Environmental Justice Clinics: Visible Models of Justice

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Environmental Justice Clinics: Visible Models of Justice*

Hope Babcock**

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* The phrase "visible models of justice" comes from David R. Barnhizer's comprehensive article on clinical teaching methodology which provides the framework for the normative evaluation of environmental justice clinics set forth in this Article. David R. Barnhizer, The University Ideal and Clinical Legal Education, 35 N.Y.L. Sch. L. Rev. 87, 123 (1990) [hereinafter Barnhizer, The University Ideal].

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The politicians thought we wouldn't fight but we united and said, Ya Basta, enough, this [is] a dumping ground no more. . . . The kids around here were babies when we started. Now they too will fight for what they believe in because we showed them their voices count.

The primary mission of clinical faculty is to create visible models of justice in action that demonstrate a deep commitment to achieving justice and to challenging injustice. This does not mean that all clinical programs will be alike. It does not mean that clinical courses involve only poverty law or related activities. Nor does it mean that there is a specific or unified agenda for clinical faculty concerning what aspects of justice ought to be addressed or how problems should be defined. I am urging that the critical element is the process of principled inquiry into conditions of justice and injustice as actually manifested in real societal arrangements. This does not dictate a particular political vision, but demands a willingness to inquire as well as a responsibility to take some form of action depending on the result of the process of principled inquiry.

2. Barnhizer, The University Idea, supra note *, at 123.
I. Introduction

Environmental equity is an emerging term coined to describe the relationship between a community's socio-economic and racial traits and its degree of exposure to environmental hazards. Many studies conducted since the 1970s have examined whether the burdens of environmental harm and the benefits of environmental protection are distributed equitably with respect to minority and/or low-income populations. These studies show that national environmental laws, inherently as well as in their enforcement, fail to protect these populations adequately. While the studies indicate that the causes of this injustice are many and varied, they also suggest that we can neither deny nor ignore the problem.

Recently there has been an upwelling of interest in the issue of environmental equity among government and elected officials, professional associations and mainstream environmental organizations. A number of legislators introduced bills in the 103d Con-


gress to remedy or prevent the ill effects of environmental injustice.6 In 1994, President Clinton signed an Executive Order directing his Administration to incorporate environmental justice considerations into its various programs.7 Industry task forces are currently exploring ways to avoid the controversy attending their efforts to site unwanted facilities in low income or minority communities8 and mainstream environmental organizations have adopted environmental justice initiatives and added minority staff.9

Although their contribution to the effort may be less well known, law schools have recently joined the environmental justice movement. A number of schools have added environmental justice courses to their curricula and/or environmental justice programs to their clinical offerings, and other law schools have chosen either to modify the content of their existing environmental courses to address the issue or to expand their existing clinical programs to include environmental justice cases.10

The history of clinical education demonstrates that law school clinical programs provide needed legal services to under-

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6. See, e.g., S. 1161, 103d Cong., 1st Sess. (1993) (proposing to direct the EPA to publish a list, in rank order, of the total weight of toxic chemicals released in each county); H.R. 1925, 103d Cong., 1st Sess. (1993) (proposing to require the Agency for Toxic Substances and Disease Registry to collect information on race, age, gender, ethnic origin, income and education levels of persons living in communities adjacent to toxic sites); H.R. 1924, 103d Cong., 1st Sess. (1993) (proposing to amend the Solid Waste Disposal Act to allow challenges to waste facility sitings in environmentally disadvantaged communities); H.R. 495, 103d Cong., 1st Sess. (1993) (proposing to amend the Solid Waste Disposal Act to require consideration of community information statements assessing demographic characteristics of a proposed site in the permitting process).


9. See supra note 5.

10. These include Georgetown University Law Center, Boalt Hall School of Law, Boston College Law School, Thurgood Marshall School of Law, Golden Gate University School of Law, Stanford Law School, and Tulane University School of Law. Various telephone interviews with personnel from these schools (Nov. 1994).
represented individuals, while at the same time offering students an opportunity to develop and hone their legal skills and confront important social policy issues. Clinics also function as laboratories for exploring different ways to overcome legal and institutional barriers confronting minority and poor communities and as catalysts for reforming the legal system. While environmental justice clinics serve these goals, they also present unique pedagogical and legal services challenges to students and faculty that traditional law clinics do not encounter. This Article examines and evaluates the contributions of environmental justice law clinics to pedagogy, law reform and legal services. The author bases her observations and conclusions on her experiences at Georgetown University Law Center where she teaches a course in environmental equity and supervises students in an environmental justice clinic.

Part II summarizes current knowledge about the incidences and causes of environmental inequity and the legal barriers to achieving environmental justice. This discussion highlights the distinctive aspects of environmental justice issues which influence the design of environmental justice clinical programs. Part III presents general information on legal clinical programs and discusses David Barnhizer's pedagogical goals for clinical instruction in order to provide a normative framework for evaluating environmental justice clinical programs.

Part IV describes Georgetown University Law Center's environmental justice clinical program—its origins, goals and structure. This Part addresses such issues as funding, staffing and continuity between semesters, as well as case selection, student training and projects. This Part also discusses some of the problems encountered in designing Georgetown's environmental justice clinical

11. Some clinicians have long considered law reform, and with it the reform of social institutions, to be the primary purpose of clinics:
This laboratory function of a law school clinical program leads not only to a better understanding of a particular part of the legal process but should also result in efforts to reform that process. Law reform can be accomplished through litigation and other means; a good clinical program generates information and data conducive to reform efforts in many areas.

program and how they have been resolved, and examines comparative examples drawn from the experiences of other environmental justice clinics. The intent is to provide guidance for schools contemplating similar programs.

Part V first describes the specific projects that the Georgetown clinic has undertaken and how these confront the problems of environmental injustice discussed in Part II, and then analyzes the extent to which Georgetown's program, and environmental justice clinics in general, meet the clinical educational goals set forth in Part III. Because the design differences between Georgetown's program and other environmental justice clinics are not significant in this context, this Part uses the Georgetown program as an analog for others. Part VI concludes with a brief discussion of the lessons learned from the clinical experience at Georgetown.

II. ENVIRONMENTAL INEQUITY

A. The Nature of the Problem

We have seven landfills. We have a sewer treatment plant. We have the Ford Motor Company. We have numerous chemical company and steel mills. The river is just a few blocks away from us and is carrying water so highly contaminated that they say it would take seventy-five years or more before they can clean it up.13

The environmental justice movement emerged into the national limelight in 1982 with a protest over North Carolina's decision to build a toxic waste landfill for PCB-contaminated dirt in Warren County, a largely black and extremely poor region of the state. By the time the demonstrations were over, the police had arrested 500 people, including several prominent civil rights figures and a member of the Black Congressional Caucus.14 While the protests did not succeed in keeping the landfill out of Warren County, an interracial movement was forged, linked to the larger civil rights and poverty movements, with the goal of empowering people to protect themselves and their communities from environmental harms.15

13. Unequal Protection, supra note 1, at 265 (quoting "an African American woman who fought the siting of a landfill on the South Side of Chicago").
14. Among those arrested were civil rights leaders Dr. Benjamin Chavis, former Executive Director of the United Church of Christ Commission for Racial Justice, Dr. Joseph Lowery of the Southern Christian Leadership Conference and then-Congressman Walter Fauntroy (D-DC). See Charles Lee, Toxic Waste and Race in the United States, in Environmental Hazards, supra note 4, at 12.
15. The environmental justice movement is just one response to the phenomenon of
Since the demonstrations in Warren County, researchers have developed a considerable body of scholarship indicating that the discriminatory siting in North Carolina was not an isolated phenomenon. While the specific conclusions of some of these studies may be debatable, the weight of the evidence is persuasive that minorities and low income populations suffer a disproportionate share of the environmental burdens of an affluent society. Furthermore, the studies indicate that these communities have less access to traditional remedies to ameliorate those burdens under environmental and civil rights laws than do their wealthier neighbors. Unfortunately, despite increased recognition of this phenomenon, the specific conclusions of some of these studies may be debatable, the weight of the evidence is persuasive that minorities and low income populations suffer a disproportionate share of the environmental burdens of an affluent society. Furthermore, the studies indicate that these communities have less access to traditional remedies to ameliorate those burdens under environmental and civil rights laws than do their wealthier neighbors.
nomenon, the problem appears to be worsening.\textsuperscript{20}

As discussed below, neither civil rights\textsuperscript{21} nor environmental\textsuperscript{22} laws have provided adequate legal remedies. In fact, because environmental statutes often prevent locally undesirable land uses\textsuperscript{23} from locating in either ecologically important or politically powerful areas, some argue that these laws have actually contributed to the disproportionate distribution of environmental harms in those areas which are least capable of resisting them.\textsuperscript{24}

B. The Causes of Environmental Inequity

The variety of causes of environmental inequity poses particular challenges for the ameliorative capacity of our legal system and the creativity of its lawyers. While some causes may be easier to address than others, all are difficult to eliminate. To some extent, the roots of the problem, including racism, market forces and the disenfranchisement of poor communities, also shape the clinical responses as described in Parts III and IV.

1. Racism.

Racism is a contributing factor and in some instances a direct cause of environmental inequity.\textsuperscript{25} As Professor Derrick Bell pro-

\begin{flushright}
\textit{NAT'L LJ.}, Sept. 21, 1992, at S4 (finding that the EPA discriminated against minority communities in enforcement of environmental laws and in the cleanup of hazardous waste sites).
\end{flushright}

\textsuperscript{20} A recent study by the Center for Policy Alternatives, the United Church of Christ and the National Association for the Advancement of Colored People found that the percentage of non-whites who live near toxic waste dumps increased from 25\% to 31\% between 1980 and 1993. The study did not attempt to disaggregate various potential causes of this increase, such as whether the area already contained an above-average percentage of people of color before it was chosen as a site for a hazardous waste facility, or whether migration patterns caused by other social or economic pressures were responsible for the high percentage. On its face, however, the study demonstrates that racial disparities have worsened. \textit{Benjamin Goldman & Laura Fitton, Center for Policy Alternatives, Toxic Waste and Race Revisited} 2 (1994).

\textsuperscript{21} See discussion \textit{infra} Part II.C.2.

\textsuperscript{22} See discussion \textit{infra} Part II.C.1.

\textsuperscript{23} The commonly used acronym is "LULU." See, e.g., Been, \textit{What's Fairness, supra} note 17.

\textsuperscript{24} This phenomenon is generally referred to as "NIMBY" (Not In My Backyard). The response to NIMBY, according to Robert Bullard, is "PIBBY" ("place-in-blacks'-backyard"). \textit{Dumping in Dixie, supra} note 5, at 6; \textit{see also} Austin & Schill, \textit{supra} note 15, at 78. \textit{But see} Been, \textit{LULUs, supra} note 17, at 1388-92 (arguing that market forces may be responsible for disproportionate sitings).

\textsuperscript{25} See \textit{Dumping in Dixie, supra} note 5, at 6; Gelobter, \textit{supra} note 19, at 64-81 (suggesting a model that includes racism).
claimed in a recent speech, "The fact is: racism is far from dead in the last decade of twentieth century America. The civil rights gains, so hard won, are being steadily eroded. Despite undeniable progress for many, no African-American is insulated from incidents of racial discrimination." Racism is ingrained in our culture. The mark of racism has been etched into our political and socioeconomic institutional structures and into our national psyche. Although overt racism is against the law, conscious and unconscious racist attitudes are still widespread. Racially motivated policies have left segments of our society with many burdens, including living in urban or rural ghettos, and being under-fed, without adequate health care or education, and being politically and economically disenfranchised, all of which make it difficult for people of color to combat environmental harms or secure environmental amenities.

The racial element of environmental justice cases creates new

26. Derrick Bell, The Permanence of Racism, 22 Sw. U. L. Rev. 1103, 1104 (1993). Professor Bell goes on to compare the inner cities of America to the homelands of South Africa. He describes an environment of drug-related crime, teenage parenthood, and dysfunctional families, calling them the "manifestations of a despair that feeds on itself" because of racism. Id. He concludes:

Racism . . . is not an aberrant disease afflicting bad, white folks whose discriminatory symptoms can be cured—if not cured—by heavy doses of stronger civil rights laws, vigorously enforced. Rather, racism is a principal stabilizing force in a nation of varied people whose opportunities and status are widely disparate, and are likely to remain so.

Id. at 1105.


28. For a provocative and challenging look at how the Eurocentric view has destroyed the cosmogenic view of indigenous peoples, see Williamson B.C. Chang, The "Wasteland" in the Western Exploitation of "Race" and the Environment, 63 U. Colo. L. Rev. 849 (1992) (arguing against the re-formulation of claims by native peoples for sovereignty into claims of racial discrimination).

29. See generally Lawrence, supra note 27.


31. See, e.g., Jon C. Dubin, From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color, 77 Minn. L. Rev. 799 (1993) (suggesting that "Euclidean" zoning principles have not only contributed to racially segregated communities, but also have failed to protect those communities from undesirable land uses).

32. For a discussion of some of the hurdles faced by communities of color and low income communities that are threatened with a locally undesirable land use, see Austin & Schill, supra note 15, at 76-77.
causes of action and legal opportunities for traditional environmental lawyers, even though to date these cases have not been particularly effective. However, the different historical and personal experiences of lawyer and client in an environmental case may also create initial barriers between them which at times make effective teamwork difficult.

2. The Marketplace.

Market forces can also play a large role in the inequitable distribution of environmental hazards, for example, they contribute to decreased land values in poorer communities. When siting environmental burdens, many decisionmakers choose the path of least economic cost and political resistance. Since impoverished communities generally lack the financial and technical resources necessary to resist environmentally hazardous facilities, less opposition is expected. For instance, the District of Columbia found it cheaper and politically easier to dump 767,000 tons of municipal incinerator ash in a gully on the grounds of a public mental health hospital surrounded by public housing than to haul the ash to an out-of-state landfill.

The role of the marketplace in dictating a particular siting decision can hinder the effectiveness of a civil rights claim by making it hard to show discriminatory intent. The marketplace can also offer jobs and infrastructure improvements (for example, new schools) to environmental justice victims, creating a tension between their economic interests and their desire for a clean and

33. See discussion infra Part II.C.2.
34. See discussion infra Part II.C.4.
35. The issue of whether market dynamics or racism in the siting process has caused the burden of environmental hazards to fall disproportionately on the poor has received some attention in the scholarly literature. See, e.g., Been, What's Fairness, supra note 17.
36. Historic patterns of segregation and modern-day red-lining result in these communities being predominantly minority as well. See Chase, supra note 3, at 345 (noting that blacks are residentially segregated from whites at all income levels); Dubin, supra note 31, at 744-56 (discussing historic racial zoning).
37. Godsil, supra note 3, at 396 (noting developer's response to wealthy community's opposition); see also Unequal Protection, supra note 1, at 4-5; Been, LULUs, supra note 17, at 1988-92 (discussing market forces).
38. The prospect of jobs, an increase in the tax base and funding for basic social services has even caused some minority and low income communities to solicit polluting industries. See Robert Bullard, Environmental Blackmail in Minority Communities, in Environmental Hazards, supra note 4, at 82.
39. See discussion infra Part V.A.1.
40. See discussion infra Part II.C.2.
healthy environment. This conflict can create tensions as well between the lawyer’s vision of the public interest, which may include the desire to reform the law, and the client’s needs, which may not include that goal at all. 41

3. Political Disenfranchisement.

Minority and poor communities generally lack the political power to be well-represented in government, particularly at the national level. Unfortunately, the environmental movement has also failed to include people of color and to address their predicament. 42 The relative absence of minorities from environmental policy-making may be the result of deliberate exclusion, lack of training or racial stereotyping 43 or may simply reflect the perception that poor and minority populations are uninterested in environmental problems. 44 This perception might stem from the

41. See Cole, supra note 4, at 658. This conflict can become acute during the settlement or remedy phase of litigation.

42. See Dorceta Taylor, Can the Environmental Movement Attract and Maintain the Support of Minorities, in ENVIRONMENTAL HAZARDS, supra note 4, at 28, 41 (describing the gap between mainstream and grassroots environmental organizations); see also Lazarus, supra note 4, at 811-25 (discussing absence of people of color from the process of setting the environmental agenda).

Perhaps the definition of “environmental problem” should be expanded to include non-traditional environmental issues such as diet, crime, drugs, and noise in order to encompass the concerns of inner city residents. See Taylor, supra note 42, at 45-48. While expanding the scope of the phrase broadens the range of affected interests and the diversity of the participants in the environmental movement, it may also divert resources from the traditional environmental agenda. This conflict has caused tension between mainstream and grassroots environmental organizations. Id. at 40; see also Cole, supra note 4, at 652-53 (describing the gap between the ideals and the reality of who is served by environmental and social change litigation).

43. See, e.g., Lazarus, supra note 4, at 822-25 (exploring some possible explanations for lack of people of color in the environmental movement); Taylor, supra note 42, at 28-54 (describing the formation of the mainstream environmental organizations and their problems in appealing to people of color).

44. Case studies demonstrate the inaccuracy of this perception by showing that when environmental issues are coupled with civil rights and public health concerns they receive the immediate attention of people of color. Unequal Protection, supra note 1 (giving examples of environmental justice activism); see also Austin & Schill, supra note 15, at 71-72 (stating that minorities are more concerned about environmental issues that affect public health than “people who are wealthier and white”); Bullard & Wright, supra note 15, at 304 (showing that African-American communities are attracted by issues that advocate safeguards against environmental blackmail, focus on inequity and civil rights, endorse the politics of direct action, and seek political empowerment of “underdog” groups). The author’s experience in the clinical program is that there is considerable interest in environmental issues among minority and low-income communities faced with environmental harm. In the first three years, half of the cases were brought to the clinic by concerned individuals from such communities. See discussion infra Part IV.D.2.
historical exclusion of these groups from environmental amenities, or it could arise from a misperception that these groups have more pressing concerns (such as crime, education, housing, or health care) which preclude interest in their own environment. Whatever the reason, environmental policy has not responded to the problems of these communities.

The absence of minority representation in the government and in environmental advocacy groups means that policymakers are not informed about the environmental problems that particularly afflict communities of color and the poor. There is also little political pressure to address these problems, and often no significant political opposition in these communities when faced with the threat of new polluting facilities within their borders.

The environmental justice lawyer must appreciate her client's relative lack of political power. Often solutions to environmental justice problems lie more in the political than the legal realm; thus, an important strategy may be to search for a political weapon to wield on the client's behalf. Unfortunately, locating and using these political tools is also complicated by the relative lack of minority representation in the political process.

C. Barriers to Solutions

To the extent that remedying the distributional inequities of our environmental programs implicates the need to eliminate racism, reverse or neutralize market forces, and restructure our existing political structures, the likelihood of success becomes faint.

45. This perceived lack of interest may also have kept the issue off the mainstream civil rights agenda until now. Publication of the UCC study, supra note 19, has caused dramatic change by moving environmental issues to the top of that agenda. For example, the National Association for the Advancement of Colored People ("NAACP") played a role in the Superfund reauthorization debates. See NAACP Joins Group Seeking Superfund Reform, Including Elimination of Retroactive Liability, 24 Env't Rep. (BNA) No. 26, at 1209 (Oct. 29, 1993).

46. See Godsil, supra note 3, at 399-400 (noting that hazards are often placed in communities of color because their lack of political influence will mean less opposition).

47. See Cole, supra note 4, at 648 ("Poor people and people of color also understand that most problems faced by their communities are not legal problems, but political and economic ones.").

48. For a spirited discussion of whether civic republicanism or political pluralism will lead finally to the elimination of racism in American life, see Richard Delgado, Zero-Based Racial Politics and an Infinity-Based Response: Will Endless Talking Cure America's Racial Ills?, 80 GEO. L.J. 1879 (1992) (interest convergence and log-rolling may be more effective at combating racism than normative discourse that may just rehearse the dominant narrative); Stephen M. Feldman, Whose Common Good? Racism in the Political Community, 80 GEO. L.J.
At a macro level, the sheer enormity of the underlying causes, their pervasiveness in American culture and the general resistance to change reinforces the barriers identified below. At the micro level of an environmental justice case, these factors combine to impede a lawyer’s ability to achieve both a client’s short-term goals and long-term social change.

The clinical experience at Georgetown highlights how poorly adapted current environmental laws and programs are to the realities of today’s inner cities. Often these laws are the obverse of what is needed to address and remediate these problems. Civil rights laws offer no greater promise of relief. The nature of urban environmental problems and the representational challenges presented by environmental justice clients can complicate matters even further.

1. Environmental Laws.

Federal pollution control laws are national in scope and thus do not adequately address the highly localized problems found in inner cities and their economically disadvantaged communities. Environmental laws typically set broad-based, uniform standards that do not account for cumulative impacts or the synergistic behavior of pollutants in the urban environment. Hence, the urban paradigm—chronic, low level, environmental degradation from numerous sources, including polluted runoff from city streets, air pollution from crowded city streets or freeways, lead poisoning from poor housing stock or old plumbing, and leaking underground fuel storage tanks—is not adequately addressed by federal environmental laws. The statutory and regulatory screening

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1835 (1992) (civic republicanism offers the strongest approach to reducing racism). Environmental justice clinics, which employ the dialogue and self-criticism of communitarianism, and have as their goal enhancing the ability of the victims of environmental justice to engage in the log-rolling and interest convergence advocated by political pluralists, combine features of both approaches.

49. The EPA risk assessment procedures employed in implementing many of these laws replicate and exaggerate the problems already created by the laws by setting risk thresholds without regard to the cumulative and synergistic effects of multiple pollution sources in a community. U.S. EPA, supra note 3, at 21.

50. Rainwater running off roofs, lawns, streets and industrial sites carries sediment and debris, as well as heavy metals, inorganic chemicals (such as copper, lead, zinc, and cyanides), nutrients and petroleum products from spills and leaking underground fuel storage tanks. U.S. ENVIRONMENTAL PROTECTION AGENCY, REPORT TO CONGRESS: NONPOINT SOURCE POLLUTION IN THE U.S. 2-32 to 2-34 (1984). According to the 1992 National Water Quality Inventory, 91% of the District of Columbia’s rivers were not supporting their designated uses, such as fish consumption, aquatic life support or primary or secondary contact
criteria used by the U.S. Environmental Protection Agency ("EPA") to determine whether and at what level an environmental problem should be remediated are either too high or are irrelevant in an urban setting. Statutory exemptions for certain activities, like those found in the hazardous waste provisions of the Resource Conservation and Recovery Act ("RCRA") for household hazardous waste, result in some environmental impacts being completely unregulated. Often the challenge for environmental justice advocates is to find a way to persuade a recalcitrant EPA to enforce environmental laws. This may entail the lawyer gathering enough evidence to convince government agencies to take legal action.

The National Environmental Policy Act ("NEPA") is a possible

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51. For example, EPA lead toxicity standards are between five and ten times higher than the health standards the Centers for Disease Control use for children exposed to lead in soil. See 40 C.F.R. § 261.24 tbl. 1 (1994) (providing a five ppm toxicity standard for lead); CENTERS FOR DISEASE CONTROL, PREVENTING LEAD POISONING IN YOUNG CHILDREN 20 (1991) (explaining that childhood blood lead levels generally rise three to seven d/dL for every 1,000 ppm increase in soil or dust lead concentrations. The rise can easily put a child, particularly poor and minority children who already have high average blood lead levels, over the 10 ppm blood lead level associated with decreased stature, growth, hearing acuity, intelligence, and neurobehavior development. See Debra J. Brody et al., Blood Lead Levels in the U.S. Population, 272 JAMA 278-80 (1994).

52. An example of this is the EPA's heavy reliance on drinking water exposure for ranking hazardous waste sites. See Hazard Ranking System, 40 C.F.R. § 300 app. A (1994); see also infra note 204.

53. Prior to the decision in Chicago v. Environmental Defense Fund, 114 S. Ct. 1588 (1994), the household hazardous waste provisions of RCRA exempted from stringent regulation municipal ash containing toxic materials. Even under the Supreme Court's decision, the ash must meet a high threshold of toxicity to trigger the law's regulatory requirements. Id. (holding that the generation of toxic ash from incinerating household hazardous waste is not exempt from RCRA's hazardous waste regulatory provisions).


exception to this pattern. In its provisions for hearings and public meetings, NEPA offers communities of color and low-income communities the opportunity to put pressure on the government to respond to their environmental concerns. 55 Unfortunately, NEPA’s narrow focus on the physical environment 56 as well as the federal action restriction and the fact that the U.S. Supreme Court has narrowed the law’s application to correcting procedural errors 57 disables NEPA as a device for addressing potential socio-economic injuries to minority or low-income communities. 58 Even environmental impact statements, required by the statute in order to provide the public with information on proposed projects, can be intimidating and difficult to read, 59 despite regulatory requirements to the contrary. 60

The remedies available to citizens under federal environmental laws are also inadequate, as they are largely restricted to injunctive

Environmental Law Journal (temporarily enjoining construction of a waste transfer station while the District government prepared an adequate environmental assessment). Although the city recently proposed regulations implementing DCEPA, the final rules are unlikely to be promulgated soon because they contain several items that are problematic for the environmental community, such as allowing project applicants to prepare environmental impact statements and restricting opportunities for public comment. 41 D.C. Reg. 2251, 2259, 2262 (Apr. 22, 1994).


56. See Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766 (1982) (NEPA does not require an agency to assess every impact or effect of its proposed actions); see also Peter L. Reich, Greening the Ghetto: A Theory of Environmental Race Discrimination, 41 KAN. L. Rev. 271, 298-99 (1992) (discussing exclusion of "harm to the psychological health and community well-being").

57. See Strycker’s Bay Neighborhood Council v. Karlen, 444 U.S. 223 (1980) (holding that court should review only whether an agency has considered the environmental consequences of a decision).


59. See Freeman & Godsil, supra note 58, at 557 ("although the EIS and permit processes normally include opportunities for public hearings and public comment on proposed projects, the proceedings remain technocratic").

60. See 40 C.F.R. § 1502.8 (1993) (requiring environmental impact statements to be written in "plain language" so the "public can readily understand them"). Some agencies have interpreted this regulation as requiring the preparation of Spanish language translation. See, e.g., 45 Fed. Reg. 70,539-41 (1980) (describing a 90-page U.S. Department of Energy EIS summary written in Spanish for a proposed radioactive waste storage facility in New Mexico).
and declaratory relief and/or civil penalties. While injunctive relief may keep an unwanted facility out of a community or compel modifications in the design or operating procedures of an existing facility, it may not address the injuries that the residents of an adversely affected community suffer, such as medical expenses, decreased property values and job losses. Defendants generally pay civil penalties into the federal treasury instead of directly to plaintiffs, and the funds are rarely returned to the community for environmentally or socially beneficial projects. In the long-term, reforming environmental laws so that they become more responsive to the needs and concerns of the victims of environmental justice and encourage proper remedies should become important goals of environmental justice clinics.

2. Civil Rights Laws.

Civil rights laws offer no better alternatives for minority communities. At a macro level, the Equal Protection Clause and federal civil rights, fair housing, anti-job discrimination, and voting

61. See Cole, supra note 4, at 651-52 (criticizing the failure of traditional litigation to address the self-empowerment needs of lower income communities and communities of color).

62. The Supreme Court has held that civil penalties must be paid into the federal treasury. See Gwaltney of Smithfield v. Chesapeake Bay Found., 484 U.S. 49, 53 (1987); Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1, 14 n.25 (1980). But see Sierra Club v. Electronic Controls Design, Inc., 909 F.2d 1350 (9th Cir. 1990) (holding that out-of-court settlements are not civil penalties, and thus can be distributed to private environmental organizations other than the plaintiffs); see also H.R. CONF. REP. No. 1004, 99th Cong., 2d Sess. 139 (1986) (encouraging settlements that "preserve the punitive nature of enforcement actions while putting the funds collected to use on behalf of environmental protection").

63. Since the 1980s, the EPA has used supplemental environmental projects ("SEPs") whereby the fines paid by companies are reduced in exchange for the initiation of pollution prevention projects. The agency is gradually expanding the program. In 1992, more than two hundred SEPs were approved, many of which involved violations of the major pollution control laws. See generally Growth Expected in Program to Cut Fines in Exchange for Pollution Prevention, 23 Env't Rep. (BNA) No. 42, at 2692 (Feb. 12, 1993). The extent to which advocates or agencies will use these projects to address the concerns of environmental justice plaintiffs is not yet clear.

64. See generally Boyle, supra note 30; Chase, supra note 3, at 353-58 (discussing the failure of equal protection litigation to work for communities of color); Kelly M. Colquette & Elizabeth A. Henry Robertson, Environmental Racism: The Causes, Consequences, and Commendations, 5 Tul. Envtl. L.J. 152 (1991); Lazarus, supra note 4, at 829-42 (discussing litigation under the equal protection clause and the civil rights acts); Reich, supra note 56, at 290-97; James H. Colopy, Note, The Road Less Traveled: Pursuing Environmental Justice Through Title VI of the Civil Rights Act of 1964, 13 Stan. Envtl. L.J. 125 (1994) (discussing the failure of equal protection litigation and advocating the use of Title VI to tackle environmental justice problems); Godsil, supra note 3, at 409-21; Naikang Tsao, Note, Ameliora-
laws all address some of the circumstances in which environmental racism exists. However, none of these laws, either individually or in the aggregate, has yet directly helped plaintiffs with specific claims of environmental racism.

Heightened review under the Equal Protection Clause of the Fourteenth Amendment applies only to racial classifications, while claims of discrimination based on wealth are not recognized. Additionally, the Supreme Court requires a showing of both statistically demonstrable disparate impact and specific discriminatory intent for Equal Protection claims. While intent can be proven circumstantially, plaintiffs must address the five factors that are set out in Village of Arlington Heights v. Metropolitan Housing


66. A recent and long overdue initiative undertaken by the U.S. Environmental Protection Agency uses Title VI of the Civil Rights Act of 1964 to prevent states from disproportionately siting hazardous facilities in communities of color. Complaints filed by local communities in Louisiana fighting a permit issued by the Louisiana Department of Environmental Quality, and a lawsuit filed by the Sierra Club Legal Defense Fund alleging Title VI violations, prompted the EPA to take this action. The Tulane Environmental Law Clinic assisted in the formulation of the administrative complaint.

67. For an article examining some of the problems encountered in the current methods used to define subpopulations based on race and ethnicity for determining whether an inequity has been created, see Rae Zimmerman, Issues of Classification in Environmental Equity: How We Manage Is How We Measure, 21 FORDHAM URB. L.J. 633 (1994).

68. See San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 24 (1972) (upholding school finance system based on neighborhood's ability to raise property taxes by stating that "at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precise equal advantages").

69. See Washington v. Davis, 426 U.S. 229 (1976) (finding that disproportionate black failure rate on police test was not an equal protection violation in the absence of discriminatory intent). Proving disparate effect can be problematic depending on the size of the geographic area being used to determine the affected, or "baseline," population. The broader the geographic area (for example, census tract or zip code), the more difficult it is to show that the siting of a facility disproportionately affects members of a racial or ethnic minority. See, e.g., East Bibb Twiggs Neighborhood Ass'n v. Macon-Bibb County Planning & Zoning Comm'n, 706 F. Supp. 880, 885 (M.D. Ga. 1988), aff'd, 896 F.2d 1264 (11th Cir. 1989) (approving a landfill in a 70% African-American census tract does not establish either disparate impact or facts from which discriminatory intent can be inferred, even though landfill "does of necessity impact to a somewhat larger degree" upon black community in census tract); see also Lawrence, supra note 27, at 318-28 (pointing out the shortcomings of an intent standard); Godsil, supra note 3, at 413-16 (discussing the problems of proof encountered by plaintiffs in East Bibb Twiggs and other cases).

Proving invidious discriminatory intent is particularly difficult for the Georgetown clinic because the District of Columbia has a minority run government, making it less likely that a court will find racial bias in governmental decisions. See, e.g., City of Richmond v. J. A. Croson Co., 488 U.S. 469, 495-96 (1989) (noting that a black majority government that votes to the disadvantage of a white minority would raise suspicions).
Development Corp. As illustrated by Bean v. Southwestern Waste Management Corp., East Bibb Twiggs Neighborhood Ass'n v. Macon-Bibb County Planning & Zoning Commission and R.I.S.E., Inc. v. Kay, this has proven extremely difficult. In each of these cases, the court held that the plaintiff's proffered proof of disparate impact was insufficient to show discriminatory intent. In fact, no court has been willing to infer intent from a historical pattern of discrimination. An added difficulty is that the disparate distribution of environmental impacts is rarely accompanied by specific and explicit evidence of motive. Thus, the Fourteenth Amendment has not been of much use to date for winning environmental justice claims in court.

Advocates for communities affected by environmental inequity may be able to use other laws that do not have the intent requirement. Some authors have suggested using Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, or

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70. 429 U.S. 252 (1977) (holding that a showing of disparate impact on minorities is insufficient to infer discriminatory intent). The five factors that can be used to prove discriminatory intent are: (1) official action's effect on particular race; (2) decision's historical background; (3) sequence of events immediately preceding the action; (4) any substantive or procedural departures from the ordinary decisionmaking process; and (5) action's legislative or administrative history. Id. at 264-68.

71. 482 F. Supp. 673 (S.D. Tex. 1979) (holding that the statistical data are insufficient evidence to prove discriminatory intent).


74. See, e.g., City of Memphis v. Greene, 451 U.S. 100 (1981) (holding that closing a street connecting white and black communities did not violate § 1982); Coalition of Bedford-Stuyvesant Block Ass'n, Inc. v. Cuomo, 651 F. Supp. 1202 (E.D.N.Y. 1987) (finding that statistical evidence alone did not establish discriminatory intent under § 1983 in the decision to site a homeless shelter in a community of color); Coalition of Concerned Citizens Against I-670 v. Damian, 608 F. Supp. 110 (S.D. Ohio 1984) (holding that Title VI of the Civil Rights Act cannot be used to stop highway construction in minority community because alternatives were adequately considered); Harrisburg Coalition Against Ruining the Environment v. Volpe, 330 F. Supp. 918 (M.D. Pa. 1971) (finding that the proposed construction of two highways through city parks used by African-Americans was not racially motivated).

75. See, e.g., Lazarus, supra note 4, at 834-42 (discussing use of Title VI, Title VIII and § 1982); Colopy, supra note 64 (suggesting use of Title VI).


civil rights laws such as 42 U.S.C. § 1982,78 although to date these also have not been successful in the environmental context.79 Other approaches that avoid the intent requirement include using the Medicaid laws80 and persuading governmental bodies to take action to prevent disparate impact before it occurs.81

3. The Nature of Environmental Problems.

The complexity of environmental problems has generated an extremely complicated regulatory and administrative legal framework. In cases involving the urban environment, proving causation can be quite difficult given the multiple sources of pollution and a population already stressed by a variety of lifestyle factors.82 This makes it virtually impossible to assign individual liability for urban environmental harms such as those caused by overflows from combined sewer and stormwater systems, leaking underground fuel tanks and lead exposure.83 The costs and difficulties involved in solving these problems make them politically and bureaucratically unattractive.84 The lack of attention from elected officials often

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79. For example, in City of Memphis v. Greene, 451 U.S. 100 (1981), the court held that § 1982 was not violated by the closing of a street which had connected white and black residential neighborhoods because plaintiffs failed to show that blacks could not close streets in their own neighborhood; however, official action which did decrease the value of black-owned property might give rise to a § 1982 claim. The holding leaves open the question of whether § 1982 requires a showing of discriminatory intent or racial animus.

80. For example, a state’s failure to provide adequate lead screening for children might be used in a lawsuit brought under the Medicaid laws. See, e.g., Philadelphia Welfare Rights Org. v. Schapp, 602 F.2d 1114 (3d Cir. 1979) (affirming injunction against state for failing to provide screening as required by Medicaid, 42 U.S.C. § 1396d (1988 & Supp. 1993)).

81. See discussion infra Part V.A.3.

82. Because these populations are generally not part of the health care system, background health information on them is lacking. Ecological indicators are often not inventoried in urban environments, making it difficult for harmed communities to demonstrate that an individual source is the cause of that harm.

83. It is estimated that 17% of all pre-school children have an increased risk of lead poisoning; over 68% of low-income African-American children have high enough levels of lead in their blood to cause physiological and neurobehavioral effects, compared to 36% of low-income white children. U.S. EPA, supra note 3, at 9. Local governments almost never enforce laws regulating lead-based paint in housing and the federal laws regulating lead paint have universally been deemed ineffective. Housing and Community Development Act of 1992, §§ 1012-13, 42 U.S.C. § 4822 (1988 & Supp. 1993) (amending the Lead-Based Paint Poisoning Prevention Act).

84. City housing officials in New York City recently estimated that the average cost of each lead cleanup in an apartment or home is approximately $5,000. Matthew Purdy, Cost of Lead Cleanup Puts More Poor Children at Risk, N.Y. TIMES, Aug. 25, 1994, at B1.
results in the problems becoming worse.


The typical environmental justice client is a voluntary, loosely structured, transitory gathering of individuals with varying degrees of concern for creating change in their community. Leadership of such a group may be difficult to identify at any given point in time and may change for reasons not apparent to the outside lawyer. In some cases, these groups are bound together through activities in other associational settings such as churches, PTAs or social clubs, while in other cases, they may have no preexisting social ties. The skills and resources necessary to fight unwanted land uses may have to come from outside the community, which can create tensions with the community. Also, views may clash because some members of a disempowered group may be initially hostile toward, or intimidated by, lawyers and the judicial

85. The affected population varies widely. For example, some of the client groups may include the homeless, living either on the streets or in shelters, people who migrate within or out of the affected environment, and collections of people with different ethnic origins who may not traditionally work with each other, let alone understand each other. As is often the case when working with disempowered communities, the question of who should (or can) represent these individuals is a constant one for the lawyer.

86. Rule 23 of the Federal Rules of Civil Procedure, which regulates class action lawsuits, may give some measure of control to a court in assuring commonality of interests among plaintiffs in these situations. See Fed. R. Civ. P. 23.

87. Interestingly, women have played a dominant role in the leadership of these groups. See Unequal Protection, supra note 1, at 210-18.

88. The Georgetown clinic has encountered this problem. Particularly in litigation, there is a need to identify a single responsible individual who can either speak for the group, or report back to the clinic lawyers on the group’s decisions. Because of the dynamics within these groups and their lack of formal authorization, existing leadership can be challenged, removed and circumvented in a variety of ways that can be disquieting for the attorneys. In these cases, the clinic must find a mechanism to assure that the larger group is effectively communicating its wishes to the attorney and to encourage that group to establish stable leadership. The loose structure and tenuous nature of the leadership may also mean that decisions are made slowly; survival of the group depends on the leadership’s ability to represent the interests and goals of all of the group’s members, which can engage the group in a lengthy democratic process of decisionmaking. The attorney must respect this process and try not to short-circuit it.

89. See Austin & Schill, supra note 15, at 74 (describing commonalities of individuals in grassroots environmental organizations); Bullard & Wright, supra note 15, at 304-05 (African-American environmental leadership often comes from churches and social justice organizations); Taylor, supra note 42, at 42-43 (describing grassroots environmental organizations).

90. Establishing community trust can be a particular challenge in environmental justice cases. Giving clinical participants the principal responsibility for projects has helped to establish this trust by exposing potential clients to the enthusiasm, commitment and care of law students. In several instances, students in the Georgetown clinic were able to
process\textsuperscript{91} or may have been trained in the confrontational tactics of the civil rights or poverty movements.\textsuperscript{92} These characteristics add yet another challenge for an environmental justice clinic to address.

Environmental inequity is real. Its multiple causes are rooted deep in our culture and implicate both market and political inequities; they strike at the heart of our national consciousness about race. The solutions seem to be beyond the reach of our traditional environmental and civil rights laws, since environmental justice problems contain all of the challenging features of typical environmental and civil rights cases, while posing unique challenges of their own. The environmental justice movement is striving to address these challenges by creating new responses to the problems. The environmental justice clinic is one vehicle particularly well suited for this task.

III. **The Promise of Law School Clinical Programs**

And if somewhere, some time, something a law professor does hasn't a practical effect, he hasn't been a good law scholar or teacher.\textsuperscript{93}

Law school clinics have become part of the environmental justice movement for good reason. They have the potential to offer high quality legal services to communities at risk from the disproportionate distribution of environmental harms, and they can function as catalysts for reform of the legal framework and institutions creating the disparities. In exchange, environmental justice projects enrich the clinical curriculum by offering students a rich array of legal problems on which to work that will enhance their sense of professional responsibility, their analytical abilities, their knowledge of the law, and their lawyering skills.

nurture an incipient lawyer-client relationship into maturity. Other approaches include affiliating with a community organization, as Boston College Law School has done, Telephone Interview with Bill Shutkin, Co-Director, Alternatives for Community and Environment (Nov. 30, 1994), or hiring a non-legal community outreach liaison for community programs, as Tulane has done, Telephone Interview with Daria Diaz, Acting Director, Tulane Environmental Law Clinic (Nov. 23, 1994).

\textsuperscript{91} For example, Luke Cole notes that “[p]oor people and people of color also have a deeper skepticism about the law’s potential, because in the United States the law has historically been used to systematically oppress people of color and poor people.” Cole, \textit{supra} note 4, at 647.

\textsuperscript{92} See Austin & Schill, \textit{supra} note 15, at 74; Bullard & Wright, \textit{supra} note 15, at 305; Taylor, \textit{supra} note 42, at 42; Cole, \textit{supra} note 4, at 640.

\textsuperscript{93} \textit{Ten Teachers Who Shape the Future}, \textit{Time}, Mar. 14, 1977, at 57 (quoting Prof. Guido Calabresi, Yale Law School).
Many articles have been written about clinical teaching methodology\(^94\) and the origins of clinical legal education in the law school curriculum.\(^95\) Drawing on this literature, this Part introduces the reader to the elements of clinical education, including its pedagogical goals,\(^96\) so that she may critically evaluate the ability of such programs to provide legal services and function as a catalyst for legal reform in the environmental justice field.

A. Clinical Legal Education as a Pedagogical Paradigm

An American Association of Law Schools report defines clinical education as:

[F]irst and foremost a method of teaching. Among the principal aspects of that method are that students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts to identify and solve the problem; and perhaps most critically, the students' performance is subject to intensive critical review.\(^97\)

“Live client” clinics add to this definition the requirement that at least some of the interaction in role be real situations, rather than simulated or hypothetical situations, and “in-house” means that supervision and review of the student’s actual project is undertaken by clinical faculty rather than by practitioners outside of the law school.\(^98\)

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\(^96\) *See infra* Part III.B.


\(^98\) *Id.* This model is distinct from the type in which teaching occurs in an employment setting under an extern program. The latter often lacks direct faculty supervision and an academic component such as a seminar. Some feel that this type of teaching does not adequately educate the student and lacks the structure, methodologies and resources to address the student's individualized needs. *See, e.g.*, George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415, 421 (1991). Others favor this approach because it can provide a “window” onto the real world. *See, e.g.*, Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 HARV. C.R.-C.L. L. REV. 1, 13 (1993).
Clinical education is both a pedagogical method and "a philosophy about the role of lawyers in our society." With roots in the social and legal education reform movements of the 1960s, clinical programs offer a qualitatively different educational experience to students than that available through traditional classroom teaching. Clinics that offer legal services to individuals or promote law reform perform important social services as well. Yet the barriers described in the previous Part present a serious challenge to advocates for communities affected by environmental injustice. As such an advocate, an environmental justice law clinic must confront these barriers and work with the affected communities to provide effective legal services and promote law reform, while still providing students with a successful pedagogical experience. How well the Georgetown clinic, which employs a "live client," "in-house" model, achieves the goals discussed in this Part is evaluated in Part V.A.

Clinical students acquire most of their learning through faculty-supervised representation of clients in either live or simulated circumstances. Learning from experience is the key difference between classroom and clinical education. This is a qualitatively different learning experience than that involved in the traditional Langdellian casebook approach, which relies on heavily edited vicarious experiences through faculty directed examination of appel-
late cases. On the one hand, the emphasis on empiricism increases the motivation of clinical students, as they must assume "responsibility for another person’s welfare." Their motivation is also enhanced by the close scrutiny their work receives, the importance and immediacy of the problems, and "the perception that the student’s success in the clinic directly reflects on future, professional success." On the other hand, the fact that the learning experience in a clinic is largely driven by the realities of the docket, rather than isolated educational considerations, means that clinical faculty cannot rely on presenting the material in an organized theoretical framework into which students can fit facts and concepts. Instead, they must supplement, through demonstration or direct experience, the material to which students are exposed in order to impart information concerning the substantive law or professional role at issue. Clinical educators thus use clinical experiences "as the springboard into critical examination of a variety of topics" that


104. The pedagogical theory behind experiential learning has been succinctly stated by Peter Margulies, who believes that a student "learns lawyering best when she is empowered to tell a story about her own lawyering." Peter Margulies, The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education, 88 Nw. U.L. Rev. 695, 704 (1994). Margulies goes on to note that the "incompleteness of the student's professional socialization" at this early stage in her development "yields narratives" about her experience that as a professional she would suppress, enabling students to put "legal disputes within a broader context of emotion and need." Id. at 705. This enhances the quality of the student's representation of the client's interest as well as her own sense of social injustice.

105. Peter Toll Hoffman, Clinical Course Design and the Supervisory Process, 1982 Ariz. St. L.J. 277, 287 (1982). As Kreiling notes, "The assumption of a professional role by the students can generate strong motivation to learn and to perform effectively." Kreiling, supra note 102, at 287. However, "the very depth of the involvement and the newness of the role make the experience potentially debilitating. . . . [A]nxiety, if kept within reasonable bounds, is a powerful motivator." Id.

106. Hoffman, supra note 105, at 287. Hoffman goes on to list other benefits from experiential learning (which he calls "role assumption") such as:

integrating theory and knowledge from several different areas . . . developing in
students a sense of the realities of the practice of law, renewing student self-es-
tee through successful completion of a clinical course, offering students new
referents and insights for use in the traditional classroom curriculum, providing
students with independent data for evaluating the teacher's ideas and theories,
and generating renewed enthusiasm for legal studies.

Id. at 288; see also Smith, supra note 98, at 13 ("actively taking part in real life situations makes for more intense, purposeful engagement").

107. See Hoffman, supra note 105, at 301-06. Hoffman advocates the use of simulation as an alternative or supplement to real cases. He acknowledges, however, that simulated cases lack the "factual richness and uncertainty" of real cases and do not generate the
may not be reached in a traditional classroom setting, such as the professional and social role of lawyers, the nature of public interest law, "the structure and function of the legal system, and the possibilities for systemic improvement in the interests of substantive justice." 108

The core of this method of teaching is the student's assumption of the lawyering role. 109 Clinical faculty closely supervise students 110 on actual cases 111 and fully explore that experience with the student. 112 Only occasionally does the professor step in to demonstrate to the students how she should handle a particular situation. This method of teaching is different from the expository or dialectic methods common in the law school classroom, which depend upon the active presence of the professor. 113

Much of the learning in a clinical setting revolves around the interpersonal relationships between students and clients. 114 As a same level of emotional involvement as actual cases, resulting in lower motivation and a lower level of learning. Id. at 290-91.

108. Goldfarb, supra note 11, at 746.
109. See Amsterdam, supra note 94, at 615-16; Joseph A. Barrette, Content in Context: A Process of Clinical Teaching and Learning, 14 OHIO N. U. L. REV. 45, 52 n.16 (1987) (discussing learning to learn from experience); see also Barnhizer, The University Ideal, supra note *, at 102 n.53 ("This means that lawyers must have broader capabilities in human relations than our law schools have attempted to nourish in the past. The only way for students to grow in this respect is through fieldwork, that is, personal involvement with the application of the law at its lowest and roughest levels.") (quoting John M. Ferren, The Teaching Mission of the Legal Aid Clinic, 1969 ARIZ. ST. L.J. 37, 37 (1969)).
110. In this regard, clinical faculty may provide the clearest professional role model for students during their law school experience. Hoffman, supra note 105, at 300.
111. Some clinics use simulated cases. For a discussion of the pros and cons of this approach, see Barnhizer, Crossroads, supra note 103, at 1048.
112. See Lawrence M. Grosberg, Introduction: Defining Clinical Scholarship, 35 N.Y.L. SCH. L. REV. 1, 5 (1990) (noting the tension between developing clinical scholarship and preserving what is integral and valuable about clinical education, close supervision of students on live cases and exploring that experience fully).
113. As Kreiling notes:
[C]linical education is primarily concerned with the process of learning from actual experience, learning through taking action (or observing someone else taking action) and then analyzing the effects of the action. The data of learning are provided primarily by the students' actual performances and experiences with clients who have legal problems. Such problems arise in a world where some facts cannot be ascertained, where personal qualities and interpersonal relationships often are crucial, where the 'problem-solver' must take action and choose solutions when faced with unforeseeable contingencies.
Kreiling, supra note 102, at 285-86 (footnote omitted); see also Hoffman, supra note 105, at 283 (teaching methods include role assumption, evaluation, demonstration, expository teaching, and dialectic teaching).
114. Menkel-Meadow calls these the "affective" as opposed to the "cognitive aspects of lawyering," referring to the "social, psychological, moral, political, ethical, and eco-
pedagogical method, a clinic "allows legal educators to examine the dynamics of the lawyer-client relationship from within the relationship itself."115 This paradigm poses challenges to students—who may share the short-term goal of meeting the client's needs, but have very different lives than the client116—and to the instructor, who has a professional responsibility to the client separate from her function as an educator.117 Client representation also teaches lawyering skills,118 such as fact-finding, record development, client interviewing, negotiation, and legal writing which complement the skills that are taught in the classroom through the Langdellian methodology.119 However, "[G]ood clinical teaching

nomic dimensions to individual client's problems . . . that may overwhelm the legal consider-
ations" students learn in the classroom. Menkel-Meadow, Contradictory Criticisms, supra note 11, at 290.

115. Befort, supra note 97, at 625.

116. Students, informed by several years of classroom instruction, must learn that their experience of a legal case may be very different from the client's, who is unlikely to see the case in terms of legal precedent or doctrinal significance. Menkel-Meadow, Contradictory Criticisms, supra note 11, at 297-98. Students also tend to blend their idealism about the world and desires for the client with the client's articulation of her needs, which may be different. Students must learn to handle the frustration and anger that clients experience when their expectations exceed what is achievable under the law or the desired results take longer than expected. Students learn to handle their own frustrations when they confront an uninterested, intransigent, or rude client, public official or judge.

117. This relationship can also be a source of tension between the clinical instructor and the student unless the precise scope of the student's "authority" in the case is clearly delineated at the start of the project. The source of the tension is in the client relationship and the separate ethical requirement to represent that client to the best of one's abilities. Situations occasionally arise that require a faculty member, for reasons of professional responsibility, to intercede between a client and a student to protect the client's interests. For a more detailed discussion of the teaching problems this tension creates, see Barnhizer, Clinical Method, supra note 12, at 107-08; see also Critchlow, supra note 98, at 415-21.

118. For an exposition of clinical teaching methodology, see Amsterdm, supra note 94, at 613 ("a major function of law schools is to give students systematic training in effective techniques for learning law from the experience of practicing law"). Menkel-Meadow adds that teaching students lawyering skills includes "teaching judgment, decision-making, interpersonal skills, the interaction of legal and non-legal factors in making legal decisions," and a variety of lawyering tasks such as "question-framing, listening, drafting, persuading, fact gathering, synthesizing and marshaling information, investigating, problem-solving, and advising." Menkel-Meadow, Contradictory Criticisms, supra note 11, at 288-89. This emphasis on skills training is not quite as divorced from the doctrinal studies of the classroom as it sounds. Teaching skills, Menkel-Meadow points out, "involves demonstrating the relationship of doctrine and substantive law and process to the practice of lawyering skills." Id. at 289. Menkel-Meadow goes on to criticize clinical faculty for failing to put the rules clinicians teach into a broader political and social context, calling this an "essential 'skill' of being a lawyer." Id. at 289-90.

119. Amsterdm identifies three types of analytical thinking traditionally taught in the classroom ("case reading and interpretation," "doctrinal analysis and application," and
is not just a descriptive drill, it is explicitly normative." Students learn self-critical skills so that they can begin to evaluate their own performance as future lawyers.

The clinical faculty show students how to link doctrinal knowledge, legal practice and ethical and social values, seeking ultimately to produce, in the words of Eric Janus, "effective, ethically grounded lawyers." David Barnhizer's comprehensive article on the clinical method of legal instruction describes such "ethically grounded lawyers" by defining some of the clinical program's educational goals. These goals offer useful criteria for evaluating the pedagogical effectiveness of a law school clinic.

B. Barnhizer's Normative Model

In Barnhizer's view, the first goal of clinical education is to introduce students to the concept of professional responsibility, "logical conceptualization and criticism"), and three not traditionally taught in that setting ("ends-means thinking," "hypothesis formulation and testing in information acquisition," and "decisionmaking in situations where options involve differing and often uncertain degrees of risks and promises of different sorts"). Amsterdam, supra note 94, at 613-14. But see Barnhizer, The University Ideal, supra note *, at 121-22 (warning against dangers of too great a technical focus)

120. Menkel-Meadow, Contradictory Criticisms, supra note 11, at 289.

121. At Georgetown, students in the IPR do a mid-term self-evaluation of their work to determine the extent to which they are meeting their personal, as well as the performance goals established by the clinical faculty.

122. Clinical education is particularly effective in blending both doctrinal studies and legal skills training. As Phyllis Goldfarb has written, "In the hands of clinical educators, experience can generate theory which can circle back to inform experience, which in turn can alter, refine, and improve the theory." Goldfarb, supra note 11, at 721.

123. According to David Barnhizer, "The theme of developing and implementing a practical conception of social justice has been a significant element in the work of clinical faculty." Barnhizer, The University Ideal, supra note *, at 102 (footnote omitted). Menkel-Meadow criticizes clinicians for not moving from the concrete to a deeper understanding of the political and social patterns which generate the cases the students handle. Menkel-Meadow, Contradictory Criticisms, supra note 11, at 296-97.

124. Eric S. Janus, Clinics and "Contextual Integration": Helping Law Students Put the Pieces Back Together Again, 16 WM. MITCHELL L. REV. 463, 463 (1990). This goal is, of course, shared by the classroom professor. In fact, Barnhizer notes that the quality and diversity of teaching materials, course content, faculty and teaching techniques that now enrich the traditional classroom have lessened the contrast between clinical and classroom education which was so stark in the 1960s. Barnhizer, The University Ideal, supra note *, at 123.

125. Barnhizer, Clinical Method, supra note 12, at 75-79; see also, Barnhizer, Crossroads, supra note 103, at 1029. Some, like Befort, quibble over whether clinical education can be defined in terms of its goals, arguing instead that it is a "distinct pedagogical method." Befort, supra note 97, at 624-25 (emphasis in original). Befort criticizes those who, like Menkel-Meadow, "argue that skills training must embrace a normative theory of lawyering in order to be justified as a law school enterprise." Id. at 625 n.27.
which encompasses "considerations of legal ethics and ethical philosophy, professional competence, the roles of the lawyer, economics, the political system and social attitudes and duties."¹²⁶ From this perspective, students should develop an awareness of social problems and their causes and of the need for constructive systemic reform.¹²⁷ The second goal is to teach sound analysis and judgment through the use of issue identification and analysis, strategic thinking, tactical decisionmaking, and synthesis and generalization.¹²⁸ The third goal is to teach students substantive areas of the law,¹²⁹ and the fourth is to teach technical lawyering skills such as client interviewing and counseling, negotiation, legal research and writing, and advocacy.¹³⁰

The overarching mission of the clinical faculty, according to Barnhizer and others, must be to teach what is just¹³¹—"to create

¹²⁶. Barnhizer, Clinical Method, supra note 12, at 76. Barnhizer contends that "the primary intellectual contribution[]" of the clinical faculty is "'speaking truth to power,' telling those in power things they have ignored or simply do not want to hear." Barnhizer, The University Ideal, supra note *, at 124 (citing Schlesinger, Intellectuals' Role: Truth to Power?, WALL ST.J., Oct. 12, 1983, at 28) (quoting Hans Morgenthau). Barnhizer also critiques the failure of clinical faculty to examine the concept of justice and to assume instead that a particular problem about which they are concerned involves an injustice that needs to be remediated. He calls this "orientation toward practical justice" both a strength, allowing "clinical faculty to develop intensely focused and highly energized microstrategies," and a weakness that deters clinical legal education from helping to organize a political and intellectual movement. Id. at 103-04.

¹²⁷. This view is rooted in the origins of clinical education in the liberal reform effort of law schools during the 1960s and early 1970s. According to Nina Tarr, a major stimulus for many programs that developed during the 1960s and early 1970s was the desire to serve the needs of the unrepresented, to sensitize students to their ethical and moral responsibilities to society, to train students in poverty law practice, and to give law schools a role in their communities. Tarr, supra note 99, at 32. As noted previously, not all clinicians share this belief. See supra note 100.


¹²⁹. Id.; see also Wizner & Curtis, supra note 11, at 678 ("The second goal of a clinical program is to provide a laboratory in which students and faculty study, in depth, particular substantive areas of the law.").

¹³⁰. Barnhizer, Clinical Method, supra note 12, at 77-79. Barnhizer decries the "Faustian implications" in the shift from early clinical themes focused on achieving practical justice to those emphasizing technical skills. He believes that clinical faculty's "increasing preoccupation with technique has diminished concern for the themes of practical justice and knowledge." Barnhizer, The University Ideal, supra note *, at 122. He warns that "[t]echnique can quickly threaten one's sense of justice and integrity" and that the "magnification of microscopic elements of the technical process blinds the observer to the larger framework in which technique is only a single element." Id.

¹³¹. For a passionate exposition of what this means and how teaching justice translates itself into a new clinical pedagogy as well as a new type of clinic, see Bernard K. Freamon, A Blueprint for a Center for Social Justice, 22 SETON HALL L. REV. 1225 (1992).
visible models of justice in action that demonstrate a deep commitment to achieving justice and to challenging injustice." The teaching of justice can mean different things. It can mean a commitment by the clinical faculty "to developing, testing, adapting, comprehending, and explaining a practical conception of justice in action." It can also mean "teaching law students that the privileged class of lawyers possess the responsibility to facilitate a just society." The practical efforts of the clinical curriculum in pursuing a vision of justice in action can include taking large social reform cases, experimenting with different forms of representation, developing new methodologies and ways of presenting evidence, finding new causes of action or new uses of old law, forging new partnerships with other disciplines in the representation of clients' interests, and even sponsoring symposia on public interest law.

132. Barnhizer, The University Ideal, supra note *, at 123 ("The goal of the Criminal Justice Clinic is to turn out young 'ministers of justice' in the representation of clients and defense of their freedom." (quoting William Greenhalgh, former professor and director of the Criminal Justice Clinic at Georgetown)).

133. "[I]f clinical education really is to succeed as the flesh on the bones of legal education, it must help to identify the weaknesses of the legal system and the social structure in which it is embedded in order to move toward progressive reforms and changes both of the legal system and the larger society." Menkel-Meadow, Contradictory Criticisms, supra note 11, at 298 (emphasis in original). Goldfarb, comparing clinical legal education with critical legal theory, notes that both "seek to illuminate the assumptions, biases, values, and norms embedded in law's workings in order to heighten awareness of the political and moral choices made by lawyers and the legal system"; hope to "generate a climate favorable to social change"; and are "motivated by ethical sensibilities and sparked by an interest in ameliorating injustice." Goldfarb, supra note 11, at 722-23.

134. Barnhizer, The University Ideal, supra note *, at 123. Wizner & Curtis also note that the "laboratory function of a law school clinical program leads not only to a better understanding of a particular part of the legal process but should also result in efforts to reform that process." Wizner & Curtis, supra note 11, at 679. A considerable portion of Georgetown’s clinical energy has gone toward making the District’s regulations and programs more receptive to the concerns of the city’s minority and low income residents.

135. Barnhizer, The University Ideal, supra note *, at 123.


137. An example of this is the North Carolina Project, in which the University of North Carolina and North Carolina Central Law School are jointly administering a clinical program to reform the state’s public education system. The Project involves "employing experts to conduct empirical research, surveys and public dialogues." Freamon, supra note 131, at 1238. Another example is the UCLA Homeless Seminar. In 1990, "Half of the participants were scholars in the law, medicine, urban planning" and related disciplines, and half were advocates for the homeless. Id. at 1239. The goal of the seminar is to establish an advocacy practice which will include "new research agendas, action strategies and policy proposals." Id.

138. Various institutions have hosted important public interest symposia: "Recently,
Without a concept of justice as an organizing principle, a program that merely blends doctrinal learning with experiential skills training would fall short of Bamhizer's goal of creating visible models of justice. Learning how to tackle injustice in the pursuit of justice should, therefore, be the dominant pedagogical and normative goal of any clinical program with a legal services purpose, and the primary standard to apply when evaluating an environmental justice clinic.

The remainder of this Article examines the extent to which the Environmental Justice Clinic at Georgetown has responded to the challenges presented by environmental justice cases, described in Part II of the article, and how well it has met Bamhizer's goals of clinical education set forth in Part III, particularly his over-arching goal of teaching students what is just. Georgetown, of course, is not the only such clinic in the country, nor is its design unique, as is shown in greater detail in Part IV.

IV. GEORGETOWN'S ENVIRONMENTAL JUSTICE CLINIC

Georgetown's Environmental Justice Clinic was designed to respond to the pedagogical goals set out in the proceeding Part of the Article as well to the perceived needs of the community and the demands of environmental problems in general. In selecting a clinical design, the faculty had several models from which to choose, as is discussed in greater detail in this Part. Modifications in these models were made to reflect the school's vision of clinical education and the realities of the environmental agenda described in Part II.

A. History of the Clinical Program's Development

Student interest in environmental law and the overall commitment to public interest law have been consistently strong at Georgetown.139 A full curriculum of environmental law courses, a

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139. The clinical programs at Georgetown compose the largest public interest law center in the nation. Fourteen members of the full-time faculty, twenty-four graduate fellows, and numerous adjunct instructors offer clinical instruction to approximately 300 J.D. students, with approximately 45% of graduating full-time students having had some form of...
student-run Environmental Law Forum and a journal in International Environmental Law satisfy some of the academic interest in environmental law. Until the school decided to establish a clinic, the only missing piece was an opportunity for students to gain practical experience in the field.\textsuperscript{140}

As resources were limited and Georgetown already had nine separate clinics dealing with other matters,\textsuperscript{141} the administration and faculty decided in 1991 to expand the agenda of an existing clinic to include environmental projects.\textsuperscript{142} The school chose the Institute for Public Representation ("IPR"),\textsuperscript{143} which emphasizes civil rights and administrative law, as the most compatible clinic within which to develop an environmental agenda.\textsuperscript{144}

B. \textit{Funding}

Lack of monetary support is generally the major challenge facing clinical education.\textsuperscript{145} The "in-house," "live-client" clinic, with its relatively low student-to-faculty ratio (at IPR, the ratio is between five- and six-to-one), is an expensive option when compared to a


\textsuperscript{141} Georgetown currently has clinics dealing with issues as disparate as social security benefits, juvenile justice, sex discrimination, and the legislative process. \textit{Clinical Program}, \textit{supra} note 139, at 1-2.

\textsuperscript{142} Georgetown may in the future decide to move the environmental program into a separate, free-standing clinic. This will depend on sustained student interest, case load, and financial resources.

\textsuperscript{143} IPR was established at Georgetown University Law Center in 1971 to serve as both a public interest law firm and a clinical educational program. Initially focused on federal administrative law issues, IPR later specialized in civil rights issues, such as immigration, job discrimination and disability rights. In 1981, IPR merged with the Citizens Communication Center and added communications law to its project docket.

\textsuperscript{144} All clinical programs at Georgetown are housed in the law school. Unlike Boalt Hall School of Law at the University of California at Berkeley, which has chosen to locate its environmental justice clinic off-campus, Telephone Interview with Anne E. Simon, Director, Environmental Law Community Clinic (Dec. 1, 1994), Georgetown never considered locating the environmental justice clinic outside of the law school. An off-campus clinic may provide easier access for clients, and a sense of independence from the school, but for students and faculty it can create a sense of isolation from the rest of the school.

\textsuperscript{145} Befort, \textit{supra} note 97, at 625-26.
large lecture course. A new clinic faces two choices in funding—either securing "hard money" (financing from the school) or relying on "soft money" (outside financing). Although hard money can be difficult to obtain in this era of belt-tightening and budgetary constraints, grants are an unpredictable source of funding.

At Georgetown, the law school agreed to provide "seed money" for the salary of a visiting professor and any incremental administrative costs of running the program for several years and suggested to the clinical faculty that they try to raise soft money to make the program financially self-sufficient. However, it is difficult to raise funds from outside sources for clinical programs. Foundations would rather fund the people affected by environmental inequities than their lawyers, and generally assume that law schools can get the money from alumni, tuition or other sources.

Some schools rely on attorney's fees to fund their clinical programs. However, attorney's fees are not only difficult to secure, especially in the environmental area, but are not recoverable until the end of litigation and sometimes require a separate action to collect them. Thus, a clinic which relies on attorney's fees for its

146. To reduce costs, some schools advocate externships and/or the use of simulated skills courses as substitutes for "in-house," "live-client" clinics.

147. Many environmental justice clinics, including those at Golden Gate, Boalt Hall, and Boston College, today depend on outside funding. Telephone Interviews with Cliff Rechtschaffen, Co-Director, Environmental Law and Justice Clinic, Golden Gate University (Nov. 30, 1994), Anne E. Simon, supra note 144, Bill Shutkin, supra note 90.

148. Disadvantages to relying on soft money include "the uncertainty of outside sources, the loss of control over the program, the marginalization of the faculty, and the administrative expenses." Tarr, supra note 99, at 37.

149. In 1991, the school made an initial two-year commitment to the program, but its immediate success led to a two-year extension of that commitment.

150. Although the clinic had to compete for foundation funding with other worthy budget priorities of the school and the greater University, it eventually did receive an extremely generous three-year grant from the Bingham Foundation. The receipt of this grant has helped secure the future of the clinic, at least for the next few years.

151. Boalt Hall and Boston College Law School have had some initial success in raising outside money. Telephone Interviews with Anne E. Simon, supra note 144, Bill Shutkin, supra note 90. Others, including Tulane, have relied on Department of Education grants. Telephone Interview with Daria Diaz, supra note 90. These are available to law schools for the "expansion, development, and continuation of clinical programs." Tarr, supra note 99, at 37 & n.16 (referring to the Higher Education Act, 20 U.S.C. § 1134(u) (1988); 34 C.F.R. §§ 74, 75, 77 (1965)).

152. Chicago-Kent collects fees from its clients. Don J. DeBenedictis, Learning By Doing: The Clinical Skills Movement Comes of Age, A.B.A.J., Sept. 1990, at 54, 56. This appears to contradict the usual needs-based criterion used to select clinic clients.

funding may go unfunded for a significant period of time.\textsuperscript{154}

C. Selection of Clinical Model and Goals

1. Focus on the District of Columbia.

In 1991, there were no national environmental organizations\textsuperscript{155} working on environmental justice issues in the District of Columbia.\textsuperscript{156} Environmental justice, particularly as it affected District residents, was not yet on the national agenda of the federal agencies or of Congress. Without question, there was a need to be filled. Focusing on local environmental projects also had the pedagogical advantage of providing students with an opportunity to visit their project sites, work directly with clients, attend community meetings, and meet with local and federal government officials.\textsuperscript{157} The local focus also promotes the pedagogical goals discussed in Part

\textsuperscript{154} An additional consideration for a clinic relying on attorneys fees is that the high cost of litigation forces many cases into settlement. Georgetown's limited experience in this area has been that the settling party may require the attorney to waive any claim to fees as a condition of settlement. This creates interesting professional responsibility questions for the attorney who must weigh her interest in receiving attorney's fees against her client's interest in a speedy, favorable resolution of the case. See Evans v. Jeff D., 475 U.S. 717 (1986) (holding that a district court can approve a settlement granting the injunctive relief sought conditional on respondents' waiver of any claim for attorney's fees).

\textsuperscript{155} Although the city has an effective legal services program, that program has no in-house environmental expertise. This finding should not be surprising. The Standing Committee on Environmental Law of the American Bar Association surveyed over 200 legal services offices to determine to what extent they handle environmental matters. Slightly less than half of the offices surveyed do no environmental work. Of those that do handle such cases, many said that they receive few requests for assistance on such cases. The lack of expertise on staff and the low priority given to environmental cases were principal reasons other offices gave for not doing environmental work. American Bar Association, Standing Committee on Environmental Law, Environmental Law Mail Survey Summary 2 (1993) (on file with the Stanford Environmental Law Journal).

\textsuperscript{156} The presence of national environmental organizations in the city made this finding particularly troubling. Recently, however, the Natural Resources Defense Council, the Sierra Club Legal Defense Fund, and American Rivers have started to work on environmental justice issues in the District. The National Audubon Society and the Sierra Club have local chapters in the District which address environmental justice issues.

\textsuperscript{157} Developing a unique, local docket of projects for the students additionally assured that they would not be serving as clerks to outside lawyers in national groups on cases which might not have a local base. While young lawyers can gain much from working with practicing attorneys, the disadvantages for the students of working on pieces of cases being handled outside of the office outweigh the benefits. Students may fail to see how their work fits into the larger project; miss out on developing the strategy for the entire case; and must respond to two different reviewers of their work. Although IPR students have worked with out-of-house and in-house lawyers on cases, including environmental cases, these situations are exceptional and the faculty maintain close supervision of the students' performance. For a view praising the virtues of the extern model, see Condlin, supra note 94, at 63-73.
III by enhancing students' sense of responsibility for their projects.\textsuperscript{158}

2. \textit{The Selection of a Clinical Model.}

There are several clinical models which the faculty could have chosen in designing an environmental clinical program at IPR. One constraint was that the model selected had to be compatible\textsuperscript{159} with both the structure of the existing clinic\textsuperscript{160} and the achievement of IPR's goals.\textsuperscript{161}

One model that IPR could have selected involved working with a national or regional environmental organization on projects involving federal environmental statutes.\textsuperscript{162} Under this model,

\begin{itemize}
\item Working on projects in the nation's capital has the additional advantage for Georgetown students of increasing their opportunity to influence national policy on environmental justice issues. For example, clinic students assisted Rep. Eleanor Holmes Norton on her Urban Watershed Restoration bill, H.R. 3873, 103rd Cong., 1st Sess. (1993) (proposing that the EPA provide incentive grants for community-based restoration projects to encourage local cleanup of urban waterways). Although the bill "died an early death" in committee, Norton and others have plans to reintroduce it next year, both as part of the Clean Water Act reauthorization and as a free standing bill. Elise Jones, \textit{The Waterways Restoration Bandwagon}, 16 \textit{National Wetlands Newsletter}, Nov./Dec. 1994, at 9. Students have also advised the EPA on various facets of the agency's environmental justice program.
\item One objective of the faculty at IPR has been to integrate the disparate portions of the clinic's agenda so that students, fellows and faculty do not feel isolated from each other, and so that the clinic curriculum can be enriched by the cross-fertilization of experiences in the different project areas.
\item Schools that have established separate environmental justice clinics, such as Boalt Hall, did not have to worry about this issue of compatibility in both the design of their clinic and the selection of goals and projects.
\item IPR's primary goals are twofold: first, to provide legal services to groups and individuals who are unable to obtain effective legal representation on matters that have a significant impact on issues of broad public importance; second, to enhance both the students' ability to function independently as attorneys after graduation and their understanding of the role of lawyers and the nature of legal education by exposing students to projects involving complex legal issues. IPR seeks to achieve its pedagogical goal by offering students the opportunity to produce an intensively supervised piece of legal writing.
\item For example, the environmental clinic at Pace University Law School works very closely with the Hudson Riverkeeper Fund. Robert F. Kennedy & Steven P. Solow, \textit{Environmental Litigation as Clinical Education: A Case Study}, 8 \textit{J. Envtl. L. \\& LITG.} 319, 323 (1993). Both Boston College Law School and the University of Baltimore School of Law have taken the traditional environmental clinic model one step further by designing clinical programs associated or affiliated with outside organizations. At Baltimore, the clinic and the Environmental Action Foundation ("EAF") have collaborated on a joint project; students work in the school's clinic and are supervised by an attorney from EAF. Telephone Interview with David Monsma, Staff Counsel, Environmental Action Foundation (Nov. 23, 1994). Boston College has a "quasi-clinic" where students work with Alternatives for Community and Environment ("ACE"), which recently opened its office in the community. Telephone Interview with Bill Shutkin, supra note 90. This model would not have been compatible
\end{itemize}
projects are selected on the basis of national or regional significance and law reform capability. Georgetown elected not to base its clinic design on this model because it reduces student opportunities to be involved in strategic planning and to assume full responsibility for the project.

Another approach was the legal services model. Under this model, projects would be selected on the basis of the needs of individual clients who meet certain income criteria and who need assistance with an environmental problem. The type of cases Georgetown would take under this clinic design would not likely serve a law reform purpose or provide the students with a complex, structured legal writing experience. Also, projects under this model would be more repetitive and relatively simple compared to the typical projects undertaken in other areas of the clinic's practice, creating a potential imbalance in the students' experiences depending on which substantive area they worked. Therefore, this model was inappropriate for Georgetown's purposes.

IPR eventually selected the model described below, which combines features of both the traditional environmental clinic and the legal services model. Like a traditional environmental clinic, the clinic has established client relationships with several national and regional organizations working on environmental issues in D.C. on behalf of low income individuals. Like a legal services clinic, the

with the structure of IPR or consistent with the models used by other clinics at Georgetown; hence, it would not have been an appropriate model for the new clinic.

163. As a practical matter, it would have been difficult to adopt the traditional environmental clinic model because, as noted earlier, in 1991 there was no organized environmental representation of D.C.'s economically disadvantaged and minority communities. See supra note 155.

164. These factors would diminish the experiential value of the student's clinical experience and might lessen her motivation. See supra notes 104, 105 (discussing the experiential approach and motivation).

165. The prototype for this model is found in legal aid or legal services offices set up initially under the auspices of the Legal Services Corporation Act, 42 U.S.C. § 2996 (1988 & Supp. 1993).

166. The author is not aware of any environmental clinics, in particular any focusing on environmental justice matters, that follow this approach. Boston's Alternatives for Community and Environment, Inc., which has recently established a community office, may ultimately come close to the legal services model.

167. This model might have been appropriate for an environmental justice caseload because the clients who meet the financial needs screening criteria might not be screened out for pedagogical or law reform reasons. Thus, this model has the potential to provide better legal services to clients than the model IPR selected.

168. Boalt Hall and Tulane appear also to have selected approaches containing at least some elements of both models. Telephone Interviews with Anne E. Simon, supra note 144, Daria Diaz, supra note 90.
clinical selects projects involving individuals who cannot secure legal representation from other sources for financial reasons.\textsuperscript{169}

3. \textit{Clinic Goals.}

The principal goal of Georgetown's environmental justice clinical program is to improve the public health and environmental conditions of economically disadvantaged and minority communities in the District of Columbia.\textsuperscript{170} In addition, the program seeks to broaden support for environmental protection by linking community and grassroots activists in environmental, public health, civil rights, and legal services areas,\textsuperscript{171} and to provide impetus for policy development on national environmental justice issues. Although these goals involve elements new to IPR, such as community and political outreach, they appear to be compatible with its existing goals.

As a law school clinic, the program pursues many of the pedagogical goals described in Part III. These include training law students in lawyering skills; enhancing their ability to engage in sound analysis; encouraging strategic thinking and decisionmaking; teaching students the substance of environmental laws and their application to a concrete case; and increasing student awareness of their legal, ethical and social responsibilities as lawyers.\textsuperscript{172}

\textsuperscript{169} The clinic has rejected some projects, including projects initiated by individuals, because they failed to meet the educational and legal reform criteria. For example, IPR initially elected not to assist an Anacostia rowing club to secure permits to enable it to move its dock to the Anacostia side of the river because the project offered little opportunity for legal research and writing. A graduate fellow eventually assisted the club. IPR also declined an invitation to help a community in Anacostia block a street closing for the same reason.

\textsuperscript{170} Other environmental justice clinics have different primary goals. For example, Golden Gate's primary objective is to train its students to become effective environmental practitioners, and among Boston College's goals are to educate citizens about their legal and political options and to devise long-term solutions to environmental distributional inequities. Telephone Interviews with Cliff Rechtschaffen, \textit{supra} note 147, Bill Shutkin, \textit{supra} note 90.

\textsuperscript{171} The clinic has been successful in establishing information-based working relationships with environmental organizations, involving exchanges of information and expertise and occasional joint strategizing on projects. The clinic has also developed working relationships with several government agencies, as well as industry trade and bar associations. Occasionally the clinic receives calls from civil rights organizations or environmental litigants about an environmental law issue or for help in locating a technical expert. Such requests for assistance have come from throughout the country.

\textsuperscript{172} The pedagogical goals form the basis for student evaluation criteria, which the faculty use in issuing grades.
D. **Clinic Design and Project Selection**

1. **Clinic Design.**

There are approximately sixteen new students in IPR each semester, one-third to one-half of whom work on environmental projects. Students earn twelve hours of credit for the clinic each semester and are required to work a minimum of thirty-two hours per week. Student participation in the clinic involves case work along with preparation for, and attendance at, clinic meetings and seminars. One of the three faculty members is assigned to oversee student participation in the clinic; in addition, each student works closely with at least one of four graduate fellows.

Structuring a clinical program around single-semester student participation and the school's academic calendar poses pedagogical and legal services challenges. The central pedagogical challenge derives from the fact that students attend IPR for only one semester—a limitation stemming from high student demand. Environmental cases, which occupy approximately one-third of IPR's docket, are particularly problematic in this respect because they are rarely completed in four months. Giving each student an opportunity to participate in project decisionmaking and to conduct a carefully evaluated legal research and writing project each semester requires the faculty to develop assignments that meet each of these objectives. Because many clinic projects are incompatible with the academic calendar, limiting them to one semester would severely diminish the scope of potential clinical activities. In order to increase the flexibility of the program and the types of projects it can accept, the IPR permits students to work on several different projects, either concurrently or sequentially, and assigns environmental or administrative law memoranda on generic issues such as

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173. Unlike some other Georgetown clinics, there are no prerequisites for enrolling in the clinical program at IPR. The environmental justice clinic at Boalt Hall does require an environmental law class as a prerequisite. Telephone Interview with Anne E. Simon, *supra* note 144.

174. Three faculty members and four graduate fellows are assigned to the clinic. The fellows are generally recent law school graduates, frequently coming to IPR after a judicial clerkship. Fellows act as the first line of student supervision and work closely with both the student and faculty supervisor. The fellows also are given an opportunity to present seminars, work on their own projects, write law articles, and argue cases in court.

175. Faculty members must manage the docket during periods in which the students are unavailable, while at the same time attending to their own scholarship and other academic matters. Successful management is particularly difficult because it depends in large part on matters beyond the faculty member's control. See Grosberg, *supra* note 112.
equitable remedies, discovery procedures and the rules governing complex litigation.

From a legal services perspective, the clinic must maintain continuity in its relationship with clients. Maintaining this continuity is especially difficult during the start of each semester as new students and fellows familiarize themselves with the factual and legal records of their projects. The clinic addresses this problem through a combination of strict record-keeping procedures, the two-year terms of the graduate fellows, and student willingness to continue monitoring their projects after they have left the clinic. Constant turnover in students and occasional turnover in clinical fellows can also strain the attorney-client relationship and make it more difficult to win the client's trust, which is already a challenge in this area of the law.

2. Sources of Clinic Projects.

Environmental projects have come to the clinic in a variety of ways. The clinic's first set of projects arose from a first semester review of ecologically valuable natural resources in the District of Columbia's Anacostia River watershed and the threats to those resources. This enabled the clinic to compile a resource library of studies, a map pinpointing resource values and threats to them, a directory of community and environmental activists, and an initial list of projects. During the program's first year, students also wrote legal memoranda on generic environmental law topics to serve as starting points for future work.

New projects now flow from a variety of sources, including community and neighborhood activists, local and national environ-

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176. Terms for the environmental graduate fellows are staggered so that there are always at least two fellows with a year's experience at the clinic.
177. See discussion supra Part II.C.4.
178. Unlike the environmental justice programs at Tulane and Boston College, Georgetown's program conducts no formal outreach to the affected communities, either to locate projects or to help those communities organize and participate in government decisionmaking. Telephone Interviews with Daria Diaz, supra note 90, Bill Shutkin, supra note 90. IPR elected, instead, to have students perform these outreach functions both to teach the skills involved and to underscore the students' sense of responsibility for their projects.
179. Students performed a literature search of studies on the Anacostia watershed and interviewed community and environmental activists about their environmental concerns.
180. For example, memoranda covered the basic pollution control laws and cross-cutting issues like the citizen suit provisions contained in those laws.
181. These projects generally concerned some immediate or long-standing visible threat to the neighborhood, such as the construction of a waste transfer station in a resi-
mental groups,\textsuperscript{182} and political organizations.\textsuperscript{183} Most projects, however, evolve from the clinic's prior work, either because a past client has a new project or because a new client has heard of the clinic's work.\textsuperscript{184} The clinic has also started projects without particular clients in mind. Some of these clinic-based actions have occurred because individuals in the community were hesitant to assume responsibility for the project or were uncomfortable with potential personal visibility.\textsuperscript{185} General distrust of the legal system\textsuperscript{186} combined with distrust of the clinic and Georgetown\textsuperscript{187} also may have initially impeded community support and an effective lawyer-client relationship.\textsuperscript{188} In still other cases, such as the clinic's lead project, IPR knew who the potential clients were, but needed to survey the field first to identify ways in which the clinic could help.

At times, a matter might involve a general policy initiative by a government agency that is not of particular interest to any single community, but is of general interest to the District's residents as a dental community, or a municipal ash dump on the grounds of a public mental health hospital.

\textsuperscript{182} A local environmental group on Capitol Hill enlisted the clinic to help stop a road from being constructed on public parkland. A national environmental organization, representing several neighborhood associations, referred several matters to IPR in an effort to stop construction of a football stadium and a theme park on an undeveloped island in the Anacostia River.

\textsuperscript{183} The District has 37 publicly elected Advisory Neighborhood Commissions ("ANC"), which function as liaisons between citizens and the District government. IPR works with two ANCs on projects involving the disposal of hazardous waste in the southeast quadrant of the city.

\textsuperscript{184} Press accounts of the clinic's work have been especially helpful in this regard. See, e.g., Nancy E. Roman, \textit{Georgetown Students Dump on Junk East of the Anacostia}, Wash. Times, June 15, 1992, at A7.

\textsuperscript{185} Although persuading the District government to clean up and close a municipal ash pile properly was the highest environmental priority of community activists in Anacostia, it took three years for a client on that project to emerge. In the interim, clinic students regularly reported back to the community on their findings.

\textsuperscript{186} See \textit{supra} text accompanying note 91.

\textsuperscript{187} Some communities had previously worked with environmental groups, but felt these groups had used or abandoned the local communities. Although these groups initially viewed Georgetown with distrust, the students quickly earned the communities' trust through perseverance and reliability.

\textsuperscript{188} In some cases, the community was unaware of the environmental threat IPR students uncovered. This situation can raise the important issue of when, in the process of gathering information, there is sufficient information to inform a community about the risk to its health. The difficulty in securing information from the government can make the point at which this occurs even more problematic. In one case, the intransigence of the EPA forced IPR to wait nearly a year before there was enough information to present to a community about a hazardous waste site in its midst.
whole, particularly its poorer members. In these cases, the clinic acts as a surrogate for the community during the early stages of the project's development until a formal lawyer-client relationship develops. This procedure involves frequent communication with various groups in the community to report on the clinic's progress on the project, to learn about the community's concerns and to incorporate those concerns into the clinic's plan. Until the community's specific concerns are known, IPR may focus on issues of generic concern, such as the opportunities for public participation. Where the clinic has initiated actions without a client, a formal lawyer-client relationship generally evolved as trust developed and the need for legal representation became more apparent to the community.


The IPR faculty's initial concern was that criteria for choosing among potential projects be established so as to preclude the imposition of a pre-planned agenda on the community. Due to its limited resources, the clinic must restrict its focus to those projects most likely to meet its legal services and pedagogical goals. The faculty drafted specific project selection criteria designed to gauge which projects will respond most effectively to the environmental needs of the District's poorer communities, while simultaneously providing the best learning vehicle for the students. As a result,

189. Typical of such matters are the filing of comments in administrative proceedings, such as comments on the Washington metropolitan area's compliance with the Clean Air Act Amendments of 1990, 42 U.S.C. § 7401 (1988 & Supp. 1993).
190. IPR played this role during the development of the District's response to the Clean Air Act Amendments of 1990.
191. IPR asks its clients to sign a retainer agreement so that both the clinic and the client understand clearly the scope of IPR's representation as well as some of the practical considerations of legal services offered by a program that uses law students on a semester-by-semester basis.
192. Initially, the clinic chose to focus only on the District of Columbia. See supra Part IV.C.1. However, now that other groups are starting to address the environmental needs of the city's poorer residents, IPR is evaluating an expansion of the program's geographic scope.
193. The project selection criteria are substantially as follows:
1. The project fits within the goals of the environmental clinic such that it:
   a. Enhances and protects the public health of economically disadvantaged and minority populations and improves the environmental amenities available to those populations by forming linkages with community groups;
   b. Broadens the constituency for environmental protection;
   c. Provides the impetus for policy development at the national level.
2. The project offers a meaningful educational experience for each student by:
the clinic will not pursue projects that do not meet this educative goal, although the staff will assist the potential client in finding alternative representation.\footnote{194}

Additionally, the IPR faculty faced the choice of focusing on small, simple cases or larger, complicated projects. For example, both Clean Water Act permit violation citizen suits and, at the local level, zoning variance proceedings are among the simpler environmental cases on which students could work.\footnote{195} Generally, students can easily re-use documents from earlier cases, compile and analyze the records,\footnote{196} and understand the law. During a semester, a student can usually make sufficient progress on a single case to encounter an array of legal and factual issues. Students may also readily assume sole responsibility for these cases because of their

\begin{itemize}
\item[a.] Offering the opportunity for the production of an identifiable work product involving legal research, analysis and writing, fact-gathering, and analysis;
\item[b.] Providing an opportunity for meaningful student involvement including client contact, strategy development and critical path decisionmaking;
\item[c.] Allowing student access to project resources, decisionmaking entities and the client;
\item[d.] Introducing students to the field of environmental law and the different arenas in which decisions affecting the environment are made;
\item[e.] Fitting within the confines of a single semester and presenting manageable time requirements from the perspective of a single student or school year.
\end{itemize}

3. The project offers an array of subject matters in the environmental field and decisionmaking institutions.

4. No other representation is available to the project because of the unique skills of the clinic staff and students or because the nature of the subject matter makes it difficult to find representation.

5. The project requires substantial resources to complete and it offers the potential to be funded through collection of attorneys fees or from donations by third parties.

6. The project offers an opportunity to have a significant impact on the law, the resource under threat, and/or the client.

See Georgetown Environmental Justice Clinic, Environmental Project Selection Criteria (on file with the Stanford Environmental Law Journal).

\footnote{194} There is a tension, reflected in the criteria, between providing legal services on environmental matters to the poorer District residents and providing students with a meaningful clinical experience. Occasionally, a faculty member or teaching fellow is willing to undertake a project on her own which does not satisfy the educational criteria. \emph{See supra} note 169.

\footnote{195} Indeed, some environmental clinics, including the Pace Environmental Litigation Clinic, make Clean Water Act citizen suits the mainstay of their clinical agenda. Telephone Interview with Mary Beth DiStefano, Administrative Assistant, Pace Environmental Litigation Clinic (Nov. 23, 1994).

\footnote{196} One need only compare the facility's monthly discharge monitoring report with its permit to determine whether there is an ongoing violation. \emph{See}, e.g., Richard E. Schwartz & David P. Hackett, \textit{Citizen Suits Against Private Industry Under the Clean Water Act}, 17 NAT. RESOURCES L. 327 (1984); Beverly M. Smith, \textit{The Viability of Citizens' Suits Under the Clean Water Act After Gwaltney of Smithfield v. Chesapeake Bay Foundation}, 40 CASE W. RES. L. REV. 1 (1989).
relative simplicity.\textsuperscript{197}

Working exclusively on small, relatively simple cases, however, would preclude students from handling the factually and technically more complex environmental cases which they are more likely to encounter in practice. These more complicated cases provide a broader context within which the students can develop an understanding of their work; moreover, such cases offer the possibility of affecting a larger segment of the population and having a greater impact on the law.\textsuperscript{198}

Large, technically complicated cases, however, may exceed the abilities of the students and the resources of the faculty. The clinic would probably require outside technical assistance to handle factually complex records and regulations.\textsuperscript{199} Furthermore, students could not complete a large case in one semester. This limitation would create both continuity problems for the client and pedagogical challenges for the faculty committed to providing each student with a meaningful clinic experience.\textsuperscript{200}

The clinic has responded to this dilemma by developing an eclectic agenda that reflects the diversity of the environmental problems in the District of Columbia. The program contains both large and small, as well as simple and technically demanding, cases. The next section describes some of these projects and the techniques used to overcome the many barriers confronted by practitioners working on environmental justice issues.

V. MEETING CLINIC GOALS

A self-declared goal of Georgetown's Environmental Justice Clinic is to address and remediate instances of environmental inequity. A quick review of the projects the Clinic has undertaken in the first three years of its existence shows how their goal has been

\textsuperscript{197} Also, because the students have the same type of learning experience, grading is less complicated because the faculty can more easily compare the quality of the work that various students produce.

\textsuperscript{198} Larger cases also offer students a greater opportunity to work on complex legal issues, thus meeting one of the goals of the larger clinic.

\textsuperscript{199} Professional employee organizations in federal agencies, local minority bar associations and private lawyers have all offered to assist the clinic. Colleagues in environmental groups have also volunteered their expertise and have even taught basic science to clinic students. The clinic has hired outside expert help to evaluate a report and assist in a trial. Occasionally students, members of their families or one of their friends will bring the needed skills into the clinic.

\textsuperscript{200} See supra Part IV.D.1.
met, as well as the pedagogical goals of Barnhizer's normative model.

A. Georgetown Clinic Projects Address Environmental Inequities


One of the earliest clinic cases involved an abandoned coal gasification plant located on the banks of the Anacostia River. Remarkably, this plant was built in 1888 and was not shut down until the mid-1980s. The plant poses a significant health threat to an estimated 20,475 people living within a one-mile radius of the site, including the residents of three public housing projects in the immediate vicinity. Today, only a pump house, an administrative building, a wharf, five empty oil tanks, and toxic residues from coal tar and oil remain. Contaminated groundwater at the site moves at a rate of 3,700 gallons per day towards the Anacostia River. The surface of the soil at the site is also severely contaminated.

Although the National Priority List ("NPL") currently lists six abandoned coal gasification sites pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), this site is not listed because the EPA uses risk to drinking water as a primary criterion for selecting NPL sites, and there are no drinking-water wells in use on Capitol Hill. Neither the preliminary assessment nor the site investigation examined the exposure pathway from surface water contamination, subsistence fishing in the river or inhaling chemicals volitizing from the surface of the site or from an on-site water treatment plant.

IPR has worked for two years on this case, most recently with residents from a nearby housing project. The objectives of this project include: (1) compiling a factual record that will sustain litigation under federal environmental laws; and (2) developing a

201. Documents corroborating the facts of each of the following cases are on file with the author and the clinic.
204. The site received a Hazard Ranking Score ("HRS") of 4.3 from the EPA. Draft letter from Scott A. Brit, Environmental Scientist, ICF Kaiser Engineers, to Ben Mykijewycz, U.S. EPA (Feb. 5, 1988) (on file with the Stanford Environmental Law Journal). There are no sites on the NPL with HRS scores below 28.5, so this is considered to be the cutoff point for sites eligible to be listed. 40 C.F.R. § 300 app. B (1994). The HRS is part of the CERCLA National Contingency Plan; its purpose is to assess, using a numerical score, the relative risks posed by sites to human health and the environment. 55 Fed. Reg. 51,592 (1990). Supporting documents are on file with the author.
political base that can lobby the government to clean up the site. Toward these ends, students submitted requests for documents under the Freedom of Information Act, filed successful administrative appeals when those requests were denied, analyzed technical reports prepared by company consultants, and distilled the results of those reports for presentations to agency and congressional staff as well as to community residents. Students researched potential causes of action under federal and District law and recently turned to analyzing the discharge of pollutants from the site into the city’s sewage treatment plant. Students also helped the community prepare a petition and letters to local and federal officials indicating their concern about the site.

A second project seeks to correct years of inappropriate use of pesticides and handling of leaking underground storage tanks on federal land along the western shore of the Anacostia River. This site is not eligible for priority cleanup because, once again, of the absence of drinking water wells. IPR has worked on this project for four years and is currently pursuing litigation options on behalf of a local conservation organization. Students have gathered information from federal and local agencies on the extent of the environmental hazards at the site, working with a hydrogeologist and toxicologist to enhance their understanding of the record. They have reviewed local enforcement reports on leaking underground storage tanks on the site and researched possible causes of action against the site owner for violations of federal water pollution and solid waste disposal laws. The removal of the leaking tank and the fact that the discharge has been to ground, not surface, water have raised novel questions of law for the students’ consideration.

Finally, IPR is taking action to contain the effects of an abandoned municipal ash pile on the grounds of a local public mental mental

205. A 13,400 gallon plume of oil, 240 feet long by 45 feet wide with an average thickness of two inches, is leaking from underground storage tanks and moving toward a tributary of the Anacostia River. IPR has been investigating this situation for approximately three years. Supporting documents are on file with the author.

206. Between the preliminary assessment and the final site investigation, the EPA changed its methodology for determining the HRS score. 55 Fed. Reg. 51,592 (1990). The final site investigation utilized the revised methodology, which emphasized the importance of exposure pathways such as drinking water, inhalation or indirect digestion. Because the consultants who conducted the investigation found a low probability of risk from these pathways, the final report reduced the severity of the risk significantly. The Final Site Investigation is on file with the author.
Over the course of twelve years, the site has received nearly 767,000 tons of municipal incinerator ash containing commercial, medical and household hazardous waste. The ash pile is located near a hospital and is within 350 feet of residential housing. This site has not been properly closed, tested or protected against public access. In addition, a new subway track is plotted to go through a portion of the pile.

IPR represents a locally elected group that acts as a liaison between the District government and the community. Three years of painstakingly gathering and analyzing test data on the toxicity of the ash and researching potential causes of action under various federal and state pollution control laws have culminated in a decision to file suit against the local agency responsible for dumping ash and failing to manage the site properly. Students have filed comments on a draft environmental impact statement and supplemental technical report on routing the subway through the ash pile. Students have also prepared letters for the client to send to federal and local officials to bring the situation to their attention, made presentations to federal agency staff on the hazards associated with the site, and facilitated meetings between the community and government officials. During the course of its representation, the clinic persuaded the EPA to request that the Agency for Toxic Substances and Disease Registry conduct a health survey of residents in the surrounding community, including the hospital patients. Thus, the clinic is involved in stimulating EPA action on this local environmental hazard.

2. The Anacostia River.

An automobile recycling plant located just over the District line in Prince George's County has for many years threatened the ecological health of the Anacostia River. The facility, one of the largest on the East Coast, produces over 200,000 tons of re-salable metal scrap each year and many tons of non-recyclable material known as "fluff." The fluff, which is stored along the banks of a tributary of the Anacostia River, produces run-off that drains into the creek. Oil and grease spills on the grounds of the facility also

207. See Roman, supra note 184.
run into the creek, and debris deposited along the banks frequently falls into the water, creating additional environmental problems.

IPR has represented a local environmental organization on this matter for three years, compiling an extensive factual record of the environmental hazards at the site. The students prevented the facility owner from securing a zoning variance to expand his operation. They also persuaded the EPA to initiate a multimedia enforcement action against the facility. The recent bankruptcy of the company has further complicated this project for the students, requiring them to file a claim in bankruptcy court to preserve the client’s option to proceed with an action against the site owner in federal district court. Students prepared and submitted a letter notifying the site owner of the client’s intent to file suit under federal pollution control laws if violations at the site continue and have worked with the client in identifying other potential co-plaintiffs. Based on legal research performed by clinic students, the client will be able to pursue remedies in bankruptcy, equity and law simultaneously.

Two transportation companies also threaten the Anacostia River by directly and indirectly discharging oil and wastewater into a small tributary. The oil pollution from these operations was so significant that one of these companies vacuumed the stream daily for many years. The small stream also contains dangerously high levels of fecal coliform bacteria as a result of discharges from these facilities and trace amounts of highly toxic chemical solvents. Pressure from IPR, as a result of information gathered by students on the nature and extent of the violations, forced the EPA to fine one of the companies $35,000. Since the EPA has not proceeded against the other company, IPR has filed notice on behalf of a local conservation organization of the group’s intent to bring a lawsuit


against the second company. IPR has worked with this local conservation organization for four years on this project.


The city's failure to distribute information to the general public on the health hazards from consuming contaminated fish, called fish advisories, has created a serious problem in the District. Although the District Commissioner of Public Health issued a "Public Health Advisory" in 1989, only individuals that acquire fishing licenses have access to information about the advisory. Individuals engaging in subsistence fishing in the Anacostia and Potomac rivers, many of whom cannot speak or read English, are unlikely to have fishing licenses. Moreover, the results of recent fish bioassays raise serious questions about the adequacy of the advisory. IPR has examined procedures in other states for issuing and posting fish advisories and has compared the data on the extent of contamination of fish in the Anacostia River with the action levels triggering protective action in other jurisdictions. Students are exploring whether a mandamus action might lie against the city for failing to warn residents of health hazards from eating contaminated fish.

The clinic has also undertaken an extensive review of the District's blood lead level screening program for school age children. Together with students from Johns Hopkins School of Hygiene and Public Health, clinic students hope to design a survey that can be administered to families with school age children to determine the extent of the city's compliance with federal and District mandates. Depending on the results of this survey, further legal action may be warranted. The clinic does not yet have a specific client for either the fish advisory or lead screening projects, but anticipates finding clients once it decides on a course of action.

As this broad array of projects demonstrates, the clinic accepts no single type of project, nor represents just one particular type of


client. Projects vary in size, complexity and tasks. Clinic students have employed a variety of tools on behalf of their clients. They have organized meetings between their clients and responsible government agencies to force agency personnel to listen to community concerns and have written letters on behalf of their clients to prod official action. Students have brought information about environmental problems, which the agencies should have gathered themselves, to the attention of agency staff. They have filed comments on issues of broad public concern and brought diverse groups of individuals together to share their concerns and find a common solution. The clinic has not shied away from litigation when members have discovered that clients were being disempowered or because of the technical complexity of the cases.214 The clinic, therefore, provides a wide range of challenges to the students, fellows and faculty and demonstrates that there is no single approach to environmental justice problems.

B. Environmental Justice Clinics Meet Barnhizer’s Clinical Educational Goals

After reviewing the structure and practical experiences of Georgetown’s environmental justice clinic, it should be apparent that the clinic is meeting many of its pedagogical goals as well,215 and that such programs serve as important “visible models of justice” inside and outside of the law school community.

The variety of projects has served many pedagogical functions, allowing faculty to fit the program to student strengths and skill development needs.216 Each case offers students the opportunity

214. Cole, supra note 4, at 649-54 (arguing that litigation disempowers community groups, and advocating a broader approach to lawyering for social change on behalf of these groups). The clinic has found litigation, or the threat of litigation, to be a critical tool in dealing with government agencies or recalcitrant violators. Litigation has served as an important mobilizing force within the community and has coalesced individuals who, until a lawsuit was filed, were isolated from each other. Litigation has provided media opportunities for the community, which has attracted political attention to its environmental problems. Where needed, the clinic has hired or worked with volunteer experts and pro bono legal assistance from private practitioners and minority bar associations. In addition, the clinic has an outreach program directed at other professional schools in the Washington area. Litigation is not necessarily the starting goal or even the end result of any project, and it does not occur in a vacuum. Most clinic cases have a broader strategy including political, administrative, media, and public education components. Students draft press releases, community petitions, testimony, rulemaking comments, and letters, along with legal memoranda, briefs and motions.

215. See supra Part III.B.

216. The experience at the clinic has shown that students generally work and learn
to develop and analyze a factual record, research the law and apply law to facts. In addition, students meet with and make presentations to clients, work with or in opposition to government officials and most importantly, feel that they contribute to the project’s progress.

Students receive practical training from fellows and faculty while working on their specific projects.217 The academic seminars the clinic offers also provide practical training through the use of role-playing exercises.218 The faculty may ask students to draft documents, represent a client in a variety of hypothetical situations, or take part in an actual negotiation. The environmental justice component of IPR has enriched its overall curriculum.219 The breadth of factual and legal issues that characterize environmental justice cases provides a wide range of new material for actual or hypothetical fact patterns for students to examine.

The faculty at Georgetown designed a clinical program to respond to the needs of both the local community and the students. The preliminary decision to locate the program within a pre-existing clinic placed some constraints on the design. These restrictions, however, have not impeded the effectiveness of the program in either its legal service or educative functions. The program’s strength is its remarkable flexibility, as is evidenced by the breadth and diversity of its docket as well as the educational experiences it

better in teams. Environmental cases lend themselves to the team approach because of their size and complexity. The occasional disparity in skills between students may upset the balance of the team. Faculty intercession, however, usually alleviates this problem. The environmental students also meet as a team for monthly brown bag lunches to share their experiences and to assist each other.

217. The absence of prerequisites for clinic enrollment can pose some teaching challenges for the faculty and create a tension between the clinic’s pedagogical and legal services goals. In some cases, this tension limits the development of a project more than the faculty considers ideal; in some extremely rare situations, an external deadline or client need may require that the student temporarily transfer the project to someone else. In every case, the faculty give the students the opportunity and encouragement to master the substantive law and factual record before them.

218. The American Bar Association standards for approval of law schools include the “classroom component” as a factor in evaluating the compliance of clinical programs. AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS § 1306 at 2 (1991).

219. This curriculum includes seminars in skills training, such as litigation planning, complaint drafting, letter-writing, and negotiation. Other seminars focus on the lawyer-client relationship, the lawyer’s moral responsibility for the positions taken by her client, the influence of gender and race on decisionmaking and the practice of law, and the role of law schools in both changing the way students approach moral questions and structuring the opportunities they face after graduation.
offers to students. The Georgetown approach, as the many structural options demonstrate, is just one way of addressing the dual challenge of creating an environmental justice clinic responsive to pedagogical and community needs.

1. **Understanding Professional Responsibility and Society’s Problems.**

Working on environmental justice projects in the clinic exposes students to serious social and economic inequities. Through their clients, students experience the effects of discrimination and racial prejudice as well as the indifference of the legal system and public institutions to community needs. Students become conscious of the disparity in power between the clients and themselves as well as between the clients and the source of their environmental harm. At every turn, the students are confronted by the need to reform the legal system.\(^{220}\) Through their clinic experience, students develop a heightened social consciousness and an enhanced sense of professional responsibility.\(^{221}\) Just experiencing life on “the other side of town” is a learning experience for many of these students. For other students, realizing that they can actually help real people and improve their lives becomes a defining experience. As a result, students often make a long-term commitment to public interest work.

2. **Engaging in Sound Analysis and Exercising Good Judgment.**

Environmental justice cases present students with challenging factual and legal problems, and many opportunities to think strategically and creatively.\(^{222}\) With many different avenues available for a client to obtain relief, the student must consider the advantages

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\(^{220}\) Some troubling examples include the EPA’s unwillingness, until last year, to send a representative to the Anacostia area; the federal law’s high threshold for triggering site remediation; the District’s inadequate efforts to post signs along the river (in both English and other languages such as Spanish) warning citizens against eating contaminated fish or screen the blood lead levels of school age District children; and the inadequate time allowed by the District for viewing documents obtained through the Freedom of Information Act (these documents are available only for two hours each month).

\(^{221}\) The student’s repeated interactions with clients introduces a number of social and professional issues. These include the role of the lawyer in the lawyer-client relationship, learning to represent the client’s interests and becoming sensitive to issues of lawyer control.

\(^{222}\) Students frequently have the opportunity to learn how to make decisions in situations where options involve differing and often uncertain degrees of risk. See Amsterdam, *infra* note 94, at 614-15. In almost every case, students must use an incomplete record to decide whether there is enough evidence to meet a legal threshold of proof. From this determination, the students decide how to counsel the client.
and disadvantages of each. Helping the client make an informed choice becomes the student's principal task.

The process of including clients in project development places a greater burden on students. This approach requires that they become sufficiently expert with the nuances of the relevant laws to articulate to the client the available legal causes of action and remedies, a task that is complicated by the inadequacies of environmental laws in the urban setting, incomplete factual records and highly technical details. These real-world tasks challenge students by developing their ability to assemble and analyze complicated factual records and to converse with experts about them. By applying their legal research to the record, students can draw conclusions and, together with the client, determine a course of action.

Often, students design a strategic plan to help achieve the client's goals. Clinic experience indicates that these plans are not limited to legal actions. The disparities in power inherent in the clinic's cases mean that legal action alone is generally insufficient to achieve the client's goals. Grassroots community organizing together with the pursuit of political and media strategies has enhanced the probability of success for many clinic projects. Students are instrumental in the development of these strategies.

Even with a dynamic, multi-faceted approach, environmental

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223. As Amsterdam points out, students use "ends-means thinking" when considering the options. By identifying the clients' goals and, based on these, examining the various legal and extra-legal strategies, students learn to identify and evaluate the implications of each step they consider during the development of a project. See id. at 614.

224. The questions quickly move beyond whether a particular cause of action will prevail in court to whether winning will give the client the relief she seeks and at what cost (both monetary and non-monetary). Also relevant is whether there are venues other than a court which might achieve those goals at less cost, or avenues that will achieve not only the client's principal goal but also some subordinate or indirect goals. Cf. Cole, supra note 4, at 650-54.

225. Students perform this task by engaging in each of the types of analytical thinking that Amsterdam identifies. See supra note 119.

226. Due to the level of technical work involved in the projects, the clinic seminar now includes a lecture each semester about technical matters such as units of measurement and the behavior of certain chemicals in the environment. The clinic has also acquired scientific handbooks.

227. See Austin & Schill, supra note 15, at 75-76; Cole, supra note 4, at 649-73.

228. Students in the clinic have learned that the community must be organized and willing to take action before a political strategy can work. One or two individuals may not be sufficient to impress upon public officials the importance of the issue to the community at large.

229. Student participation includes teaching grassroots organizing skills to the local leaders; writing petitions and letters to local politicians on behalf of concerned community members; briefing members of Congress on local issues; and working with the media.
justice victories are limited. Legal remedies are difficult to obtain; clinic experience has proved to be no exception to this rule.\textsuperscript{230} This work constantly challenges students to think creatively, which quickly becomes synonymous for most students with "thinking like a lawyer." Clinic staff are continually proposing and setting aside legal and political strategies.\textsuperscript{231} Students learn to evaluate their work critically, raising objections to their own theories that potential defendants might make. In this process, students gain an appreciation for the complexity and at times, seeming intractability of the problems their clients face. In each clinic project, however, students have made significant contributions toward finding solutions.

3. \textit{Teaching Lawyering Skills and Substantive Knowledge.}

Through their participation in the environmental justice clinics, students develop lawyering skills and substantive legal knowledge that they could not acquire in the classroom. Environmental justice cases present extremely complicated factual and legal challenges for students such that the deceptively easy task of assembling a factual record can take on a life (and legal strategy) of its own.\textsuperscript{232} Students are forced to move from the broad-brush understanding of the law which they acquire in their traditional environmental law classes to learning the intricacies and nuances of the statutes and their legislative and judicial histories as they try to make these laws work on behalf of a client.\textsuperscript{233}

IPR places great emphasis on legal writing. Environmental justice clinic students become adept at drafting Freedom of Information Act requests, opinion letters to clients, technical comments for rulemaking proceedings, briefs, motions, and draft orders. They also learn how to write letters on their client's behalf and to adjust the tone of their writing to both the letter writer, if it is not themselves, and to the audience.

\textsuperscript{230} See supra Parts II.C.1-3.

\textsuperscript{231} The students spent three years testing theories against the factual records in the automobile recycling facility and municipal ash projects before developing viable theories of the case, and are still searching for a legal handle to compel a federal landowner to remediate oil and pesticide contamination on its property.

\textsuperscript{232} IPR has had to resort to court and administrative appeals in three cases to secure information being withheld by government agencies.

\textsuperscript{233} As an example of the complexity of the questions that arise in these projects, a student produced a 35-page single spaced outline on the question of whether automobile "fluff" (the non-ferrous residue from recycling automobiles) is "hazardous solid waste" within the meaning of RCRA.
Students emerge from the environmental justice clinical program with a broad understanding of specific areas of environmental law and a range of lawyering skills that they could not have developed in a classroom. Additionally, they gain an appreciation of the law’s limits and how to overcome or reshape those limits through hard work, perseverance, and resourcefulness.

The clinic has had no problems with attracting students and is particularly popular among students of color. The issues encountered in the clinic have spawned a separate seminar on environmental justice and associated academic scholarship. The environmental justice program has become widely recognized and praised, most recently by the University’s President.

4. “Visible Models of Justice.”

Through the environmental justice clinic, students have provided competent legal services on a variety of environmental issues to the residents of the District of Columbia. The clinic has functioned as a visible model of justice within the law school, the greater university and District communities. The IPR also serves as a model for clinics at other schools.

Students have made significant, demonstrable contributions to the quality of the District’s environment and have provided needed legal services on environmental issues to some of the city’s poorer residents. More importantly, the clinic has empowered segments of the District population by providing information about the threats to their health and general well-being, and by facilitating community participation in governmental decisionmaking. This empowerment is manifested by the fact that several clinic projects are now largely sustained by community effort.

In the legal arena, the environmental justice program at Georgetown has had some remarkable successes. For example, using the federal environmental impact statement process, students forced the city’s regional transportation authority to conduct further testing for the railroad right-of-way through an Anacostia hazardous waste ash pile; in addition, the transportation authority is

234. The clinic has helped foster an interest in environmental law among students of color, many of whom have felt disaffected from the environmental movement and environmental issues in general.

235. Georgetown has a long history of, and strong commitment to, clinical legal education. The first clinic was founded in 1968 and there are 11 today.

236. For an insightful examination of the lawyer’s role in representing communities in environmental justice cases, see Cole, supra note 4, at 661-73.
taking new health and safety precautions in the construction and operation of the subway line. Clinic students embarrassed federal officials into initiating enforcement actions against three significant sources of pollution along the Anacostia River. Student comments strengthened the District's recycling activities and regulations concerning leaking underground storage tanks.

The experiences of students and faculty working on various clinic projects provided factual foundations for activities as diverse as the 1992 American Bar Association Resolution on Environmental Justice237 and suggestions for how the EPA could improve its performance in the District of Columbia.238 Victories may be as seemingly insignificant as securing the release of information from a recalcitrant government official; however, even these exercises have led to changes in official attitudes toward public requests for information and reforms in their process of responding.

Some of the clinic's effort may lead to reforms in environmental laws and policies and the institutions that implement them. Where federal laws do not fit the paradigm of an urban environmental problem, the students have pushed to find creative ways to forge causes of action. Aggressive representation of the interests of District residents have forced both the federal and District governments to implement and enforce their laws and to make changes in how they respond to public concerns. The clinic's work on both the lead and fish advisory projects may lead to real innovations in how the city addresses these problems.

Georgetown's clinical program meets Barnhizer's goals because of both the clinic's design and the issues the clinic addresses. The success of the Georgetown clinic suggests that it offers an effective preliminary model for other schools that are interested in developing an environmental justice clinic, even if in the long run they choose to develop alternative approaches and organizational structures.

VI. Conclusion

Georgetown students have learned a great deal about the field of environmental law from their clinical experience at Georgetown. The faculty have learned that environmental justice is-

237. See Wharton, supra note 5.
238. Letter from Hope Babcock, Associate Director, Institute for Public Representa-
issues lend themselves particularly well to a clinically-based pedagogical approach. Both students and faculty have learned of the ineffectiveness of national environmental laws as a means of addressing and redressing the disproportionate distribution of environmental harms in the urban environment and of the barriers those laws present to members of the public. Students and faculty have also learned first-hand about the universality of the basic human need for a healthy, nourishing, natural environment, and that the right to a safe, clean environment should transcend economic and racial differences, although presently it does not. The clinical experience has demonstrated to both students and faculty alike that an environmental justice clinic serves important educational, professional and social service goals, providing the local community and the law school with a visible model of justice in an area of law too often characterized by injustice.