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ENVIRONMENTAL JUSTICE

LAW-2515-01/02, Spring 2018
(5/18/18 Draft)

COURSE INFORMATION

Environmental justice describes a social and political movement to seek greater equity in the distribution of environmental harms and benefits in our society, as well as more meaningful and equitable public participation in decision-making that affects our environment.

Class meets Tuesdays, 4:15 pm – 7:15 pm in **Room 185**.

I will hold office hours on Monday and Wednesday afternoons from 4:00-5:30 pm. You can come by alone or in groups. I encourage each student to come by to discuss their paper topic. A sign up sheet is on my office door.

COURSE REQUIREMENTS

Substantial Writing (80%): *Substantial, independent research paper for “R” Credit*

Deadlines: Monday, June 25, 2018 by 4:00 p.m., for 1Ls and 2Ls
Friday, June 1, 2018 by 4 p.m. for graduating 3Ls.).

Students will write one independent research paper of approximately 26 double-spaced pages. We will discuss topic selection in class, but in general you can take one of two approaches:

OPTION ONE: Write a traditional research paper on any environmental justice topic of interest to you. This could be research on a case study regarding a specific place/EJ institution; a pressing EJ issue and assess options for reform; or a discrete issue of EJ doctrine or theory. You have a great deal of freedom choosing your topic as long as it falls under the broad banner of environmental justice as defined in the course; it need not be directly related to material included in our syllabus. Topics related to safe and affordable housing, transportation, utilities, water, and neighborhoods are suitable. Your paper may draw from and develop the presentation topic you gave during class. To brainstorm current events related to environmental justice, you might wish to consult the websites of Communities for a Better Environment, the Center on Race, Poverty, and the Environment, Urban Habitat, the Community Water Center, the UC Davis Environmental Justice Project, Earth Justice, NRDC’s EJ page (<http://www.nrdc.org/ej/>), Sierra Club (<http://www.sierraclub.org/environmental-justice>), Women’s Earth Alliance, Sierra Magazine, the Pacific Institute in Oakland (<http://pacinst.org/issues/>), US EPA (<http://www.epa.gov/environmentaljustice/> and <http://www.epa.gov/region06/6dra/oejta/ej/index.html> and <http://www.epa.gov/osp/ej.htm>); the EJ page of the NIH <http://www.niehs.nih.gov/research/supported/dert/programs/justice/>.

As reference for law student research papers of this type, you can consult sample papers that have come from this class and subsequently been published, including:

- Anne Bellows, *Holding Local Governments Accountable for Environmental Discrimination: the Promise of California Government Code § 65008*, 41 Ecology Law Quarterly 1 (2014)
- Daniel Kramer, *United Voices: An Open Proposal for Smart and Fair Growth in the Central Valley*, 39 Ecology Law Quarterly 193 (2012)
- Ziwei Hu, *Equity's New Frontier: Receiverships in Indian Country*, 101 Cal. L. Rev. 1387 (2013)
- Tony LoPresti, *Reclaiming the Authentic Future: The Role of Redevelopment in Unincorporated California*, 44 Urban Lawyer 135 (2012)
- Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Cal. L. Rev. 223 (2012)
- Swati Prakash, *Racial Dimensions of Property Value Protection Under the Fair Housing Act*, 101 Cal. L. Rev. 1437 (2013)
- Jerret Yan, *Rousing the Sleeping Giant: Administrative Enforcement of Title VI and New Routes to Equity in Transit Planning*, 101 Cal. L. Rev. 1131 (2013)

OPTION TWO: Write a research paper that responds directly to issues facing a non-profit or public agency. You may develop a topic in consultation with practitioners you know from summer employment, clinical work, or other relationships. Your goal is to define a topic of pedagogical value to you, sufficient depth to research and write a substantial work product, and service to an outside organization's research needs. Your work product can be formatted as a research paper or as a robust legal research memo that fulfills the course requirements. On the version submitted for the course, you should have a very clear articulation of the issue you are discussing, as well enough background about the issue that I can understand your research and the contribution you have made. This approach must be started very early in the semester, as you must give practitioners adequate time to engage with you. Students who pursue this option **must** come to see me in office hours early in the term to make a plan for this type of research.

For either track, I value the following things very highly in evaluating all research papers (each in approximately equal measure):

- scope of research and sources + analytical depth of treating key sources;
- clarity, writing quality, and organization;
- quality and originality of reasoning; and
- engagement with or recognition of themes and concepts from the course.

Attendance, Participation, and Presentation – 20%

All students are expected to attend class and participate in discussions. Quality contributions will be rewarded, and unexcused poor attendance could result in a reduced grade or being dropped from the course. If for any reason you do not feel comfortable taking part in class discussions, please let me know what I can do to make the atmosphere more conducive to your participation.

Participation in the class will be voluntary—it is up to you to get involved and speak up. At the start of class, I welcome students to share quick announcements related to upcoming campus events, or notable and class-related news events in the world. I welcome you to find and share interesting supplementary materials that are relevant to our class. These might include: newspaper, magazine, or blog articles; artwork, plays or literature; or other materials. There is a Canvas discussions link where students can post links or materials.

Presentation: Each student will present a timed 10-minute, in-class presentation on a case study topic from a suggested list that you can amend/augment to fit your interests. You may work alone or in a group of two (with the 10-minute time limit for each student). Case studies will be focused on a particular place or lawsuit. We will discuss the sign-up process during the second class. Your presentation might include elements such as: images (e.g., Google Earth), video/audio footage, descriptive information, and chronologies. Depending on your topic, you will be considering things such as:

- Factual background: Community location, race and socioeconomic demographics
- Description of the problem advocates have sought to solve, such as community physical conditions (e.g., housing stock, infrastructure or services needs, etc.), land use plans or proposed changes thereto
- A brief legal and political history on this issue, e.g.: a history of community organizing and activist efforts, including community leadership, a history of legal interventions (such as lawsuits and other forms of representation over time), the legal background to the present dispute, etc. Rather than looking like a Keycite history of a dispute, these should focus our attention on the legal strategies/theories as they developed over time and the outcomes of those efforts.
- Outcomes, gains, reflections: What happened/ is happening? What can we learn?

After class, please post electronic copies of your visual presentation on Canvas in the “Presentations” folder of the Discussions link.

COURSE MATERIALS & SYLLABUS

(Draft)

This syllabus provides an overview of the major topics and readings we will cover in the course of the semester. We may add or delete readings to account for the pace of our discussions, new developments in the law, etc. Materials will be located on the resources link of the Canvas class website under the modules link. Each reading will be titled with its class number.

Unit	Reading Assignments	Date
<i>Introduction</i>		
<p>1. What is Environmental Justice? Introduction, Principles, Evidence, and the History of the Movement</p>	<p>-First National People of Color Environmental Leadership Summit, “Principles of Environmental Justice” (1991) (Canvas)</p> <p>-Cole and Foster, “A History of the Environmental Justice Movement” in FROM THE GROUND UP (2001) (Canvas)</p> <p>- Richard Thompson Ford, “The Boundaries of Race: Political Geography in Legal Analysis” (excerpt published in Crenshaw et al, eds., CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (1995)) (Canvas)</p> <p>- Anderson & Plaut, “Implicit Bias and the Spatial Colorline” (Canvas) (Intro + Part II)</p> <p>-Rechtschaffen et al, “Hazardous Waste Facilities” (pp 36-46) (Canvas)</p>	<p>4/3</p>
<p>2. Part I: The Practice of Environmental Justice Lawyering</p> <p>Part II: Is there a tension between affordable housing & neighborhood quality? Is uninhabitability connected to social mobility?</p>	<p><u>Part I:</u></p> <p>- Luke W. Cole, <i>Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law</i>, 19 ECO.L.Q. 619 (1992) (Canvas) [read Parts III and IV]</p> <p>- Stephen Wexler, <i>Practicing Law for Poor People</i>, 79 Yale L.J. 1049 (1970) (Canvas)</p> <p>- Luke W. Cole, <i>Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy</i>, 14 Virginia Env'tl L.J. 687 (1995) (Canvas) (skim for argument)</p> <p><u>Part II:</u></p> <p>-Larson, <i>Informality, Illegality, and Inequality</i>, 20 YALE L. & POLY REV. 137 (2002) (Intro, Parts I, II, IV-B, V, VI) (Canvas)</p> <p>-Delgado, <i>Rodrigo's Twelfth Chronicle: The Problem of the Shanty</i>, 85 GEO. L.J. 667 (1997) (Canvas)</p> <p>-Fischel, <i>Homevoter Hypothesis</i> (excerpt) (Canvas)</p>	<p>4/10</p>

Key Legal Tools for Environmental Justice

<p>3. Introduction to Title VI, Title VI administrative remedies & the private right of action question</p>	<ul style="list-style-type: none"> -Mank, <i>Title VI</i>, in Gerrard & Foster ABA GUIDE (read pages 23-39) (Canvas) - <i>Darensburg v. Metro. Transp. Comm'n</i>, 636 F.3d 511, 523 (9th Cir. 2011) (Canvas) -Tony LoPresti, <i>Realizing the Promise of Environmental Civil Rights: The Renewed Effort to Enforce Title VI of the Civil Rights Act of 1964</i> (pp 1- 33) (Canvas) - CRPE, Letter to Revive Title VI Complaint (Canvas) - Kettleman City 1994 Title VI Complaint (skim pages 1-10 and look through the rest) (Canvas) 	<p>4/17</p>
<p>4. Common Law Nuisance & Code Enforcement</p>	<ul style="list-style-type: none"> -Drury, <i>Moving a Mountain: The Struggle For EJ in East LA</i>, from CREATIVE COMMON LAW STRATEGIES FOR PROTECTING THE ENVIRONMENT (Canvas) -South Camden excerpt (2003 Opinion) (Canvas) -South Camden excerpt (2006 Opinion) (Canvas) -Petition, Answer & Receivership Order, <i>Stockton v. Singh</i> (Canvas) (skim documents and take notes on the steps taken by the city in code enforcement and the remedy ordered) 	<p>4/24</p>
<p>5. Federal Fair Housing Act</p> <p>Part I: § 3604b: Introduction & The Modesto Litigation</p> <p>Part II: Disparate Impact Litigation</p>	<ul style="list-style-type: none"> - Text, Federal Fair Housing Act § 3604b (Canvas) -Crawford, <i>Fair Housing Act</i>, in Gerrard & Foster ABA GUIDE (Canvas) - <i>The Committee Concerning Community Improvement v. City of Modesto</i>, 583 F.3d 690 (2009) (skim) (Canvas) -<i>Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.</i>, 576 U.S. ____ (2015) (Canvas) (distill major arguments structuring each opinion, including dissents) 	<p>5/1</p>

<p>6. Climate Justice</p>	<p><u>Part I: Principles & Policies</u> -Bali Principles of Climate Justice (2002) (Canvas) -<i>The President and the Pipeline</i>, The New Yorker (2013) (Canvas) (skim to understand basics of Canadian crude supply & politics) -Kaswan, <i>Environmental Justice and Domestic Climate Change Policy</i>, 38 <i>Envtl L. Rep. News & Analysis</i> 10287 (2008) (Canvas) - Caroline Farrell, <i>A Just Transition: Lessons Learned from the Environmental Justice Movement</i>, 4 <i>Duke Forum for Law & Social Change</i> 45 (2012) (Canvas) <u>Part II: Grassroots Resilience</u> -<i>The Evolution of Casa Pueblo</i> (2008) -<i>Casa Pueblo taps solar power</i>, <i>Caribbean Business</i> (2017)</p>	<p>5/8</p>
<p>7. Strategies for Rural Environmental Justice: Water Access and Quality</p> <p><i>Panel of Guest Speakers:</i> -<i>Camille Pannu, Director, Water Justice Clinic at UC Davis School of Law</i> -<i>Todd Robbins & Jed Borghesi of RobbinsBorghesi LLP</i> -<i>Phoebe Seaton, Co-Director, Leadership Counsel</i></p>	<p>- Anne Bellows, Phoebe Seaton, & Veronica Garibay, <i>Smart Growth in Rural California</i> (Canvas) - Seth Holmes, <i>Fresh Fruit, Broken Bodies: Migrant Farmworkers in the US</i> (2013) (Excerpt Canvas) -Center on Regional Change, <i>The Struggle for Water Justice in CA's SJV</i> (2018) (skim pp 8-40, read 41-55) -KQED, <i>Devastation and Recovery: Scenes from the Valley Fire Aftermath</i> (2015) (brief video) -<i>The Battle for Matheny Tract</i> (2017) (19 min documentary)</p>	<p>5/15</p>

<p>8. Strategies for Urban Environmental Justice:</p> <p>Part I: Cooperatives and Equitable Energy <i>Guest Speaker Subin DeVar, Sustainable Economies Law Center in Oakland, CA</i></p> <p>Part II: Neighborhood-Scale Advocacy <i>Guest Speakers: Andre Belion, Caty Teav, Luis Angel and Kayuta Holliman from Fathers & Families of the San Joaquin in Stockton, CA</i></p>	<p><u>Part I:</u> -Orsi, <i>Practicing Law in the Sharing Economy</i> (excerpt on Canvas) -Energy Democracy, Co-Op Power (2016 report) (Canvas)</p> <p><u>Part II:</u> -<i>Making the problem:</i> Kim Mai Cutler, East of Palo Alto's Eden (background on creating a disadvantaged urban area) -<i>Finding a solution:</i> Browse the website of Fathers & Families here: https://www.ffsj.org/ and https://www.ffsj.org/services.php (links on Canvas)</p>	<p>5/22</p>
<p>9. Environmental Equity & Sovereignty</p>	<p>-Laurence, <i>American Indians and the Environment</i> (Canvas) (basic primer) -Noriko Ishiyama, <i>Environmental Justice and American Indian Tribal Sovereignty</i> (Canvas) -Mary Kathryn Nagle, <i>Environmental Justice and Tribal Sovereignty: Lessons from Standing Rock</i>, YLJ Forum (2018) (Canvas) -Purdy, <i>Environmentalism Was Once a Social-Justice Movement</i>, The Atlantic (2016)</p>	<p>5/29</p>