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With the People, Against Polluters

Golden Gate University

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With the People, Against Polluters

With its high-quality pro bono legal work, GGU Law's Environmental Law and Justice Clinic has improved air and water quality in communities throughout California and beyond.

It's a bright blue afternoon on San Francisco's southeastern waterfront and from eight stories aboveground we can see clear across the bay. A light breeze is blowing, the silence broken only by the occasional cry of a seagull gliding by.

Up here it's easy to forget that we are standing on the 120-foot boiler of the Potrero Generating Station, until five years ago the source of 30 percent of the city's power—and one of the oldest and dirtiest power plants in California. Every day, its pumps would suck up 226 millions of cubic feet of seawater to cool steam used to power turbines. Environmentalists said the process endangered aquatic life, while the plant's smokestack spewed air pollution, increasing the rates of asthmas and cancer and other health problems in nearby Bayview Hunters Point, Dogpatch and Potrero neighborhoods—working-class communities already impacted by exposure to environmental toxins.

The plant stopped emitting pollution in 2011, when it was shut down after a decade of efforts by community groups and the Golden Gate University Environmental Law and Justice Clinic (ELJC). The Clinic's

legal efforts included filing a lawsuit against the Potrero power plant owner Mirant (now NRG) to enforce the Clean Air Act. ELJC had already successfully helped close another power plant in Bayview Hunters Point in 2006. The Potrero station was the last fossil-fuel power plant in San Francisco.

ELJC Director Helen Kang described it as an environmental victory for residents in the neighborhood where the plant was located, but "an equally important social justice coup, as these polluting plants were inevitably located in the low-income communities of San Francisco, affecting a high percentage of non-white residents."

A Trailblazer in Environmental Justice

As one of the first law school clinics in the United States to prioritize environmental justice in its work, the ELJC has been widely recognized as a provider of high quality pro bono legal services to neighborhoods suffering the most from pollution, giving underrepresented communities a voice in the legal system. The Clinic offers free legal services to community groups, public interest

organizations, and residents who are working to promote environmental equity.

Founded in 1994 by Golden Gate University School of Law Professor Cliff Rechtschaffen and GGU Law Dean Emeritus and Professor Alan Ramo in consultation with leaders from San Francisco Bay Area communities, ELJC serves as a training ground for the next generation of social justice advocates, providing critical legal services to underserved communities throughout California and beyond.

"When the Clinic was established the founders had a meeting with community and environmental leaders to really figure out what our mission ought to be and how we could of service to communities—and that's really the first principle of environmental justice, to consult with people who are affected," says Kang.

The Potrero case illustrates how the ELJC works with community groups to win important victories for the public interest in pollution reduction and greater participation in government decisions. While community groups exhausted every other possible avenue, activated residents, and organized demonstrations, legal advocates,



Students and faculty of the ELJC at the Potrero Generating Station in San Francisco. The Clinic works with social justice and environmental groups. Its core causes include clean drinking water for low-income communities, clean energy for California, and air pollution reduction.

including the Clinic and the City Attorney's office, monitored the plant's compliance with environmental laws.

"Community groups are often left out from drafting solutions to the problems that affect them. The Clinic believes that the initiative for social change should come from the bottom-up, primarily from the communities themselves. From the beginning we consulted with the affected communities, establishing great relationships that continue to this day," says Kang.

The work is Kang's passion. A Yale College graduate, she received her JD in 1986 from the UC Berkeley School of Law. Before joining the Clinic in 2000, she was a trial lawyer with the US Department of Justice, where she handled numerous cases against industrial polluters, receiving a Special Achievement Award. In addition to overseeing the legal and administrative aspects of the Clinic, she also teaches environmental law to community groups, lawyers, and government agencies.

During Kang's time at the Clinic, ELJC has won important victories and made significant contributions in moving California towards a future of clean energy and cleaner air and

water, improving the quality of life in many communities suffering from the pollution of manufacturing and power plants.

Kang has expanded the geographic scope of the Clinic's work beyond the San Francisco Bay Area—and the subject matter of advocacy. Today the Clinic focuses on clean drinking water, in addition to its traditional air pollution reduction and civil rights work.

Protecting Communities from Pollutants

The closure of the two most polluting power plants in San Francisco was an important achievement for ELJC and its students. Still, with most of the city's industrial pollution sources located nearby and its proximity to major roadways and the Port of San Francisco, the Bayview Hunters Point community remains heavily polluted and has been designated a Community Air Risk Evaluation Area by the Bay Area Air Quality Air District.

The neighborhood has also borne the brunt of San Francisco's construction boom in recent years. The Port of San Francisco has developed an "eco-industrial park,"



(Top to bottom): Graduate Fellow Tovah Trimming, GGU Law Class of 2014; Khaleelah Ahmad, current rising 3L; Environmental Law and Justice Clinic Director Helen Kang; Joseph Baskin, who graduated in 2016.

Headshot photos by Charlotte Fiorito/Compass Photographers



Photo by Charlotte Fiorito/Compass Photographers

ELJC is staffed with two full-time professors who together have significant practice experience in environmental law, litigation, and policy work. The staff also includes two graduate law fellows, a part-time program assistant, and student clinicians who are certified under the California State Bar rules to perform lawyerly work.

Students and staff of the ELJC. BACK ROW: Jeramy Stone, Laurie Cross, Danielle Rathje, Khaleelah Ahmad, Tovah Trimming. FRONT ROW: Regina Feliciano, Priscilla "Ren" Vuong, Fe Gonzalez, Helen Kang, Linh-Phuong Ho. NOT PICTURED: Joseph Baskin, Christine Claveria, Nicholas Dahl, Andrew Graf, Elizabeth Marroquin, Phoebe Moshfegh, Collin McCarthy, Aaron Robles, Shireen Seif, Stephanie Smith.

where aggregate and concrete intended for recycling is brought into the port for processing. These activities generate significant amounts of airborne pollutants. The Clinic is working with community groups, including Clean Air Health Alliance and Greenaction for Health and Environmental Justice to address and investigate these and other sources of air pollution. Extensive student research has revealed that some of the polluters may be operating without a permit or processing more polluting materials than allowed. And more work will need to be done to resolve these problems.

Many ELJC victories make headline news. In 2014, the San Francisco's Planning Department approved, without proper notice to nearby communities, a plan to

dismantle by implosion Candlestick Park Stadium, the former home of the 49ers. Implosion would have sent a plume of dense, toxic dust clouds into the Bayview-Hunters Point, the predominantly African American community.

"For many groups, the Clinic is one of the few organizations that they can call for help, often with problems needing immediate assistance," says Kang. "So when the community heard rumors about an implosion, they came to us to prevent it."

Kang and her team, including law students Joseph Baskin, Kendra Tietjen, Whitney Wu-Chu, Francisco Martinez, and then graduate fellow Anthony Drew Graf (JD 14), used the Public Records Act to access documents proving that the city had indeed approved the implosion

plans—illegally. They mobilized community leaders and prepared to take the fight to court.

The Clinic's students met with the Planning Department, testified at hearings before city agencies, and wrote an op-ed for a local paper. In February 2015, the developer in charge of the demolition of the stadium finally agreed to abandon implosion, in favor of mechanical demolition.

"Without the diligent efforts of the Clinic's students and staff, the community would not have known about the impacts implosion could have on their health and the environment," said Graf, now an associate attorney at Thomas, Quinn & Krieger, LLP in San Francisco. "But without the hard work of the community, the Clinic would not have persuaded the government

agencies and the developer to abandon implosion in favor of the safer alternative. It is these types of collaborations that represent what it means to serve the community.”

Advocating for Safe Drinking Water

Drinking water safety became big news when the story of Flint, Michigan broke in 2015. Residents of Flint, a predominantly African-American community, had been drinking lead-contaminated water for more than a year before being told it was unsafe.

Closer to home, over 20 million Californians rely on contaminated water for their daily needs. Contaminated water poses serious public health concerns and forces entire communities, most of them already economically at a disadvantage, to either buy bottled water for their daily needs or pay to fund costly water treatment. These burdens are particularly significant in communities that are already vulnerable – those who struggle with poverty, existing health conditions, and exposure to other environmental toxins, and who lack access to health information or care.

The Clinic has been collaborating with diverse groups, including legal aid services, traditional environmental organizations, environmental justice organizations, and conservation groups to take on polluting industries.

One such case affects the Central Coast of California, home to the nation’s intensively farmed agricultural regions, such as Monterey County. Here irrigated agriculture is a multi-billion dollar industry—and the predominant cause of widespread and severe nitrate pollution linked to health problems. The Salinas Valley has problems so severe that, according to a state-mandated study, one in ten people living in the study area is

at risk of harmful exposure.

“In November 2013, the ELJC joined California Rural Legal Assistance and the Stanford Environmental Clinic and filed a case in the Sacramento County Superior Court seeking more stringent regulation of irrigated agriculture in the Central Coast region. We represented a diverse coalition of environmental justice, conservation, and fishing protection organizations as well as Ms. Antonia Manzo, a resident of a labor camp who has not been able to drink water from her tap for a decade because it was contaminated with agricultural waste,” said Graduate Fellow, Collin McCarthy, who recently joined the Clinic.

Over several semesters, ELJC students pored through tens of thousands of pages of the administrative record to write the court briefs with co-counsel. Working on this complex case, they experienced firsthand how collaboration, communication, and hard work would be required to succeed in law practice. In August 2015, relying on the research and briefs drafted by the students and staff, the court ordered government agencies in charge of regulating agricultural pollution to do a better job of reducing pesticide and nitrate pollution from 435,000 acres of farmland.

The State Board and agricultural industry groups have appealed the decision, and ELJC will continue its work to protect the victory and counsel other groups who are pushing for more stringent regulation to protect one of our most precious resources in this water-strapped state.

Toxic Waste Disposal and Civil Rights

Kettleman City is a small farming community in California’s San Joaquin Valley. Over 90 percent of its 1200 residents are Latino and

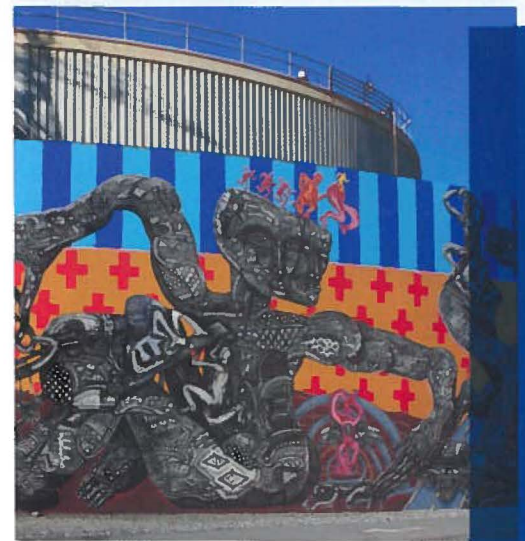


Photo by Niall David

TOP: A view of the Potrero Generating Station.

MIDDLE: Graffiti at the inoperative power plant.

BOTTOM: Director Helen Kang at the demolition of Candlestick Park.



View from the top of the Potrero Generating Station in San Francisco.

speaking only Spanish. In the 1980s, Kettleman City became the site of one of the country's largest toxic waste disposal facilities.

Since then, health and safety have been an ongoing concern for the community, the local organization 'People for Clean Air and Water' (El Pueblo para El Aire y Agua Limpio), and environmental groups such as Greenaction. Many communities suffering from pollution are also confronting civil rights violations. These groups have also been struggling to ensure that their civil rights of residents are protected.

Over this past year, the Clinic has been actively pursuing civil rights claims. "This work is both exciting to our students and critical to our clients who have long made the connection between civil rights and environmental justice," says Staff Attorney Nina Robertson, who has been leading this work.

The Clinic is currently representing its clients in mediation with the California Department of Toxic Substances Control over a 2014 permit that the agency issued for the expansion of the infamous toxic waste landfill.

Protecting the Integrity of Local and State Environmental Protection from Federal Preemption

ELJC has also led research and advocacy efforts to ensure that local and state governments can properly do their job to protect their citizenry. For example, plans are under way to increase the quantity of crude oil shipped by rail to California refineries. Citing the Interstate Commerce Commission Termination Act regulating rail transportation, rail companies and refineries are aggressively campaigning to bar state and local governments from evaluating the environmental impacts of crude and coal projects, arguing that federal law preempts—effectively invalidates—their authority to impose protective measures.

Local governments, hampered by lack of legal resources, are not always able to counter these arguments. "A careful look at the history and the language of the federal statute reveals that Congress meant only to centralize in the federal government the common carrier functions of the rail industry: its rates, train classifications, new routes, services, rail mergers and acquisitions, and complaints about carrier obligations,"

says Graduate Fellow, Tovah Trimming, who as a student wrote an article about the federal statute. "There is not a shred of evidence that Congress meant to undo laws like the California Environmental Quality Act that have protected communities," added Kang.

The Clinic is currently representing several clients on the preemption issue, with one case poised for argument before the California Supreme Court

Recognition for the ELJC

The David and Goliath quality of ELJC's work brings to mind the 2000 biographical film "Erin Brockovitch"—which celebrated the true story of an unemployed single mother who becomes a legal assistant and almost single-handedly brings down a California power company accused of polluting a city's water supply. In that spirit, the American Bar Association celebrated ELJC with its 2013 Dedication to Diversity and Justice Award for its achievements in significantly reducing pollution in numerous underrepresented communities living amidst manufacturing and power plants.

What's next for the Clinic? "Right now we are continuing to work with



our Bayview Hunters Point clients to identify sources of pollution and to try to figure out how to deal with that on a more systemic level. We will also continue to work to curb farm pollution,” says Kang.

For her students, the ELJC experience has been invaluable. Today, Holly Bender (JD 07) is a Sierra Club lawyer. “As a student at ELJC, I was handed my first Clean Air Act case in an effort to address pollution from a foundry in Berkeley,” she says. “The Clean Air Act is notoriously challenging, and most environmental attorneys avoid it for their entire careers. The Clinic’s professors didn’t just hand us the easy cases; they believed in our ability to do really tough work, and so, with their encouragement, I dove in, learned how the law could help our client, and unknowingly launched my career in air and energy law. I now speak at national industry conferences about advocacy and the Clean Air Act, and not a day goes by that I don’t draw from my background in air quality that began at the Clinic.”

For some graduates, ELJC is a launch pad for work in a different field. “Working directly with community groups and government agencies at the Environmental Law and Justice Clinic prepared

me for my internships at San Francisco Baykeeper [a nonprofit environmental advocacy organization that works to protect, preserve, and enhance the health of the ecosystems and communities that depend upon the San Francisco Bay] and the Center for Biological Diversity, and for my current position as a Deputy County Counsel,” says Cody Nesper (JD 13), Deputy County Counsel for Tuolumne County.

One of the challenges of this area of law is that the cases take a long time. Patience and persistence are key. “You have to be willing to be in it for the long haul and know that it might not be very exciting. It takes quite a bit of work to investigate cases when either government agencies or companies are not willingly going to part with unfavorable information. We work very hard to know all aspects and details of a case.

“You also have to be resilient, because some of these cases are very hard. Although it has not happened many times, sometimes we lose,” says Kang. “Losing a case is very difficult because we care very deeply about our clients. So when there is a setback it’s important to be resilient. You have to be in it for the long haul.”

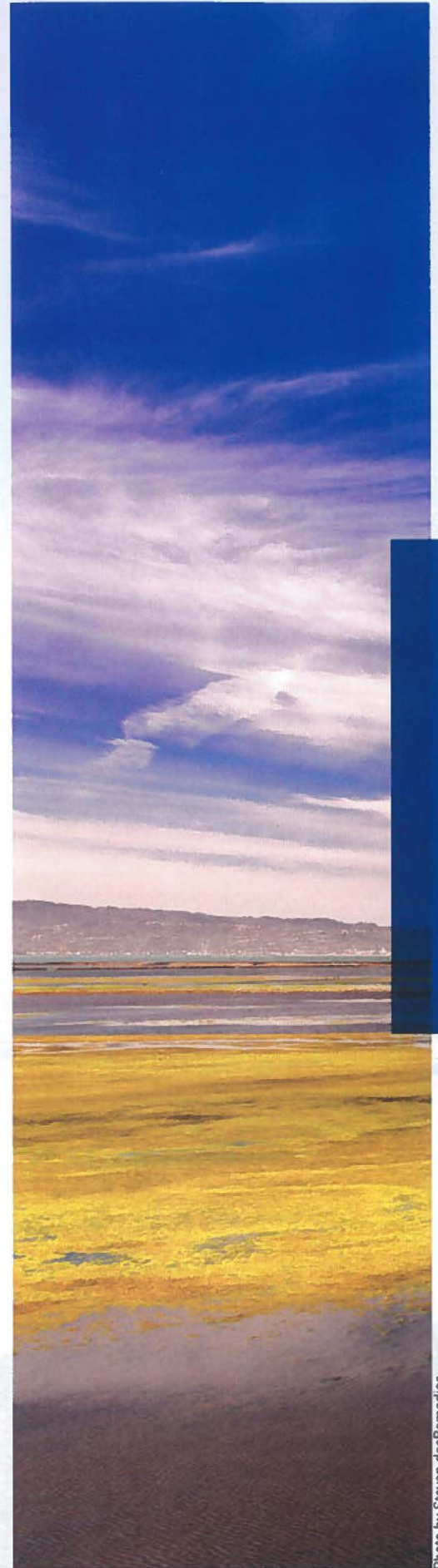


Photo by Steven dosRemedios.