by some of the symposium’s panelists.

Delivering the keynote address was Dr. Robert Bullard of the Environmental Justice Resource Center at Clark Atlanta University in Atlanta, Georgia, and the author of the seminal book Dumping in Dixie: Race, Class, and Environmental Quality, which describes the protests in Warren County, site of North Carolina’s largest African-American population. Bullard has been one of the leading voices against environmental racism. In his talk at GGU, Bullard offered an in-depth overview of his and others’ research of how people of color have been harmed by toxics and delivered an impassioned cry for more to be done. When toxics are released in low-income, predominantly minority communities, “people don’t trust the government to respond actively and quickly,” he said. He gave a scathing critique of many governmental agencies’ responses to environmental crises in poor communities, from decades ago to the crisis in New Orleans following Hurricane Katrina, and called for fundamental institutional changes. “The EPA was never designed to be an Equal Protection Agency!” he said. “Even with the laws we have—the US Constitution, the Civil Rights Act—we have never lived up to these laws.”

Recurring themes throughout the day included the health problems many low-income communities experience due to toxics in their air, water, and soil; how the mainstream environmental movement and environmental justice organizations can work together; and how to bring environmental

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Focus the Nation: Professor Alan Ramo Discusses Climate Change Policy
By Monique Preoteasa

On January 31, Golden Gate University participated in “Focus the Nation,” a national teach-in on global warming. The “Focus the Nation” effort gathered over 1,900 universities, religious institutions, businesses, civic organizations and decision-makers to collaborate on global warming solutions. As part of the movement, the GGU Environmental Law Society hosted a lecture by Professor Alan Ramo titled “Global Warming and Renewable Energy.”

The lecture focused on the current levels of greenhouse gases and the future effects such levels will have on the global community. Using statistics compiled by the Intergovernmental Panel on Climate Change, Ramo pointed out that neither adaptation nor mitigation alone can avoid all climate change impacts. Rather, to stop global greenhouse gas emissions from growing, he said, countries must adopt at least 7 out of 14 possible policy and technological mechanisms. Some scientists have proposed the following for end-user efficiency and conservation promotion: (1) doubling the fuel economy of 2 billion cars; (2) driving 2 billion cars half as much; (3) cutting electricity use by 25 percent; (4) increasing wind power 40-fold to replace coal; (5) increasing wind power 80-fold to make hydrogen fuel for cars; (6) increasing solar power 700-fold; and (7) stopping all deforestation.

Professor Ramo noted that climate change issues are at the forefront of the upcoming presidential election and hailed the prominence this crucial topic is now receiving. He stressed that immediate action must be taken to

“Even with the laws we have—the US Constitution, the Civil Rights Act—we have never lived up to these laws.”

— Dr. Robert Bullard

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Taking Action to Change the Fate of the Planet: Professor Cliff Rechtschaffen Addresses Students and Faculty

By Alexandra Leumer

The Talk

Professor Rechtschaffen, who is currently on leave from GGU assisting the California attorney general (AG) on climate change issues, returned to campus in late February to speak to students and faculty about his work at the AG’s office. After summing up the scientific data on the current effects of global warming and the results that are likely to occur in the near future, Rechtschaffen sent a clear message: Be afraid. We face a daunting challenge, he said, to meet the goals agreed to by the world’s leaders in the Bali Action Plan of reducing emissions below 1990 levels by 25 to 40% by the year 2020.

Quoting the chair of the Intergovernmental Panel on Climate Change, Rechtschaffen said, “If there’s no action before 2012, that’s too late. What we do in the next two to three years will determine our future.” What makes this goal even more difficult to obtain is the lack of support from the federal government, he said.

The Action

Rechtschaffen noted several of the ways the attorney general’s office is addressing climate change. For example, the AG is defending California’s efforts to set more stringent vehicle emissions regulations under the Clean Air Act; using the Endangered Species Act to find creative ways to force the federal government to recognize the impacts of climate change; filing public nuisance actions in an attempt to obtain injunctions against pollution activities; and challenging inadequate corporate fuel economy standards set by the Department of Energy. The AG also has submitted approximately 30 comment letters, filed one lawsuit and negotiated four agreements (SB County General Plan, Conoco Phillips Refinery Expansion, LA Port Expansion, and Great Valley Energy) under the California Environmental Quality Act, which requires agencies to analyze and mitigate greenhouse gas impacts in projects and plans.

California’s innovative greenhouse gas motor vehicle regulations also are under attack. These are an extremely important tool for dealing with climate change, Rechtschaffen said, noting that California is especially vulnerable to the effects of global warming, such as increased smog, declining snowpack and receding coastlines. Under the Clean Air Act, California has the ability to set automobile emission standards more stringent than federal law, but must receive a waiver from the federal government to do so. The Bush Administration has denied California this opportunity. The AG is currently appealing the waiver denial, and in the state’s view, is almost guaranteed to win, either in court or by the new administration granting the waiver. (Senators John McCain, Barack Obama, and Hillary Clinton have all stated that they would grant the waiver if elected president.)

The Future

Professor Rechtschaffen closed his talk with a ray of hope. He lauded state agencies’ strategies to address climate change. He also praised the great deal of creativity being demonstrated on the local level, such as infill/higher density plans, green building requirements, solar financing districts, school congestion plans, and cool roofs and pavement technologies. Some of these techniques are being used in Bay Area cities, including San Francisco and Berkeley. While many of us eagerly await Professor Rechtschaffen’s return to full-time teaching, we also look forward to hearing about more innovative steps being taken by him and his colleagues at the AG’s office.

Alexandra Leumer is a second-year law student and member of the Environmental Law Society.
The 2007 Pacific Region Edition, soon to be published, is the second issue of the Golden Gate University Environmental Law Journal. Each Pacific Region Edition features scholarship addressing legal issues related to the Pacific Region—from the Rocky Mountains to the Indian and Arctic oceans, and around the Pacific Rim. The 2007 Pacific Region Edition emphasizes some of the strengths of Golden Gate University School of Law, its Environmental Law Program, and the Environmental Law Journal: practical advocacy by and for practitioners, based on local knowledge; and the importance of providing an urban perspective in environmental legal scholarship.

The upcoming Pacific Region Edition will feature three outside articles and one student piece.

In “Strategies for Implementing the Environmental Justice Vision,” GGU Professor Clifford Rechtschaffen, currently on leave to serve as special assistant to the attorney general at the California Department of Justice, notes that the environmental justice movement has achieved much in the last 25 years, but that “to a large extent, the transformative changes in environmental policy and decisionmaking envisioned by the movement have not yet occurred.” Looking forward, he notes that race still matters and argues that advocates should use the tools available to them to directly confront race, to “provide remedies for broader societal discrimination not addressed by other statutes,” and to “empower communities by identifying the problem of environmental injustice for what it is—a civil rights violation.”

Further, Rechtschaffen argues for the reform of existing laws—pollution controls, land-use controls, and environmental review—to “explicitly authorize and require consideration of cumulative impacts.” He articulates the necessity of a precautionary approach that prevents harmful activities whenever possible and searches for a safer alternative. In conclusion, he advocates for greater focus on “remedying disparities in environmental benefits, not just the burdens.”

In “The People Down the Hill: Parks Equity in San Francisco’s East Bay,” adjunct professor Paul Stanton Kibel traces the roots of the East Bay Regional Park District’s expansive hillside holdings. The article observes that the East Bay Regional Parks are nestled among the most valuable homes in Oakland and Berkeley, inaccessible by transit; in the lowlands, low-income, minority residents have limited access to parks and open space. Noting this physical disparity, Kibel presents a quandary—if the East Bay Regional Park District holds “too closely to a self-conception as an agency whose dominant mission is preservation of large-acreage wildlands,” then the district perpetuates “the current lack of equitable access to parkland in the East Bay.” Kibel, who in addition to teaching at GGU is director of the School of Law’s City Parks Project and of counsel to the environmental/land use practice group at Fitzgerald Abbott & Beardsley LLP, adapted this article from Access to Parkland: Environmental Justice at East Bay Parks, a 2007 report published by the City Parks Project in 2007.

“Highway to Health: Exploring Legal Avenues to Connecting General Plans and Public Health Standards in California,” by former Symposium Edition Editor E. Jacob Lubarsky (JD 07),
The third edition of the GGU Environmental Law Journal will be the summer 2008 Symposium Edition, titled “The West’s Aging Dams: Retain or Remove?” and will feature four outside articles and three student pieces.

Gerald H. Meral, in “Beyond and Beneath O’Shaughnessy Dam: Options to Restore Hetch Hetchy and Replace Water and Energy Supplies,” discusses the prospects for removing the O’Shaughnessy Dam on the Tuolumne River in Yosemite National Park’s Hetch Hetchy Valley. Meral is an environmental public policy expert and former deputy director of California’s Department of Water Resources. He currently serves on the National Wildlife Federation Board of Directors.

David Wegner and Robert Adler co-author “New Ideas for Old Dams: A Strategy for Developing Solutions for a Shrinking Colorado River,” which evaluates the Glen Canyon Dam and advocates for a basin-wide environmental impact statement for the Colorado River Basin. Wegner is former lead scientist for the Bureau of Reclamation’s Environmental Impact Studies of the Glen Canyon Dam, and Adler is an associate dean at the University of Utah S.J. Quinney College of Law.

“Tribal Advocacy for Elwha Dam’s Removal on Washington’s Olympic Peninsula” recommends the removal of the Elwha River Dam. The article presents dam removal from the vantage point of Native Americans, a group generally adversely impacted by dam construction. The author, Russell Busch, is an attorney for the Lower Elwha Indian Klallam Tribe.

Jonas Minton will contribute “The Old and the New: Evaluating Existing and Proposed Dams in California,” addressing climate change implications for California dams. Minton is a water policy advisor for the Planning and Conservation League and, like Meral, served as a former deputy director of California’s Department of Water Resources.

The student pieces include Philip Batchelder’s analysis of cremation industry contributions to mercury emissions, advocating for new burial practices as a way of combating such emissions; Laura Koch’s discussion of the uncertain environmental impacts of wave energy electricity development, recommending a state-led approach; and Alicia Pradas-Monné’s advocacy for long-line fishing regulations that could better protect endangered sea turtles.
A Win for the Small Town of Hinkley ...

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“Our victory in this case gives the county a second chance to protect the environment and the health and welfare of Hinkley residents by requiring this facility to use today’s technology, rather than last century’s,” adds Kassie Siegel, climate, air, and energy program director at the Center for Biological Diversity.

Participating attorneys in the case included Brent Plater, GGU visiting assistant professor and ELJC staff attorney who led the GGU team, and Caroline Farrell (JD 99) and Ingrid Brostrom of CRPE. “We are encouraged that the judge saw matters our way,” Brostrom says. “We hope that the county takes this opportunity to provide Hinkley residents with the same level of protection that is already required in other areas.”

Golden Gate law student clinicians who worked on the case included Alicia Pradas-Monné, who argued the case in court with Brostrom, and Shannon Chaney, Mike Flynn, Clarence Lee, Retta Diekmann, Courtney Hildreth, Laura Kent-Monning, Kim Chew (JD 07), and Greta Smit (JD 07).

“From evaluating the intake forms, to arguing the case in front of the judge, ELJC students exhibited the hard work, dedication, resolve, and good judgment you’d expect from the nation’s top lawyers,” Plater says. “We couldn’t be more proud.” Others who helped the GGU team included ELJC Graduate Fellow Ashling McAnaney (JD 07), professors Plater, Helen Kang, Myron Moskovitz and Alan Ramo, ELJC Staff Scientist Ken Kloc, and clinic assistant Fe Gonzalez.

McAnaney described her experience in working on the case as a “baptism by fire. I gained great experience as a result. It was my first attempt at brief writing and being part of a team during litigation. Ultimately, I witnessed firsthand how much effort and dedication and sacrifice (the reply was written over the Christmas and New Year’s holiday) was required of everyone: the professors, Alicia, our co-counsel at CRPE . . . in order to obtain this much-deserved result for our clients.”

“No one would help or listen until the legal teams at the Golden Gate University Environmental Law and Justice Clinic and the Center on Race, Poverty, and the Environment came to the aid of our community,” says HelpHinkley.org’s Diaz. “With their help we have forced San Bernardino County to go back and look at alternatives that will protect the local population.”

The fate of the facility is now unclear, ELJC’s Plater says. “The judge sent the county back to start its environmental review over again. The county could appeal, pull the plug on the project, or try and re-do its analysis over again and address the concerns raised by the judge. In the meantime, regulatory decisions are being made that might make this type of facility a thing of the past.”

Whatever the outcome, one environmental advocate who is especially proud of the Hinkley residents’ efforts is Erin Brockovich, whose fight to hold Pacific Gas & Electric Co. accountable for contaminating Hinkley’s drinking water resulted in one of the largest toxic tort injury settlements in US history and was depicted in the film Erin Brockovich. Now president of her own consulting company, Brockovich assisted Hinkley residents in organizing against the proposed Hawes Composting Facility Project.

“I think that Norman [Diaz] has done an excellent job, as well as the community,” Brockovich says. “I admire their tenacity, their community involvement, and standing up for what they believe in.”

Environmental Justice Symposium ...

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justice issues to the fore of political discourse and action.

Symposium panelists (from left) Sheila Foster, Caroline Farrell (JD 99), and Associate Professor Helen Kang hear introductions from symposium coordinator and GGU adjunct professor Paul Kibel.

Presenters focused on the personal as well as the political, such as when Whitney Dotson, founder of the North Richmond Shoreline Open Space Alliance shared fond memories of growing up as a boy on the shoreline and his efforts to save Breuner Marsh for future generations. The panelists included two GGU Law alumni, Amy Cohen (JD 01), director of the Bay Area Environmental Health Collaborative; and Caroline Farrell (JD 99), attorney with the Center on Race, Poverty and the Environment.

Jill Goetz is director of publications and media relations at the School of Law.
ELJC Alumni Are Making Their Marks in Private and Public Sectors: A Sampling of Where Former ELJC Clinicians Are Today

By Lucas Williams

Brian Acree: Law Offices of Brian Acree (JD 98)
Kerri Bandics: Attorney, US Dept. of Agriculture, Gen. Counsel’s Office (JD 05)
Holly Bressett: Environmental Law Fellow, Sierra Club (JD 07)
David Briley: Attorney and Memphis City Councilman (JD 95)
Robert Byrne: Deputy Attorney General, California Attorney General’s Office (LLM 02)
Michael Chappell: Attorney, Lawyers for Clean Water (JD 02)
Vicki Clark: Legal Director, Trustees for Alaska (JD 95)
Amy Cohen: Campaign Director, Bay Area Environmental Health Collaborative (JD 02)
Mike Costa: Attorney, Our Children’s Earth (JD 01)
Lynne Friedrich: Partner, Lawyers for Clean Water (JD 98)
Robin Gilb: California Dept. Forestry and Fire (LLM 04)
Jason Hasley: Paul Hanley & Harley LLP (JD 04)
Kristin Henry: Staff Attorney, Sierra Club (JD 02)
Clarissa Kearns: Attorney, Walker, Hamilton & White (JD 06)
Marcie Keever: Program Director, San Francisco Beautiful (JD 01)
Andee Leisy: Partner, Remy Thomas Moose & Manley (JD 00)
Roger Lin: Staff Attorney, Homeless Action Center (JD 06)
Jacob Lubarsky: Attorney, Wilson, Elser, Moskowitz (JD 07)
Ashling McAnaney: Graduate Fellow, Environmental Law and Justice Clinic (JD 07)
Anil Mehta: Counsels Office, US Dept. of Transportation (LLM 01)
Loulena Miles: Attorney, Adams Broadwell Joseph & Cardozo (JD 03)
Kathryn F. Nooney: Attorney Advisor, Environmental Protection Agency, SF (JD 98)
Pam Palitz: Executive Director, Calif. League for Environmental Enforcement Now (JD 06)
Sara Pasquinelli: Attorney, Fitzgerald, Abbott & Beardsley (JD 04)
Cembr Picconi: Associate, Remy, Thomas & Moore (JD 07)
Robin Salsburg: Senior Staff Attorney, Technical Assistance Legal Center (JD 02)
Lynne Saxton: Attorney, Lexington Law Group (JD 02)
Nicholas Sher: San Francisco Public Utilities Commission (JD 97)
Michelle Smith: Staff Attorney, Humboldt Baykeeper (JD 04)
Scott Smithline: Director, Legal & Regulatory Affairs, Californians against Waste (JD 00)
Megan Symonds: Law Offices of Santana and Monty (JD 06)
Claire Thorp: Regional Director, National Fish and Wildlife Foundation (JD 94)
Traci Fukita Villarosa: First Deputy Corporation Counsel, County of Maui (JD 96)
Steve Weiss: Attorney, Homeless Action Center (JD 98)
Spencer Young: Law Offices of Spencer Young (JD/MBA 04)

Lucas Williams is a third-year law student and president of the Environmental Law Society. He will receive the Faculty Award for Academic Excellence in Environmental Law at Commencement 2008.

Former Clinicians Achieve Settlement with Timber Company

In February, the Simpson Timber Company agreed to remove tons of sediment containing dioxin from a ditch that empties into Humboldt Bay—representing a major victory for two former clinicians with GGU’s Environmental Law and Justice Clinic.

Michelle Smith (JD 04), a staff attorney with Humboldt Baykeeper in Eureka, California, and Fred Evenson (JD 98), a solo practitioner in Eureka, served as co-counsel on the case, representing two organizations, Humboldt Baykeeper and Californians for Alternatives to Toxics. The groups sued the Simpson Timber Company in 2006, charging that despite the company’s claims that it had removed dioxin from a ditch adjacent to the site of a former plywood mill on Humboldt Bay that had used the dioxin-laced wood preservative pentachlorophenol in the 1960s and 1970s, sediment in the ditch still contained dioxin at extremely high levels.

Humboldt Bay was listed as “impaired” after dioxin was found in fish and oysters.

In 2007, the California Water Resources Control Board listed Humboldt Bay as “impaired” after dioxin was found in the tissues of local fish and oysters.

Under the settlement, the Simpson Timber Company must remove contaminated sediment in the ditch and dispose it at an approved site. The company must also install groundwater-monitoring wells and restore the ditch as a functioning wetland.

“This is precisely what Congress had in mind when they crafted provisions in environmental laws that allow citizens to take legal action to protect their communities and the environment,” Michelle Smith says.
In the fall, students in the School of Law’s Energy and the Environment class visited the Calpine Geothermal Facility near Calistoga, California. The class is taught by adjunct professor and GGU alumnus Robert Byrne (LLM 02), deputy attorney general in the California Department of Justice.