



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

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Environmental Justice Project Annual Report 2010

Introduction

Established in 1991, the Environmental Justice Project (the “Project”) of the Lawyers’ Committee works with the private bar to represent and advocate on behalf of communities of color challenging environmentally discriminatory conditions and decisions. Historically and presently, low-income communities and people of color are disproportionately burdened by environmental pollution and the myriad health problems associated with poor air and water quality and toxic exposure.

The following report details the work of the Project for the calendar year 2010.

On the litigation front, the Project represented its long-time clients, **West End Revitalization Association** and Omega Wilson, through a renewed review of their Title VI complaint with the Department of Justice. The Project also undertook investigation of several matters, ranging from violations of environmental statutes to transportation funding concerns. Project Senior Counsel **Daria Neal** received approval to represent a Georgia community to challenge violations of the Clean Air Act.

In other activities, the Project released its much anticipated report *Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities*. Additionally, the Project’s Title VI Enforcement Initiative was launched, with its new webpage and resources posted on the Lawyers’ Committee’s website. Senior Counsel Daria Neal attended and moderated multiple conferences, including the fourth annual State of Environmental Justice Conference in Washington, D.C.

The Project also contributed to advocacy around various environmental policy issues. Daria Neal coordinated and attended meetings with senior officials at the U.S. **Environmental Protection Agency** (EPA) and the **Environment and Natural Resources Division** of the **Department of Justice** to discuss environmental justice priorities for the Obama Administration. The Project also sent letters to the Senate with comments on the appropriate scope of regulatory monitoring of greenhouse gases.

Cases

West End Revitalization Association (WERA), Mebane, North Carolina

Omega Wilson and WERA have had an over eleven year relationship with the Lawyers' Committee. Over much of this time, WERA has had a pending Title VI complaint with the Department of Justice. The complaint alleged that minority communities in the West End, unincorporated areas of Alamance County, North Carolina, were subject to discrimination in violation of Title VI of the Civil Rights Act when the North Carolina Board of Transportation adopted a plan to construct a bypass through their community without adequate opportunity for public participation. The complaint also alleged discriminatory annexation of portions of the county into the City of Mebane resulted in a denial of "basic amenities" (municipal services) to the predominately African-American areas of the County.

Though the complaint was filed in 1999, federal review of the complaint was non-existent over the past 10 years. Finally, in January 2010, the Environment and Natural Resources Division as well as the Civil Rights Division renewed their review of the complaint. Environmental Justice law fellow **Robert Young** and Fair Housing law fellow **Izu Emeagwali** have been monitoring the status of this case and the Lawyers' Committee is representing WERA through this review process.

Investigations

At the start of the year, the Project was investigating multiple potential environmental justice matters. Many of the matters have been put on hold while the project remains dormant.

New Source Review Violation. The first investigation involved a company in violation of the New Source Review requirements of the Clean Air Act. The action would be on behalf of an historic African-American community that has been challenging toxic releases by various industries adjacent to their neighborhood. In April, Daria Neal submitted this matter to the Lawyers' Committee for internal review and, in June, the Project was approved to represent this historic Georgia community.

Auto Park Development. The second matter involved a challenge to the development of an auto park in an unincorporated African-American town. Not only did it appear that no environmental impact statements were prepared for the project, but the evidence suggested that white landowners who may be affected by the development have been given financial compensation while African-American landowners have not. Ms. Neal started working with a local environmental justice organization to coordinate a site visits.

Georgia Transportation Funding (Title VI issue). In April 2010, Clayton County, Georgia terminated its transit services due to budgetary issues. To date, transit services have not been restored. This issue was brought to the Lawyers' Committee's attention by Dr. Robert Bullard, who asked that the Project look at how federal transportation dollars are distributed in the state of Georgia. Initial research on the allocation of federal transportation funds in Georgia was done over the summer, and additional research by legal assistant **Michelle Newman** is ongoing. The increase in federal transportation dollars being allocated to serve predominately white communities to the detriment of transit-dependent minority and low-income communities is of significant concern.

Vincent, AL Intake. Construction of a limestone quarry was proposed near a predominately African-American community in Vincent, Alabama. Offers to purchase the land of white landowners in the area were made, but no such offers were provided to African-American landowners. Law Fellow Robert Young was following up on this matter.

Other Project Activities

*Release of the Project's Long-Awaited Report **Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities***

In early June 2010, the Project published its eagerly anticipated report on environmental justice policy in the current administration. The report highlighted the existing legal authority of federal agencies to address disparities in environmental protection. It also extensively examined a broad range of environmental burdens borne by minority and low-income communities and provided recommendations to the Obama Administration on how to effectively address the disparate pollution burdens.¹

In anticipation of the report, Legal Director **Jon Greenbaum**, Daria Neal and other environmental justice advocates met with Assistant Attorney General **Ignacia Moreno** early in the year to discuss the upcoming release of this report. During the meeting the Lawyers' Committee also discussed its concerns about the lack of Title VI enforcement and the need for greater communication with the Civil Rights Division of the Department of Justice and EPA to identify potential violations.

Further meetings with various federal agencies, including the **Department of Justice Civil Rights Division** followed during the summer.

Launching of Title VI Enforcement Initiative

The Project spent much time and effort on the launch of its Title VI Enforcement Initiative this year. The initiative seeks to educate the public and elected officials about the impact of the Supreme Court case *Alexander v. Sandoval*, 532 U.S. 275 (2001), on the enforcement of Title VI of the Civil Rights Act of 1964.

Title VI prohibits discrimination on the basis of race, color and national origin in federally funded programs. The inability of individuals to enforce the disparate impact regulation of the statute has led to numerous incidents of federally funded discrimination that go unchecked. The Title VI Enforcement Initiative seeks to highlight the lack of federal agency enforcement and equip communities with the tools need to navigate the administrative process.

The first phase of the initiative was rolled out online. The Project is prepared a comprehensive "how-to" manual for communities to reference and the manual was posted on the Lawyers' Committee's website,

¹ A copy of the report can be found on the Lawyers' Committee's website, at <http://www.lawyerscommittee.org/admin/site/documents/files/Final-Environmental-Justice-Report-6-9-10.pdf>.

along with a downloadable Frequently Asked Questions sheet, and videos of personal accounts of advocates discussing their efforts to address the discriminatory use of federal funds and other Title VI enforcement issues.²

The second phase of the initiative will include community trainings and educational sessions with the hope of supporting an increase in administrative filings and possible litigation where appropriate. A final report on the initial phase is was been put together in coordination with Senior Grants Officer **Kathleen McEnerny** and Legal Mobilization Manager **Eric Marshall**.

Strengthening Environmental Justice Research and Decision Making

On March 17-19, Daria Neal attended the symposium “Strengthening Environmental Justice Research and Decision Making: A Symposium on the Science of Disproportionate Environmental Health Impacts.” The symposium sought to lay the groundwork for developing a systematic and scientifically defensible approach for incorporating environmental justice concerns into EPA’s decision-making process. It was also an opportunity to learn about the numerous efforts to provide scientific technical support to communities and organizations addressing the disproportionate environmental health impacts on minority and low-income populations.

National Bar Association Convention

On August 11, Daria Neal moderated a panel called “The Evolution of Environmental Justice in the United States and beyond” at the National Bar Association Convention in New Orleans. During the discussion, Ms. Neal highlighted the Lawyers’ Committee’s latest report on Environmental Justice.

Public Policy

2010 State of Environmental Justice in America Conference

On May 13, 2010, Daria Neal spoke at the State of Environmental Justice in America 2010 Conference in Washington, D.C. Before an audience of mostly federal government employees, Ms. Neal discussed the then-upcoming Environmental Justice Policy Report and highlighted the Agencies’ responsibility to enforce the disparate impact regulations of Title VI of the Civil Rights Act of 1964. She also reminded them of their duty to comply with Executive Order 12898, which requires all federal agencies to ensure their policies and practices do not have a disparate adverse environmental impact on minority and low-income communities.

Meetings with Administration Officials

Early in the year, Senior Counsel Daria Neal coordinated two meetings with several environmental justice advocates and **Cynthia Giles**, Assistant Administrator for the Office of Enforcement and Compliance at the EPA, as well as **Ignacia Moreno**, Assistant Attorney General for the **Environment and**

² View these materials at http://www.lawyerscommittee.org/projects/environmental_justice?id=0001.

Natural Resources Division of the Department of Justice, to discuss the Lawyers' Committee's strategic policy report on environmental justice released this past summer.

The first meeting, with Assistant Administrator Giles, specifically discussed the ability of EPA to utilize existing law to effectuate the goals of environmental justice and need for OECA to work closely with the Office of Civil Rights to engage in meaningful investigations of Title VI complaints to the agency.

This meeting was attended by **Leslie Fields**, Environmental Justice Director for the **Sierra Club**, **Jim Pew** and **Patti Goldman** of **Earthjustice**, Professor **Eileen Gauna** from the **University of New Mexico**, and Lawyers' Committee consultants **Vernice Miller-Travis** and **Veronica Eady Famira**. Additionally, **Charles Lee**, Director of the Office for Environmental Justice at EPA, and **Lisa Garcia**, Senior Advisor on Environmental Justice at EPA, attended the meeting.

The second meeting, with Assistant Attorney General Moreno, focused on the need for better communication between the Civil Rights Division of the Department of Justice and EPA to identify potential Title VI violations. Additionally, the Lawyers' Committee highlighted the inequitable enforcement of environmental laws, citing the poor records of EPA Regions 4 and 6 especially, regions that are both home to a significant number of polluting facilities in and near minority and low-income communities.

This meeting was attended by the same advocates above, as well as ENRD's Deputy Assistant Attorney General **John Cruden**, Chief for the Environmental Crimes Section **Stacey Mitchell**, Chief for the Environmental Enforcement Section **Bruce Gelber**, and Chief of Law and Policy **Pauline Milius**, in addition to several section Deputies.

Letter to the Senate Voicing Opposition to Senate Resolution to Limit EPA's Authority under the Clean Air Act

On April 12, 2010, upon recommendation of the Environmental Justice Project, the Lawyers' Committee sent a letter to Senator **Harry Reid** voicing its opposition to Senate Resolution S.J. Res. 26 which would limit the ability of the **Environmental Protection Agency** to monitor greenhouse gas emissions under the Clean Air Act. If adopted, the resolution would contribute to, rather than mitigate, the environmental threats facing the country's most underserved and vulnerable communities. The Senate was to vote on the resolution in early June and the Lawyers' Committee had reiterated its opposition to the resolution in advance of the vote. On June 10, 2010, the Senate rejected the resolution.

UN Conference on Climate Change in Copenhagen

In December 2009, Daria Neal traveled to Copenhagen, Denmark for the UN Framework on Climate Change Conference. Ms. Neal met with government representatives and environmental organizations and discussed Lawyers' Committee's commitment to environmental justice principles being applied to U.S. international agreements. Ms. Neal also blogged daily about her experience at the conference. The blog is posted on the Lawyers' Committee's website. The conference was an opportunity to highlight Lawyers' Committee's environmental justice work and build new relationships critical to the advancement of the mission of the Project. The Project also continued to be engaged in the pending

climate change legislation in Congress, as well as monitoring and commenting when necessary on U.S. international climate policy.

Staff

On August 13, Daria Neal, Senior Counsel for the Project, left the Lawyers' Committee to join the Department of Justice as a one of the new Deputy Chiefs of the Coordination and Review Section in the Civil Rights Division, working especially on Title VI compliance initiatives. This fall, Environmental Justice law fellow Robert Young and legal assistant Michelle Newman continued to monitor and follow up on current Project activities and investigations. Currently, the Environmental Justice docket has been absorbed by the Fair Housing Project and law fellow Izu Emeagwali is working on moving those cases forward. Additionally, the Community Development Project has absorbed some of the Environmental Justice Project's pending work and is pursuing a number of activities as complementary issues arise.