Globethics Repository



Student Review of Selected Panels at the Berkeley Law 2010 Environmental Justice Symposium

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see https://www.globethics.net. Data and content policy of Globethics Repository see https://repository.globethics.net/pages/policy.

Item Type	Article
Authors	Cook, Kara;Stamas, Maria;Wilensky, Meredith
Publisher	UC Berkeley School of Law
Rights	With permission of the license/copyright holder
Download date	2026-11-15 06:25:09
Link to Item	http://hdl.handle.net/20.500.12424/175881

Student Review of Selected Panels at the Berkeley Law 2010 Environmental Justice Symposium

Kara Cook, Maria Stamas, and Meredith Wilensky[*]

THE ROLE OF THE ENVIRONMENTAL JUSTICE LAWYER

PANELISTS: KARA BRODFEHRER, ATTORNEY, CALIFORNIA RURAL LEGAL ASSISTANCE, INC.; ALEGRIA DE LA CRUZ, DIRECTING ATTORNEY, CENTER ON RACE, POVERTY, AND THE ENVIRONMENT; HELEN KANG, DIRECTOR, GOLDEN GATE UNIVERSITY, ENVIRONMENTAL LAW AND JUSTICE CLINIC; PHOEBE SEATON, LAWYER, CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

The forum discussion on February 16, entitled "The Environmental Justice Movement: History & Skills Every Lawyer Should Know," was a great kick off to the Sixth Annual Environmental Justice Symposium. For aspiring lawyers with very little experience or background in Environmental Justice (EJ) this introductory forum was the perfect place to learn more about the movement. The forum explored the EJ attorney's role as an advocate.

EJ attorneys' identities come not from differentiating themselves from environmental law but from synthesizing the identities of many movements: civil rights, Indian law, labor law, and environmental law.

There were four speakers at the event, and notably, all four were women. The speakers were Phoebe Seaton, Kara Brodfehrer, Alegria De La Cruz, and Helen Kang. De La Cruz, the directing attorney at the Center on Race, Poverty, and the Environment, saw that the role of attorneys was to serve as tools for their clients. While she felt that most EJ attorneys fulfilled that role, she had concerns about the bifurcation of the movement's location, where attorneys and clients live in separate

Copyright © 2010 by Kara Cook, Maria Stamas, and Meredith Wilensky.

[*] Kara Cook, Maria Stamas, and Meredith Wilensky are students at the University of California, Berkeley, School of Law (Boalt Hall). They attended the Sixth Annual Environmental Justice Symposium hosted at the University of California, Berkeley, School of Law by the Environmental Law Society and Students for Environmental and Economic Justice. The panel reviews are based on their own observations and reflections. No citations should be attributed directly to the panelists themselves.

places. According to De La Cruz, 95 percent of the Center's cases are based in the Central Valley.[1] By contrast, all of the lawyers at the Center work in San Francisco.[2] De La Cruz mused that this disconnect between clients and their attorneys could work against the movement. However, with the low quality of life in the Central Valley (counties in the "San Joaquin Valley are among the unhealthiest" in the country[3]), she doubts that this trend will change any time soon.

The youngest lawyer to participate in the forum, Kara Brodfehrer, also urged new EJ attorneys to work outside of the Bay Area. She pointed out that lawyers working in office buildings do not get a full understanding of the problems presented in low-income communities. Instead of speaking generally about her work, she used a case study. She spoke about one of her clients: a small, unincorporated Central Valley community known as Lanare. Several years ago, this community discovered that it had arsenic in its water source.[4] To solve the problem, Lanare applied for a grant from the County to treat the water. Lanare got the grant and built a water treatment plant. However, the community did not know how to handle that grant properly, and found itself $180,000 in debt.[5] The water treatment plant only ran for nine months because the community ran short of operating funds.[6] The people in Lanare now have to drink bottled water, spending over $50 a month per family to buy potable water.[7]

Brodfehrer explained that in order to help the people of Lanare, she has found that "litigation is not the best strategy. Teaching communities about their rights and empowering them to make decisions is the best part about my job."[8] She sees her role as an EJ attorney as getting communities involved in political process. She felt that the only way to fulfill this role was to actually live and interact with that community.

Helen Kang agreed with Brodfehrer's evaluation of an EJ attorney's role in her community. Kang spoke about the future of the EJ movement and reminded the audience that "lawyers are not knights, they are tools

1. Alegria De La Cruz, Directing Attorney, Center on Race, Poverty, and the Environment, Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 16, 2010).

2. *Id.*

3. Barbara Anderson, *Valley Counties Lag in U.S. Health Ranking,* THE FRESNO BEE, Feb. 16, 2010.

4. Kara Brodfehrer, Attorney, California Rural Legal Assistance, Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 16, 2010).

5. *Id*.

6. *Id.*

7. *Id.*

8. *Id.*

for helping their communities."[9] She challenged the audience of law students to someday become those tools.

All of the speakers agreed that the main role of an EJ attorney is to empower communities. They must be community-based agents of change. However, no one was able to decide if those attorneys have to *live* in those communities to provide that empowerment. That is a question that the movement must answer in the future, and it would make a good topic for next year's Environmental Justice Symposium.

WORKER EMPOWERMENT COMPELS THE CLEAN-UP OF *MAQUILADORA* WASTE SITES IN THE ABSENCE OF INTERNATIONAL ENFORCEMENT MECHANISMS

SPEAKERS: MARIA MAGDALENA CERDA, DIRECTOR, BORDER ENVIRONMENTAL JUSTICE CAMPAIGN, ENVIRONMENTAL HEALTH COALITION; MARTHA OJEDA, EXECUTIVE DIRECTOR, COALITION FOR JUSTICE IN THE *MAQUILADORAS*

The environmental harms and workers' rights violations experienced by tens of thousands of people in the U.S.-Mexico border region became clear after vivid, personal presentations of activists Maria Magdalena Cerda and Martha Ojeda at Berkeley's 2010 Environmental Justice Symposium. Cerda leads the Border Environmental Justice Campaign for the Environmental Health Coalition in Tijuana. Ojeda serves as the Executive Director of Coalition for Justice in the *Maquiladoras* and coordinates the *Maquiladora* Worker Empowerment Project. Ojeda's empowered, professional manner sharply contrasts her *maquiladora* days, when she acquiesced to health and rights violations in exchange for work. However, her coworkers recognized her potential and voted to fund her legal education. In turn, Ojeda promised to use her skills to defend their rights. She continues to do this work from her base in Texas.[10]

Maquiladora is the Spanish term for a factory that is owned by a multinational corporation, imports raw materials, and exports assembled products tariff-free. The term has taken on a certain pejorative connotation following the proliferation of *maquiladoras* in the 1980s—when changes in U.S. custom laws and Mexico's near bankruptcy made cross-border and overseas investment in Mexico attractive—and 1990s, shortly after the North American Free Trade Agreement (NAFTA) was passed. Many *maquiladora* workers, 80 percent of which are estimated to be female, have not only found themselves subject to unhealthy work conditions, poor benefits, and long, hard hours, but have also faced the

9. Helen Kang, Director, Golden Gate University Law School Environmental Law and Justice Clinic, Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 16, 2010).

10. Maria Magdalena Cerda, Director, Border Environmental Justice Campaign, Environmental Health Coalition, and Martha Ojeda, Executive Director, Coalition for Justice in the Maquiladoras, Keynote Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 17, 2010).

deterioration of their communities' air, water, and land quality.[11] These environmental conditions have persisted even as *maquiladoras* relocate to Asia, where costs are cheaper, because they frequently leave their toxic byproducts behind.

The two thousand mile long U.S.-Mexico border region contains an estimated three thousand *maquiladoras* and has experienced unprecedented population growth by workers migrating from southern Mexico in search of work.[12] The Mexican government initiated the industrialization of the border region to alleviate rising unemployment in 1965 after the U.S. government ended the "Bracero Program," which had previously allowed Mexican agricultural workers legal positions in the United States on a seasonal basis.[13] In 1983, the United States signed the "La Paz" agreement with Mexico, and in 1993, the two countries entered NAFTA.[14] Both treaties included some environmental and workers' rights terms but little in the way of enforcement.[15] For example, the La Paz Agreement requires hazardous waste created by U.S. corporations to be transported back to the United States for disposal, yet many companies have simply dumped toxins and other waste into Mexican rivers or deserts.[16] Few *maquiladoras* located along the Texas-Mexico border have returned waste to the United States, and of the twenty eight petitions filed under NAFTA's labor commission since 1994, none have managed to correct a health or safety issue.[17]

The poor conditions within and surrounding Mexico's *maquiladoras* are not simply byproducts of history, but persist due to systemic, complex factors. For instance, multinational corporations choose to operate in countries with the lowest costs. Low costs often result from having few, if any, labor, health, or environmental regulations. In a world market, Mexico competes with Asian countries. In an effort to keep jobs, Mexico engages in a race to the bottom, easing already lax regulations, creating special tax exemptions, and minimizing the enforcement of existing laws.[18] Because multinational corporations optimize costs and profits, not community development, there is little incentive for them to create meaningful or lasting jobs. Further, in implementing its own environmental and labor laws, the Mexican government is constrained not only by lack of resources, but by its International Monetary Fund and

11. *Id*.

12. J. Rene Villalobos et al., *Inbound for Mexico*, 36 INDUSTRIAL ENGINEER 4 (2004).

13. Philip L. Martin, *Trade and Migration: The Mexico-US Case 89–95*, *in* SLOBODAN DJAJIC, INTERNATIONAL MIGRATION: TRENDS, POLICIES, AND ECONOMIC IMPACT (2001).

14. MARY TIEMANN, U.S. DEPARTMENT OF STATE, NAFTA: RELATED ENVIRONMENTAL ISSUES AND INITIATIVES (2000), *available at* http://fpc.state.gov/6143.htm (last visited Mar. 14, 2010).

15. Cerda, *supra* note 10.

16. *Id*.

17. *Id.*

18. *Id*.

World Bank loans, which stipulate that Mexico cannot increase its wages.[19] Finally, the young, largely uneducated *maquiladora* workers, who are generally unaware of their rights, often lack the means or resources to file a complaint.

Cerda told the hard, long, but ultimately successful story of organizing against Metales y Derivados, a battery recycling *maquiladora* in Tijuana. The *maquiladora* had accumulated a long history of health and environmental violations. In 1990, the surrounding community filed numerous complaints against it. In 1994, the Mexican government shut Metales y Derivados down, but 42,000 tons of toxic lead remained on site. Nearby residents, aided by the Environmental Health Coalition, filed a petition with NAFTA's Commission for Environmental Cooperation. The Commission concluded that the site represented a "grave risk to human health," and found that children living near the site all had elevated levels of lead in their blood. But lacking an enforcement mechanism, the Commission could do no more. Finally, after continued demonstrating in Mexico and San Diego, where the *maquiladora* owner fled after Mexico issued an arrest warrant, the Environmental Health Coalition and Tijuana residents won an agreement from the Mexican and U.S. governments for a comprehensive cleanup.[20]

There is no shortage of work. Reaching an agreement to remediate the site took fourteen years, and Metales y Derivados is just one of sixty-six documented toxic sites.[21] While the problems facing the border region are massive, Ojeda and Cerda are especially concerned by the proliferation of trade negotiations using the NAFTA model. For example, free trade agreements with Panama, Colombia, and Korea now await Congressional approval.[22] Ojeda and Cerda pray that these future trade agreements contain functioning enforcement mechanisms to protect labor rights and the environment.

Ojeda concluded the presentation with these inspiring words, "From my experience, I have found that the legal system is about power, not justice. And knowledge is empowering."[23] Ojeda is using her knowledge to inform *maquiladora* women of their rights, thereby empowering them to take action. She prodded law students to think carefully about their role as future lawyers. What do they want to use their knowledge to do,

---

19. *Id*.

20. *Id*.; *see also* U.S. Envtl. Prot. Agency, US-Mexico Border 2012 Program, http://www.epa.gov/border2012/framework/index.html (last visited Mar. 14, 2010).

21. Metales y Derivados Toxic Site, Border Environmental Justice Campaign, http://www.environmentalhealth.org/BorderEHC/BorderPollution.html (last visited Mar. 14, 2010).

22. U.S. Dep't of Commerce, International Trade Administration, U.S. Free Trade Agreements, http://www.export.gov/fta/ (last visited Mar. 14, 2010).

23. Ojeda, *supra* note 10.

who might they want to help, and ultimately, who will their knowledge empower?

CARBON TRADING: HELP OR HARM?

PANELISTS: ETHAN ELKIND, BANK OF AMERICA CLIMATE CHANGE RESEARCH FELLOW; MICHELLE CHAN, FRIENDS OF THE EARTH; ALICE KASWAN, UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW; MICHAEL WARA, STANFORD LAW SCHOOL AND THE PROGRAM ON ENERGY AND SUSTAINABLE DEVELOPMENT

Discussion of climate change mitigation regulation mechanisms is dominated by carbon trading, as opposed to traditional regulation or carbon taxes. In this session of the Environmental Justice Symposium, panelists took a critical look at carbon trading markets and expressed concerns over its application and efficacy.

The session began with a general overview of the concept of cap and trade by Ethan Elkind, Bank of America Climate Change Research Fellow. He asserted that cap and trade is advantageous compared to other types of regulation because of its flexibility and ability to set a certain emissions cap.[24] Establishing the cap requires deciding who falls under the cap and what the cap should be. Once the cap has been determined it is divided into allowances (or credits), which are essentially rights to pollute.[25] These allowances can be distributed for free or through auction. Because reducing emissions will be cheaper for some sources than others, allowances can be bought and sold freely among sources.[26] Trading allows sources to decide if it is cheaper to reduce emissions or purchase credits. Over time, the cap is tightened to reduce emissions, which can be accomplished by retiring credits after a certain period, removing a percentage per trade, accepting donations, or purchasing credits. To further complicate cap and trade, offset credits can be given for investments in agriculture or forestry sector carbon sequestration. In practice, cap and trade programs have experienced problems such as setting the cap too high, price fluctuations, market gaming, windfall profits and issues with monitoring, enforcement, and verification.[27]

Next, Michelle Chan, Senior Policy Analyst with Friends of the Earth, discussed how the financial crisis has cast doubts on the capability of Wall Street to properly control a large-scale cap and trade system.[28] First, the buying and selling of credits in the form of securities, as was done with subprime mortgages, could create the potential for speculative

24. Ethan Elkind, Bank of America Climate Change Research Fellow, Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 16, 2010).

25. *Id.*

26. *Id.*

27. *Id.*

28. Michelle Chan, Senior Policy Analyst, Friends of the Earth, Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 16, 2010).

bubbles that encourage excessive risk taking.[29] Such speculation could occur in carbon offsets markets if investors bought subprime carbon (promises to reduce emissions). If subprime carbon did not generate promised reductions, it would cause assets to collapse in value. Additionally, too many investors might get creative, resulting in risky financial innovation.[30] Since the government does not carefully monitor each Wall Street transaction, trading in this huge complicated market would be essentially unregulated. With these issues in mind, Chan maintained that creating a huge derivative market for carbon seemed imprudent. She suggested avoiding these issues by designing a cap and trade system that would be inherently smaller, simpler, and better regulated.[31]

University of San Francisco School of Law Professor Alice Kaswan discussed concerns over cap and trade systems specifically from an environmental justice perspective. First, she addressed the issue of distributive justice.[32] Sources of greenhouse gas emissions are often sources of other pollutants that have deleterious health effects on nearby communities. As a result, climate policies have implications for the emissions of these co-pollutants. Because cap and trade systems do not necessarily mean that a given plant will reduce its emissions, some communities would be disproportionately exposed to the co-pollutants emitted. Second, carbon trading presents a participatory justice issue.[33] Because it is the market that determines where the reductions will occur, cap and trade excludes the people who are subject to the carbon emissions and co-pollutants from the decision-making process. Third, Professor Kaswan expressed efficacy concerns. Because of the ability of sources to offset emissions, carbon trading might not result in the expected reductions in carbon emissions and co-pollutants in certain areas.

Carbon trading proposals, however, have some advantages and potential mechanisms to avoid the mentioned critiques. Benefits include lower industry costs, an absolute cap on emissions and the ability to generate revenue through auctions. Suggested mechanisms to avoid environmental justice issues include: (1) combining cap and trade with direct regulation; (2) creating trade limitations in certain areas; (3) limiting use of offsets; and (4) using auction revenue to finance co-pollutant reductions.[34]

---

29. *Id.*
30. *Id.*
31. *Id.*
32. Alice Kaswan, Professor at the University of San Francisco School of Law, Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 16, 2010).
33. *Id.*
34. *Id.*

Finally, Michael Wara discussed the EJ issues of climate change on an international level.[35] He discussed the disparity between the emissions of developed and developing countries. While developed countries are responsible for the majority of emissions, they are also better equipped to pay to adapt to climate change.[36] On the other hand, developing countries are responsible for fewer emissions and have fewer resources and infrastructure to adapt. Thus, they are more concerned with mitigation of climate change impacts. The question then becomes, who should pay for mitigation? He discussed efforts such as the Clean Development Mechanism that distribute money to developing countries to for climate change mitigation.[37]

35. Michael Wara, Assistant Professor, Stanford Law School, Address at the Sixth Annual Berkeley Law Environmental Justice Symposium (Feb. 16, 2010).

36. *Id.*

37. *Id.*