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A New Approach to Expanding Resources for Environmental Justice: The Professor-in-Residency

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A NEW APPROACH TO EXPANDING RESOURCES FOR ENVIRONMENTAL JUSTICE: THE PROFESSOR-IN-RESIDENCY

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I. INTRODUCTION

In a partnership that expanded the resources of an under-funded poverty law office and provided practical education to a law professor, California Rural Legal Assistance's (CRLA) Center on Race, Poverty & the Environment inaugurated its professor-in-residency program in the fall of 1993. Casey Jarman, an environmental law professor at the University of Hawaii's William S. Richardson School of Law, spent four months at CRLA's San Francisco headquarters working with CRLA attorneys Luke Cole and Ralph Abascal on environmental justice projects.

What follows are two narratives, one by Luke Cole, general counsel of the Center on Race, Poverty & the Environment (CRPE), and one by Professor Jarman, describing her four month sabbatical with

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CRPE. While this particular professor-in-residency focused on environmental justice work, we believe the model is applicable to a broad range of public interest work and urge frequent and varied experimentation with the concept.

II. A VIEW FROM THE FIELD: LUKE'S STORY

When Casey called me in early 1993 to talk about working for a semester with CRLA's Center on Race, Poverty & the Environment, she made me an offer I couldn't refuse—she would volunteer for us provided we gave her substantive work to do and an office to do it in. I considered CRPE's situation: an underfunded, understaffed poverty law office responding to dozens of requests a week, carrying a heavy load of environmental justice cases from throughout California, and providing resources and advice to legal services offices nationwide on other cases. The thought of having another experienced environmental attorney join our staff for four months sounded great—and she was free, to boot!

The experience itself *was* great. Having a law professor with CRLA's CRPE benefitted the office and our work in both tangible and intangible ways. First, Casey brought considerable experience in environmental law and administrative procedure, as well as professorial patience in parsing dense environmental statutes. Second, she allowed us to increase the breadth and depth of our office's work. Finally, she brought a fresh perspective and sense of humor that made her an office favorite.

Her presence allowed us to leverage our staff resources—allowing us to cover more administrative hearings, meet more often with clients, attend more meetings, and handle inquiries more quickly. She assisted in all aspects of office responsibilities from daily intake and resource provision to deliberating about moving to another office space. Most importantly, having her in residence allowed us to take on clients and projects we otherwise would have had to turn away.

Casey's presence not only helped us do more in the legal/community empowerment sense, but also in educating the wider public about the impacts that the struggles for environmental justice

have on the lives of the community activists involved. She spent considerable time visiting and interviewing one of the community activists, Mary Lou Mares, who was involved in our successful efforts in preventing the siting of the largest hazardous waste incinerator at Kettleman City.[1] Casey is now in the process of transcribing the taped interview. Afterward, she and Mary Lou will work together to edit the interview and submit it to journals for publication. It is important to publicize the stories of those who are struggling daily for social justice, as silence is justice's worst enemy.

Casey's sabbatical with us went so well that we are currently soliciting applications for a similar professor-in-residency in the fall of 1994, and plan to continue to expand the program after that.

III. A VIEW FROM THE ACADEMY: CASEY'S STORY

I arrived at the CRLA offices in the Mission District of San Francisco at the appointed time ready to start work and anxiously anticipating what lay ahead. Luke greeted me with a "We won! Victory at Kettleman! Don't have time to talk. In the middle of drafting a press release. Make yourself at home." I thought, "An auspicious beginning!"

Needless to say, my orientation was delayed. Two days later the aura was still celebratory as I sat with Luke in his office being briefed on the Kettleman victory. I also learned of the cases I would be assigned to and the other myriad of responsibilities an environmental poverty law attorney at CRLA attends to, such as assisting in all aspects of office responsibilities from daily intake and resource provision to deliberating about moving to another office space.

My first case, one in which the "system" ultimately won legally, but in which the community gained politically, involved attempts by residents of a small Latino farmworker community to force a local industry—a juice plant—to literally "clean up its act." Unbearable stenches emanating from a poorly working sewage treatment plant and

1. For a synopsis of the Kettleman story, *see* Luke W. Cole, *The Struggle of Kettleman City for Environmental Justice: Lessons for the Movement*, 5 MD. J. OF CONTEMP. LEGAL ISSUES (forthcoming 1994).

the juice plant caused headaches, nausea, and many sleepless nights to residents of Del Rey, California. Prior to my arrival, residents had formed a citizens group, Del Rey Residentes Preocupados por Aire y Agua Limpio (Del Rey Residents Concerned for Clean Air and Water). With the help of Luke and CRPE's community organizer Lupe Martinez, the group was able to recall four of the five members of the local Community Services District[2] and elect four members of their community group to the District. This empowerment move ultimately led to improvements in the local wastewater treatment system.

The next step was to convince the Fresno County Board of Supervisors to disapprove the juice plant's proposed wastewater treatment plan, a plan which we asserted would offer no guarantee of improving the odor problem and which failed to address the problems of illegal disposal practices allegedly engaged in by the company. So, on the day of the hearing, I met Luke at 6:30 a.m. at the Oakland train station for our 5 hour train ride to Fresno, the stop closest to Del Rey. On the train, Luke filled me in on the strategy, and we worked on his testimony. We were met there by co-counsel, Lalo Castellanos of Central California Legal Services. The next few hours before the hearing were spent putting together exhibits, taking a final look at the county files on the project to see if any new information had been added, and meeting with the clients and the press in Del Rey to make known the residents' plight and to set the stage for that afternoon's hearing.

The hearing in front of the Board of Supervisors followed a predictable pattern. The meeting started at 3:00 p.m., but our case was far down the agenda. The audience was restless. To buttress their image, juice plant management had bussed over plant workers, most of whom did not live in Del Rey. Del Rey residents opposed to the juice plant's plans car pooled over after working a long day in the fields or the plant. At approximately 5:30 p.m., our case was called. A technical presentation by an engineer hired by the plant management came first. The engineer explained the juice plant's plans and claimed that the

2. The Community Services District is the equivalent of a water board and, in the unincorporated town of Del Rey, is the only elected form of self-government.

proposed treatment of wastes (which he had designed) would cause no noxious odors. The plant manager sat quietly in the audience.

Over a half hour later, the "public" had their turn to comment. The Board of Supervisors attempted to limit public testimony to a few minutes each. We objected and won, but it would be our only victory for the night. Luke was the first to speak for the Del Rey Residentes Preocupados por Aire y Agua Limpio. He requested a translator—most Del Rey residents are either monolingual (Spanish) or bilingual with Spanish as their first language. The request was immediately referred to counsel for the Board. Counsel noted that no request had been made prior to the hearing, and besides, no law required the Board to provide an interpreter. Request denied. No surprise, but disappointment.

Next, Luke offered testimony that rebutted the engineer's claims, cited the history of the plant as a "bad neighbor," and challenged the Board on their abysmal record of protecting the interests of Latino farmworkers. Then, a parade of Del Rey residents told deeply moving stories of the miseries they suffered from having to live with the stench. Surely, I thought, the Board can't ignore these stories. But they could, and they did.

The Board called on the plant manager to respond to the residents' claims. His argument was predictable: The local waste water treatment plant is the sole source of the problem. The juice plant is a good neighbor. Look at all the workers here to support the plant. Read the report of my engineer. I am sorry for the residents' plight, but my plant is not the culprit.

Testimony over. Time to vote. Minor speech making. The unrebutted testimony of the checkered history of the plant was conveniently ignored. Anecdotal evidence by the residents was set aside. The "expert" testimony was revered. The plant's plan was approved. End of meeting.

But was that the end of the story? Did this defeat end the hope of Del Rey residents for a healthy, stench-free life? No. Although, the lack of political will on the part of the county and the lack of resources of the state will allow "business as usual" to occur at the plant, the residents themselves will assume a new role in their efforts for social

justice—that of enforcers of the plant's permits by keeping a watchful eye on the plant and carefully documenting future problems.

We started that process a few weeks after the hearing. I took the train back to Fresno, where Lalo met me. We drove to Del Rey and worked with the community leaders to devise ways to implement an enforcement strategy. A new file was started on the plant. "Watchdogs" were assigned, and plans to recruit more were laid. Residents with cameras offered to photograph future violations. A letter-writing campaign was launched. Every violation would be reported by one or more residents, with letters written in both Spanish and English. Did residents have time to do what the government should be doing? They would make time. It is their lives. They care for their families, friends, and community. It won't be easy, but it will work.

The second case I worked on involved assisting residents of a rural community in central California who opposed the permitting of a cement kiln that burns hazardous waste as a supplemental fuel. The state had put the permitting on a fast track. It attempted to by-pass California's environmental review law and opposed the application of an EPA regulation that required the Resource Conservation and Recovery Act (RCRA) application to be signed by both the owner and operator of the facility. The owners of the cement kiln held a 99-year lease on the property that was owned by a large ranch.

The story of the plant follows an all-too familiar pattern. Local residents' health complaints were virtually ignored, and reports of violations of the plant's air pollution permits were routinely trivialized by state agencies charged with protecting public health and the environment. Our strategy was to derail the "fast track" permitting by using the law and community action. We took part in the RCRA permitting process. Luke and I submitted written testimony supporting the EPA's "intent to deny" the plant's RCRA permit for lack of the landowner's signature. Local residents presented the oral testimony. The ranch owner and cement kiln operator attempted to reach a compromise on the signature issue that would satisfy EPA. They failed, and EPA denied the kiln's RCRA permit.

However, denial of the permit did not result in immediate cessation of the plant's burning of hazardous waste. It continues to operate

under interim permit authorization. No environmental impact report has been done. Residents' health complaints are still labelled as arising from unknown causes, but the residents have not given up their struggle. They continue in their watchdog role, lodging oral and written complaints of violations of the plant's air permit. CRLA continues to represent them in the regulatory arena. The struggle continues.

I returned to Hawai'i in the middle of my clients' stories. But I had entered in the middle as well. Environmental justice is a process. I left my clients in good hands—their own and CRLA's. And I brought to Hawai'i their stories. Stories I can share with those here in Hawai'i who are struggling for social justice. Stories I can use to supplement the "hypotheticals" I develop to illustrate the law in the classroom. Stories that have changed the way I look at teaching the law.

IV. CONCLUSION

Despite minor constraints—Casey is not licensed to practice in California, and CRLA could offer no stipend to supplement her limited sabbatical wages—our first experiment with a professorship-in-residency was a success story. The experience is probably most valuable for law professors with little or no litigation experience and/or who teach at schools without clinical programs in their fields. For those academics who have succeeded in the classroom and at traditional scholarship and who are now looking for a creative and different way to contribute to the community-at-large, we recommend exploring a professorship-in-residency at a public interest law firm. Classroom teaching, scholarship, a professor's life, and the lives of the clients and students will all be enriched by the experience.