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# The Struggle for Environmental Justice: Legal Services Advocates Tackle Environmental Poverty Law

by *Ralph Santiago Abascal and Luke W. Cole*

"Environmental justice" has become a rallying cry in many low-income communities and communities of color in the United States. As the movement for environmental justice grows in strength and stature, more and more legal services advocates have found themselves representing clients facing environmental hazards. This article discusses resources available to legal services offices taking on environmental justice cases through a new national support center, the Center on Race, Poverty & the Environment.

That poor people and people of color bear a disproportionate burden of pollution and other environmental hazards is an intuitive notion. We all know that low-income people and people of color have for years been segregated into the dirtiest, most dangerous parts of town, often near industry, and are forced by economic necessity to take the dirtiest, most dangerous jobs. Well-expressed by the old phrase "living on the other side of the tracks," this notion has been confirmed by more than 200 studies of the impact of environmental hazards in the past 25 years. Whether the environmental danger is pesticide poisoning, air pollution, contaminated drinking water, lead

poisoning, or proximity to toxic waste sites, in almost every study the conclusion has been the same: poor people and people of color bear the brunt of environmental hazards.

## I. Legal Services' Response to the Call for Environmental Justice

Across the country, legal services advocates have taken on environmental justice cases for more than 20 years. In 1969, California Rural Legal Assistance (CRLA) filed what may be the first environmental justice case within legal services, a case brought on behalf of six migrant farmworkers that ultimately led to the banning of the pesticide DDT.<sup>1</sup> CRLA's 25-year history of environmental poverty law advocacy stems from that suit. Since 1972, Appalachian Research and Defense Fund in Kentucky and in West Virginia has vigorously and successfully represented clients fighting the environmental consequences of coal-mining and other land-use abuses. Bronx Legal Services in New York and Advocates for Basic Legal Equality in Ohio, among many others, have brought suits to force abatement of lead paint hazards in low-income housing. The Na-

*Ralph Santiago Abascal is the director of and Luke W. Cole is general counsel to the Center on Race, Poverty & the Environment, California Rural Legal Assistance Foundation, 631 Howard St., Suite 300, San Francisco, CA 94105-3907; (415) 777-2752 (voice); (415) 543-2752 (fax); HN2609.*

<sup>1</sup> See *Environmental Defense Fund v. HEW*, 428 F.2d 1083 (D.C. Cir. 1970); *Environmental Defense Fund v. Hardin*, 428 F.2d 1093 (D.C. Cir. 1970) (Clearinghouse No. 3678); *Environmental Defense Fund v. EPA*, 510 F.2d 1292 (D.C. Cir. 1975) (Clearinghouse No. 14,891).

tive Hawaiian Legal Corporation has long fought for Native Hawaiians' legal rights in water- and land-use cases.

***The first full-time environmental poverty law project within a legal services program was launched in 1989.***

Texas Rural Legal Aid has battled air pollution in low-income neighborhoods, while Dakota Plains Legal Services has brought suit to clean up abandoned garbage dumps. The list of programs that have engaged in environmental justice work is long, and the hazards addressed are many and varied.

Until recently, however, these cases were handled in an ad hoc fashion, with little knowledge of, or coordination among, different legal services organizations' efforts. In the past six years, this has begun to change.

In 1989, the first full-time environmental poverty law project within a legal services program was launched. In California, the CRLA Foundation set up the California Communities at Risk Project to coordinate its environmental justice efforts statewide. We coined the term "environmental poverty law" to describe our advocacy on behalf of poor people confronting environmental issues.<sup>2</sup> The project's experience is instructive: we were flooded with calls from potential clients and their legal services attorneys throughout the United States who were facing environmental problems in their own communities.

## II. The Center on Race, Poverty & the Environment

Two years ago, to respond to the growing number of requests we were receiving from around the country, the CRLA Foundation launched the Center on Race, Poverty & the Environment (CRPE). The idea behind the center is simple: because the movement for environmental justice is both community based and community led, there is a need for community-based legal resources—attorneys who are available and accountable to local efforts. Legal services offices, in low-income communities nationwide by design, are a natural place to begin.

CRPE functions as a mini-backup center, offering technical and legal assistance, strategic advice, and networking to legal services offices nationwide.<sup>3</sup> (Through CRLA's 16 field offices, we also continue to provide direct legal representation in environmental justice matters to poor people in rural California.) Operating on a limited budget, in the past two years we have provided advice and resources to programs from Maine to Hawaii, Florida to Washington, Missouri to North Carolina. This assistance has ranged from participating in telephone strategy sessions on how to get local lead paint abatement laws drafted and passed, to providing sample briefs in toxic-waste incinerator cases, to sending out material on electromagnetic fields from power lines. We have an extensive brief bank of environmental justice cases and a large library of other resources in the field.

Three years ago we inaugurated the "Environmental Poverty Law Working Group"—blessed with the easy acronym EPLWG ("epple-wig")—which is a national network of poor peoples' lawyers

<sup>2</sup> CRLA's early environmental justice effort had a threefold mission: first, to investigate and document the impact of environmental hazards on the rural poor in California because in 1989 there was little literature in the field; second, to provide direct legal and technical assistance to low-income communities throughout the state fighting environmental hazards; and, third, to build CRLA's institutional capacity to engage in environmental poverty law. The project's paid staff was originally limited to one lawyer, who was joined by a community worker toward the end of the second year of the project. Early cases involved pesticide poisonings, two toxic-waste incinerators, and a garbage dump.

<sup>3</sup> "Mini" because we do not yet have Legal Services Corporation funding. We are now staffed with 2.5 lawyers, one community organizer, and a part-time scientist.

## Strategies for Legal Services Advocates Fighting Environmental Hazards

In representing clients in environmental cases, legal services attorneys often experience a technical disadvantage when communicating with corporations who have the money to hire environmental consultants or specialized attorneys. Steve Virgil, recipient of the Saul Biskind Public Interest Law Fellowship, spent the past year working with Cleveland Legal Aid on environmental equity issues. From his experience, a few helpful hints on how to address technically unfamiliar environmental problems can be drawn.

**1. Discover Alternate Technical Approaches.** A Cleveland iron steel plant had plans to expand an existing fly-ash and foundry-sand landfill to reach heights of 30 to 40 feet when completed. Wind-blown particles from the landfill blanketed surrounding neighborhoods with fine dust. In combating the problem on behalf of the concerned residents, legal aid approached the steel company and worked to find new ways to control dust emissions. After the residents consulted professionals in the steel industry, the company agreed (1) to plant a line of evergreen trees as a natural barrier, (2) to use a silicon-based dust suppressant, which acts as a protective shield, instead of a water-based suppressant, which is ineffective when it dries, (3) to reduce the speed of trucks hauling the ash, (4) to erect portable windscreens, and (5) to maintain the maximum height of dumping to ten feet.

Although in this instance the alternate technical approaches were fairly complex, often a simple comparison of the particular corporation's practices with others in its industry will suffice. For example, to pressure a northeast Cleveland hospital to refrain from building a waste incinerator, community members offered information on how other Ohio hospitals safely dispose of waste. Often, an industry sited in a low-income minority area will not be implementing state-of-the-art technology, or even complying with standard practices in the industry and may respond to demands that it raise its standards.

**2. Obtain Technical Assistance from the Industry.** Under certain circumstances, where settlement is critical for the company, a community can obtain technical assistance from the company itself. In the interest of time, the steel company maintaining the fly-ash dump hired an independent environmental consultant to consult with local residents in their quest to find alternate technical remedies.

**3. Get the Community Involved.** The northeast Cleveland hospital mentioned above made plans to site a waste incinerator in a low-income neighborhood that was experiencing 40-percent unemployment. The outrage and involvement of the community were a factor in the hospital's decision not to build the incinerator.

interested in environmental justice work. Through EPLWG, we have created a data base of legal services and other attorneys who handle environmental cases, as well as other environmental specialists. Our data base currently includes over 400 attorneys, environmental consultants, and law professors—more than 90 percent of whom are legal services attorneys.

The specific resources CRPE provides legal services programs include:

- Technical assistance in environmental justice struggles. This includes deciphering technical documents (we have a scientist on staff).
- Learning materials. We have collected hundreds of articles, from the popular to the technical (both law review and otherwise), on a variety

of environmental issues affecting poor people, that we share with legal services offices seeking information in a particular area. We also have collected dozens of briefs and other legal documents that are available for advocates involved in a particular type of litigation from us and through the National Clearinghouse for Legal Services. Many of these legal resources are available in electronic form (on disk or via HandsNet), making them instantly useful in brief writing.

- Strategic consultation. Most local environmental justice struggles begin as political fights at the local governmental level. We offer strategic advice on how to win at the local

level and thus avoid litigation. We have years of experience in integrating legal advocacy into ongoing community campaigns against unwanted and dangerous land uses and can often put legal services attorneys in touch with grassroots organizers in their local area for further consultation.

***The environmental justice movement has the capacity to reach far beyond the interests of the poor because of the crosscutting nature of pollution: everybody breathes air and drinks water.***

- Litigation assistance. For legal services offices considering or involved in environmental justice cases, we regularly provide litigation assistance in the form of reviewing briefs, suggesting case law, etc.
- Cocounseling in selected cases. We work with local programs that may not have the resources to sustain litigation in environmental justice cases alone, especially in key cases raising broader issues. As our staff expands, we will be able to undertake more cocounseling.
- Referral to other experts. Our data base of legal services, environmental lawyers, and other experts is arranged so that, when we do not have expertise in a particular area, we can refer callers to someone who does. For almost any area of environmental law, we can refer legal services advocates to another person with expertise, or build an

ad hoc partnership, including our own staff. In this way, we help maximize legal services resources within the community.

Beyond providing resources and networking attorneys working on similar issues, CRPE is dedicated to enhancing the ability of legal services advocates to serve our client population in environmental justice cases. To this end, we organize and participate in training sessions for legal services lawyers to build their capacity to recognize, understand, and solve environmental justice problems faced by their clients.<sup>4</sup>

The center also produces educational and informational materials of interest to legal services attorneys. We publish a quarterly journal, *Race, Poverty & the Environment*, which for several years has been featuring issues on urban environmental justice, Latinos and the environment, population and immigration, and environmental justice and the law. We have also published several law review articles that serve as training manuals for legal services attorneys, including our general primer on practicing environmental poverty law,<sup>5</sup> a specialized discussion of the merits of using civil rights or environmental law in environmental justice cases,<sup>6</sup> and a handbook on filing administrative environmental justice administrative complaints under Title VI of the Civil Rights Act of 1964.<sup>7</sup> These publications are available free of charge to legal services advocates. The center is also on active HandsNet, where we have just created an Environmental Justice Forum.

### III. The Tasks Ahead

Environmental justice issues will increasingly be presented to legal services offices as the national movement builds. Legal

<sup>4</sup> We have thus far participated in such training sessions in more than a dozen states and look forward to working with field programs and regional training centers around the country to continue such training.

<sup>5</sup> Luke W. Cole, *Empowerment as the Means to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619 (1992).

<sup>6</sup> Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 *FORDHAM URBAN L.J.* 523 (1994).

<sup>7</sup> Luke W. Cole, *Civil Rights, Environmental Justice and the EPA: The Brief History of Administrative Complaints Under Title VI of the Civil Rights Act of 1964*, 9 *J. OF ENVTL. L. & LITIG.* (forthcoming 1995).

services advocates are once again in a position to provide support to a growing movement of poor people who seek to take control over decisions that affect their lives.<sup>8</sup> In its largest sense, the environmental justice movement is causing substantial reconstruction of both the traditional environmental movement *and* the traditional civil rights movement. And, most important, in contrast to other poor people's movements of the past, it has the capacity to reach far beyond the interests of the poor because of the crosscutting nature of pollution: everybody breathes air and drinks the water.

Those legal services programs that currently take on environmental poverty law cases are blazing the trail for other

programs to follow. If your program has not yet explored the needs of your clients, and the capacity of your staff, in the environmental justice area, you can take an active role in that self-reflection now and learn from the efforts of other programs. Statewide and regional training sessions for poor people's lawyers on environmental poverty law have been and are taking place with increased regularity around the country, and many written materials exist to bring interested advocates up to speed. We urge you to give us the opportunity to work with you in the quest for environmental justice and the broader goals of justice deeply embedded in this exciting new element of the legal services agenda.

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<sup>8</sup> Environmental poverty law is also a hot new field of law. In the last two years alone, at least a dozen law schools have begun offering courses in environmental poverty law, and more than a hundred law review articles have addressed it.