Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law

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INTRODUCTION

Poor people bear the brunt of environmental dangers — from pesticides to air pollution to toxics to occupational hazards — and their negative effects on human health and safety. At the same time, poor people have the fewest resources to cope with these dangers, legally, medically or politically.

Until recently, mainstream environmental groups have not focused on the environmental problems faced by low-income communities,[1] and poverty lawyers traditionally have not ranked environmental cases highly.[2] Both environmental lawyers and poverty lawyers must begin to address the disproportionate burden of pollution borne by low-income

1. In some cases, this lack of attention has been intentional. In a 1971 national membership survey, the Sierra Club asked its members, "Should the Club concern itself with the conservation problems of such special groups as the urban poor and ethnic minorities?" According to the Club's *Bulletin*, "[t]he balance of sentiment was against the Club so involving itself," with "58 percent of all members either strongly or somewhat opposed" to the idea. Don Coombs, *The Club Looks at Itself*, SIERRA CLUB BULLETIN, July-Aug. 1972, at 35, 37.

Similarly, mainstream environmental groups have largely ignored the environmental problems of communities of color. *See* Charles Jordan & Donald Snow, *Diversification, Minorities, and the Mainstream Environmental Movement*, *in* VOICES FROM THE ENVIRONMENTAL MOVEMENT: PERSPECTIVES FOR A NEW ERA 71, 90-93 (Donald Snow ed., 1991); Letter from SouthWest Organizing Project to "Group of Ten" National Environmental Organizations (Feb. 21, 1990) (letter on behalf of over 100 community leaders of color accusing mainstream environmental groups of racist and exclusionary hiring practices and policy positions) (on file with author); Philip Shabecoff, *Environmental Groups Told They are Racist in Hiring*, N.Y. TIMES, Feb. 1, 1990, at A16; *infra* notes 58-74 and accompanying text.

2. *See, e.g.*, Edgar S. Cahn & Jean Camper Cahn, *Power to the People or the Profession? — The Public Interest in Public Interest Law*, 79 YALE L.J. 1005 (1970). The Cahns, parents of the poverty law movement, were bitterly opposed to public interest attorneys practicing environmental law:

> In the current romance between public interest law devotees and pollution, there is danger of a major moral default by the legal profession. Mayor Hatcher correctly observed that the environment issue had done what Alabama's George Wallace had not been able to do — "distracted the attention of the nation from the pressing problems of the black and poor people of America."

Id. at 1005. *But see infra* text accompanying notes 227-36.

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communities. Both must recognize the intersection of their disciplines, and mutually come to practice a new, empowering type of legal advocacy — environmental poverty law — which will challenge both disciplines as they are currently practiced.

This Article seeks to define "environmental poverty law" in the context of lawyering for social change and social justice. To build a foundation for discussion, Part I briefly surveys the impact of environmental hazards on poor people. Part II then examines the history of environmental movements in the United States, exploring the differences between "mainstream" and "grassroots" approaches to environmental problems. Part III asks and answers the question, "Why environmental poverty law?" Part IV is a brief overview of the rise and practice of poverty law, while Part V describes the practice of environmental poverty law, a practice integrating elements of environmental and poverty law. Part VI provides two case studies of successful environmental poverty advocacy. While this article is specifically an approach to environmental poverty law, the principles and strategies advanced are applicable to lawyering for social change in general.

I
POLLUTION'S VICTIMS

It would seem a truism that poor communities have more hazardous environments than middle class and wealthy communities, and that poorer workers engage in dirtier, more dangerous work. After all, the typical inner city public housing project is generally not in as "nice" or clean a neighborhood as the standard tract home in the suburbs, and everyone knows that the boss in the air-conditioned office makes more money than the laborer working with deadly chemicals on the shop floor. Anecdotal horror stories abound in the media.

The garbage industry courts small, low-income, rural towns as locations for new garbage dumps — and because the towns are too poor to afford the lawyers and consultants needed to get a "good deal," the towns get the trash while the garbage companies make fat profits.[3]

In the small, poverty-ridden farmworker town of Earlimart, California, six children of farmworkers are diagnosed with cancer in a five-year period, more than six times the expected rate. The town is just fourteen miles from the town of McFarland, the site of a cluster of thirteen childhood cancer cases. Residents suspect the one ubiquitous environmental toxin: pesticides.[4]

3. Jeff Bailey, *Some Big Waste Firms Pay Some Tiny Towns Little for Dump Sites*, WALL ST. J., Dec. 3, 1991, at A1, A9.

4. Jane Kay, *Farm Workers Call it "Toxic Racism,"* S.F. EXAMINER, Apr. 8, 1991, at A1, A8 [hereinafter Kay, *Farm Workers Call it "Toxic Racism"*] (stating that the six cancers are "three times the number expected in a 10 year period").

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The tiny community of Sunrise, Louisiana — a low-income, African-American town on Louisiana's Cancer Alley — is surrounded by chemical plants and oil refineries that have turned life in this once-placid community into a living nightmare.[5]

Indian reservations across the country, some of the poorest areas of the nation, are being cultivated as potential sites for a variety of unwanted environmental facilities, including toxic waste incinerators, massive garbage dumps, and radioactive waste disposal sites.[6]

Agricultural workers, among the poorest of the working poor, toil under hellish conditions in the fields including exposure to deadly pesticides. They are forced to enter fields before mandatory waiting periods have elapsed following pesticide application, given defective protective equipment if anything at all, and then discarded from the labor force if they become ill.[7]

The conclusion drawn from these tragic anecdotes — that the poor suffer disproportionately from environmental hazards — is confirmed in local and national studies of the impacts of toxics production and disposal,[8] garbage dumps,[9] air pollution,[10] lead poisoning,[11] pesti-

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5. Bob Anderson, *For Many in Sunrise, the Sun Set With the Coming of the Refinery*, BATON ROUGE ADVOC., May 11, 1992, at 1A, 5A. This article is part of a three-part series on industry moving into low-income black communities on Cancer Alley. *See also* Bob Anderson, *Industries Crowding Out Communities: Lack of Siting Law Leaves Tiny Towns Enclosed, Enraged*, BATON ROUGE SUNDAY ADVOC., May 10, 1992, at 1A [hereinafter Anderson, *Industries Crowding Out Communities*]; Bob Anderson, *Plant Sites: Is Racism An Issue?*, BATON ROUGE ADVOC., May 12, 1992, at 1A.

6. *See* Robert Tomsho, *Indian Tribes Contend With Some of Worst of America's Pollution*, WALL ST. J., Nov. 29, 1990, at A1; Jane Kay, *Indian Lands Targeted for Waste Disposal Sites*, S.F. EXAMINER, Apr. 10, 1991, at A10 (listing 38 Indian lands on which industrial waste facilities exist, are proposed, or have been rejected) [hereinafter Kay, *Indian Lands Targeted for Waste Disposal Sites*]; Valerie Taliman, *Waste Merchants Intentionally Poison Natives*, VOCES UNIDAS (SouthWest Organizing Project, Albuquerque, N.M.), 4th Quarter 1991, at 1, 18 (reporting that the Bush Administration's Office of the U.S. Nuclear Waste Negotiator sent letters to 650 tribal leaders nationwide in an effort to site a radioactive waste dump).

7. Michael G. Wagner & Marcos Breton, *Despite Pesticide Rules, Laborers Work in Peril*, SACRAMENTO BEE, Dec. 11, 1991, at A1, A9. This article is the final part of a four-part series on the exploitation of California's farmworkers called "Fields of Pain." *See also* Michael G. Wagner & Marcos Breton, *Fields of Pain: Regulators Have Failed to Protect the Exploited Farm Worker*, SACRAMENTO BEE, Dec. 8, 1991, at A1; Michael G. Wagner & Marcos Breton, *Brutal Work, Lax Regulation: Federal, State Agencies Lack Staff, Will to Enforce Laws*, SACRAMENTO BEE, Dec. 9, 1991, at A1; Michael G. Wagner & Marcos Breton, *Drudgery by Day, Shacks by Night*, SACRAMENTO BEE, Dec. 10, 1991, at A1.

8. *See* COMMISSION FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES 15-16 (1987) (reporting that mean household income is lower nationally in areas with toxic waste sites than in areas without sites); U.S. GEN. ACCOUNTING OFFICE, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES (1983) (stating that all four toxic waste dumps in eight southern states are in economically depressed communities). On the local level, studies of particular cities have found that poorer people live closer to toxic waste sites than wealthier people. *See*

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Paul Mohai & Bunyan Bryant, *Race, Class and Environmental Quality in the Detroit Area, in* ENVIRONMENTAL RACISM: ISSUES AND DILEMMAS 42, 44 (Bunyan Bryant & Paul Mohai eds., 1991) (stating that Detroit residents living below the poverty line have a four and a half times greater chance of living near a commercial hazardous waste facility than those who live above the poverty line) [hereinafter Mohai & Bryant, *Race, Class and Environmental Quality in the Detroit Area*]; Paul Mohai & Bunyan Bryant, *Environmental Racism: Reviewing the Evidence, in* RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE 163, 169-74 (Bunyan Bryant & Paul Mohai eds., 1992) (finding that poor people are more likely than the more affluent to live near commercial hazardous waste sites in Detroit) [hereinafter Mohai & Bryant, *Environmental Racism: Reviewing the Evidence*]; Donald Unger et al., *Living Near a Hazardous Waste Facility: Coping with Individual and Family Distress*, 62 AM. J. OF ORTHOPSYCHIATRY 55, 62 (1992) (establishing that residents closest to a hazardous waste facility in Pinewood, S.C., were poor, while more affluent residents lived further away); MICHAEL GREENBERG & RICHARD ANDERSON, HAZARDOUS WASTE SITES: THE CREDIBILITY GAP 158 (1984) (summarizing a study of 567 communities in New Jersey that found communities with the greatest number of toxic waste sites to have more low-income residents than other communities).

9. *See* BRIAN J.L. BERRY ET AL., THE SOCIAL BURDENS OF ENVIRONMENTAL POLLUTION: A COMPARATIVE METROPOLITAN DATA SOURCE 563, 570-71 (1977) (reporting that solid waste sites in Chicago are distributed inequitably by income).

10. *See* COUNCIL ON ENVTL. QUALITY, THE SECOND ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 192-93 (1971) (finding air pollution to be distributed inequitably by income); Myrick Freeman, *The Distribution of Environmental Quality, in* ENVIRONMENTAL QUALITY ANALYSIS 243, 264 (Allen V. Kneese & Blair T. Bower eds., 1972) (stating that air pollution is distributed inequitably by income in Kansas City, St. Louis and Washington, D.C.); DAVID HARRISON, WHO PAYS FOR CLEAN AIR: THE COST AND BENEFIT DISTRIBUTION OF AUTOMOBILE EMISSIONS STANDARDS 127-29 (1975) (finding that emission controls impose regressive costs); JEFFREY M. ZUPAN, THE DISTRIBUTION OF AIR QUALITY IN THE NEW YORK REGION 2-5 (1973) (finding that air pollution is distributed inequitably by income in New York); William R. Burch, *The Peregrine Falcon and the Urban Poor: Some Sociological Interrelations, in* HUMAN ECOLOGY: AN ENVIRONMENTAL APPROACH 308, 312-15 (Peter J. Richerson & James McEvoy eds., 1976) (stating that air pollution in New Haven, Conn. is distributed inequitably by income); BERRY ET AL., *supra* note 9, at 559-62, 572 (reporting that air pollution in 13 major urban areas is distributed inequitably by income); Femida Handy, *Income and Air Quality in Hamilton, Ontario*, ALTERNATIVES, Spring 1977, at 18 (finding air pollution in Hamilton, Ontario, is distributed inequitably by income); Peter Asch & Joseph J. Seneca, *Some Evidence on the Distribution of Air Quality*, 54 LAND ECON. 278, 283, 285 (1978) (reporting a study of Cleveland, Chicago and Nashville that showed poorer census tracts to be exposed consistently to higher pollution levels than more affluent tracts, and a study of urban areas in 23 states that found particulate pollution was higher in cities with low-income characteristics); Michel Gelobter, The Distribution of Air Pollution, By Income and Race 2-3 (1989) (unpublished Masters Thesis, University of California at Berkeley (Energy and Resources Group)) (on file with author) (declaring that the poor face higher levels of air pollution than the rich); Michel Gelobter, *Toward a Model of Environmental Discrimination, in* RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE, *supra* note 8, at 64, 65-68 [hereinafter Gelobter, *A Model*] (asserting that the damage caused by air pollution in urban areas is inequitably distributed by income); CITIZENS FOR A BETTER ENVIRONMENT, RICHMOND AT RISK: COMMUNITY DEMOGRAPHICS AND TOXIC HAZARDS FROM INDUSTRIAL POLLUTERS 2, 31 (1989) (reporting that the Contra Costa County neighborhoods closest to polluting industries in Richmond, Cal., were also those with the lowest income); Leonard Gianessi et al., *The Distributional Effects of Uniform Air Pollution Policy in the U.S.*, Q.J. ECON., May 1979, at 299-300 (concluding that the U.S. air pollution policy implies a redistribution of benefits toward a minority composed largely of nonwhite inhabitants of polluted urban areas).

11. *See* Kathryn R. Mahaffey et al., *National Estimates of Blood Lead Levels: United States, 1976-1980*, 307 NEW ENG. J. MED. 573, 578 (1982) (discussing a national health survey

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cides,[12] occupational hazards,[13] noise pollution[14] and rat bites.[15]

An important corollary is that people of color are exposed to more environmental dangers than white people. "California's most toxic neighborhood lies wedged between the state's largest black and Latino communities," begins one newspaper article, describing a neighborhood between South Central Los Angeles and East Los Angeles with a population that is 59% black and 38% Latino.[16] This corollary is borne out by many of the studies examining environmental hazards in poor communi-

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that found "significantly higher prevalence" of elevated levels of lead in children whose families have incomes under $6000 compared to those whose families have incomes over $6000); Olivia Carter-Pokras et al., *Blood Lead Levels of 4-11-year-old Mexican American, Puerto Rican, and Cuban Children*, 105 PUB. HEALTH REP. 388, 390-91 (1990) (discussing a study of 1390 children that found Mexican-American children living in poverty to have higher blood lead levels than Mexican-American children not living in poverty); Committee on Envtl. Hazards & Committee on Accident & Poison Prevention, Am. Academy of Pediatrics, *Statement on Childhood Lead Poisoning*, 79 PEDIATRICS 457, 457 (1987) (finding lead poisoning to be particularly prevalent in areas of urban poverty).

12. *See* BERRY ET AL., *supra* note 9, at 567, 587 (reporting that pesticide poisonings in the Chicago area are distributed inequitably by income); Luke Cole & Susan S. Bowyer, *Pesticides and the Poor in California*, 2 RACE, POVERTY & ENV'T (California Rural Legal Assistance Found. & Earth Island Inst. Urb. Habitat Prog., S.F., Cal.), Spring 1991, at 1, 1, 17 (noting that farmworkers, with average annual earnings of $8800 for a family of four, are at greatest risk of pesticide poisoning); John E. Davies et al., *The Role of Social Class in Human Pesticide Pollution*, 96 AM. J. EPIDEMIOLOGY 334, 338 (1972) (discussing survey of 800 residents of Dade County, Fla. that showed blood levels of the pesticides DDT and DDE to be significantly higher in poor people than in the more affluent); MARION MOSES, A FIELD SURVEY OF PESTICIDE-RELATED WORKING CONDITIONS IN THE U.S. AND CANADA: MONITORING THE INTERNATIONAL CODE OF CONDUCT ON THE DISTRIBUTION AND USE OF PESTICIDES IN NORTH AMERICA 1, 3 (1988) (noting that 70% of farmworkers in 1984 survey reported being exposed to pesticides and 90% reported making less than $5000 annually).

13. *See* JAMES C. ROBINSON, TOIL & TOXICS: WORKPLACE STRUGGLES AND POLITICAL STRATEGIES FOR OCCUPATIONAL HEALTH 75-94 (1991) ("The typical hazardous occupation is unattractive in virtually every measurable dimension. People clearly do not voluntarily choose hazardous occupations if they have other possibilities."). In 1988, for example, approximately 30% of all injured or ill workers in California — those who missed a day or more of work as a result of occupational injury or illness — made less than $250 per week; just under two-thirds made less than $400 per week. *See* DIVISION OF LABOR STATISTICS & RESEARCH, CAL. DEP'T OF INDUS. RELATIONS, 1988: CALIFORNIA WORK INJURIES AND ILLNESSES 42-50 (1989). California craftsworkers, operatives, laborers, farmworkers, and service workers, all traditionally low-paying, non-union sectors of the economy, accounted for 72% of all reported occupational diseases in 1987. *See* DIVISION OF LABOR STATISTICS & RESEARCH, CAL. DEP'T OF INDUS. RELATIONS, 1987: OCCUPATIONAL DISEASE IN CALIFORNIA 5 tbl. 3 (1989).

14. *See* BERRY ET AL., *supra* note 9, at 558, 573 (reporting that noise pollution in three major urban areas is distributed inequitably by income).

15. *See id.* at 563, 567 (reporting that the risk of rat bites in the Chicago area is distributed inequitably by income).

16. Jane Kay, *Minorities Bear Brunt of Pollution: Latinos and Blacks Living in State's 'Dirtiest' Neighborhood*, S.F. EXAMINER, Apr. 7, 1991, at A1, A12. This article is part of a four-day series. *See also* Jane Kay, *Minority Groups Taking Stand Against Toxic Sites*, S.F. EXAMINER, Apr. 7, 1991, at A12; Kay, *Farm Workers Call it "Toxic Racism,"* *supra* note 4; Jane Kay, *Town Fears Toxic Burner*, S.F. EXAMINER, Apr. 8, 1991, at A8; Jane Kay, *Ethnic Enclaves Fight Toxic Waste*, S.F. EXAMINER, Apr. 9, 1991, at A1; Kay, *Indian Lands Targeted for Waste Disposal Sites*, *supra* note 6, at A10.

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ties.[17] In fact, race plays perhaps a *more* significant role than poverty in

17. This is true for the range of environmental hazards:

Toxics. See, e.g., COMMISSION FOR RACIAL JUSTICE, *supra* note 8, at xiii-xiv, 13 (noting that three of the five largest hazardous waste landfills in U.S. are in black or Latino communities; that the mean percentage of people of color in areas with toxic waste sites is twice that of areas without toxic waste sites; and that race is a more reliable predictor of location of hazardous waste sites than income); U.S. GEN. ACCOUNTING OFFICE, *supra* note 8, at 3-4 (stating that three out of the four commercial hazardous waste sites in eight southern states are located in communities with a majority of people of color, while the fourth is in a 38% black community); Mohai & Bryant, *Environmental Racism: Reviewing the Evidence, supra* note 8, at 170 (showing that in Michigan commercial hazardous waste facilities are located disproportionately where people of color are most heavily concentrated); Mohai & Bryant, *Race, Class and Environmental Quality in the Detroit Area, supra* note 8, at 43-44 (concluding that African-Americans in Detroit are four and a half times more likely than whites to live within a mile of a commercial hazardous waste facility, and that race is a stronger predictor than income); Unger et al., *supra* note 8, at 59, 62 (establishing that residents closest to hazardous waste facility in Pinewood, S.C., were poor and primarily African-American while more affluent whites lived farther away); GREENBERG & ANDERSON, *supra* note 8, at 158 (reporting that a study of 567 communities in New Jersey found that those with the greatest number of toxic waste sites have more black residents than other communities); *see also* Kusum Ketkar, *Hazardous Waste Sites and Property Values in the State of New Jersey*, 24 APPLIED ECON. 647, 653 (1992) (stating that an analysis of seven urban counties in New Jersey found that municipalities with the highest percentage of people of color also had a large number of toxic waste sites).

Garbage dumps. See, e.g., BERRY ET AL., *supra* note 9, at 563, 570-71 (reporting that solid waste sites in Chicago are distributed inequitably by race); Robert D. Bullard, *Solid Waste Sites and the Houston Black Community*, 53 SOC. INQUIRY 273 (1983) (finding that garbage dumps in Houston are placed disproportionately in black neighborhoods); Robert D. Bullard & Beverly Hendrix Wright, *The Politics of Pollution: Implications for the Black Community*, 47 PHYLON 71, 77 (1986) (noting that black neighborhoods, which comprise one-quarter of Houston, are home to six of the city's eight garbage incinerators and all five city-owned garbage landfills).

Air pollution. See, e.g., Gelobter, *A Model, supra* note 10, at 65-68 (arguing that damage caused by air pollution is inequitably distributed by race in urban areas); Freeman, *supra* note 10, at 264 (finding that air pollution is distributed inequitably by race in Kansas City, St. Louis and Washington, D.C.); BERRY ET AL., *supra* note 9, at 559-62, 572 (noting that air pollution in 13 major urban areas is distributed inequitably by race); Asch & Seneca, *supra* note 10, at 283-84, 286 (reporting that studies of Chicago and Nashville, as well as of urban areas in 23 states, found that people of color were exposed to more air pollutants than whites); CITIZENS FOR A BETTER ENVIRONMENT, *supra* note 10, at 2, 25 (stating that black and Latino neighborhoods in Richmond, Cal., are closest to polluting industries); ERIC MANN, L.A.'S LETHAL AIR: NEW STRATEGIES FOR POLICY, ORGANIZING, AND ACTION 31 (1991) (asserting that in L.A. 71% of African-Americans and 50% of Latinos live in areas with the worst air pollution, compared to 34% of whites). *But see* Burch, *supra* note 10, at 313-14 (declaring that air pollution in New Haven, Conn., is not distributed inequitably by race); Gianessi et al., *supra* note 10, at 299-300 (concluding that the U.S. air pollution policy implies a redistribution of benefits toward a minority composed largely of nonwhite inhabitants of polluted urban areas).

Lead. See, e.g., Carter-Pokras et al., *supra* note 11, at 389 (finding that Mexican-American and Puerto Rican children may be at a higher risk of lead poisoning than the general population because they are more likely to live in inner cities and in poverty); *see also* H. Needleman & D. Bellinger, *The Developmental Consequences of Childhood Exposure to Lead, in* 7 ADVANCES IN CLINICAL PSYCHOLOGY 195 (Benjamin B. Lahey & Alan E. Kazdin eds., 1984) (discussing a 1972 study by the National Center for Health Statistics that found 4% of all children in U.S. to have elevated blood lead levels, while this rate was 18.6% for black children living below the poverty level); Mahaffey et al., *supra* note 11, at 573 (reporting that black children suffer from lead toxicity six times more frequently than white children); Philip J. Landrigan & John W. Graef, *Pediatric Lead Poisoning in 1987: The Silent Epidemic Contin-*

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ues, 79 PEDIATRICS 582 (1987) (stating that in a study conducted from 1976 to 1980, 9.1% of all preschool children in the U.S. had blood lead levels over 25 milligrams per deciliter, while 24.5% of black children had this level); U.S. DEP'T OF HEALTH AND HUMAN SERVICES, STRATEGIC PLAN FOR THE ELIMINATION OF CHILDHOOD LEAD POISONING, at xi (1991) (concluding that "poor, minority children in the inner cities" are particularly vulnerable to lead poisoning).

Pesticides. See, e.g., BERRY ET AL., *supra* note 9, at 567, 587 (reporting that pesticide poisonings in the Chicago area are distributed inequitably by race); John E. Davies et al., *Problems of Prevalence of Pesticide Residues in Humans*, 2 PESTICIDE MONITORING J. 80, 83 (1968) (discussing survey in Dade County, Fla., showing blacks to have higher blood and fat tissue levels of DDT than whites); MOSES, *supra* note 12, at 1 (finding that the vast majority of farmworkers are people of color and that pesticides comprise the major health risk to farm workers); *see also* F.W. Kutz et al., *Racial Stratification of Organochlorine Insecticide Residues in Human Adipose Tissue*, 19 J. OCCUPATIONAL MED. 619, 622 (1977) (noting that a national study detected almost twice as much of the pesticide DDT in the fat tissue of African-Americans as in the fat tissue of whites and that the pesticide lindane was detected more than twice as often in African-Americans as in whites); William S. Hoffman et al., *Relation of Pesticide Concentration in Fat to Pathological Changes in Tissues*, 15 ARCHIVES ENVTL. HEALTH 758, 762 (1967) (discussing study of fat tissue of 700 patients from Chicago that found a higher concentration of DDT in blacks than whites); James E. Burns, *Organochlorine Pesticide and Polychlorinated Biphenyl Residues in Biopsied Human Adipose Tissue — Texas 1969-72*, 7 PESTICIDE MONITORING J. 122, 124 (1974) (reporting that study in southern Texas found significantly higher residues of the pesticides DDT, DDE, and dieldrin in Mexican-Americans than in Anglo-Americans); Ivette Perfecto, *Hazardous Waste and Pesticides: An International Tragedy*, *in* ENVIRONMENTAL RACISM: ISSUES AND DILEMMAS, *supra* note 8, at 36, 38 (noting that 90% of farmworkers in U.S. are people of color); Ivette Perfecto & Baldemar Velsquez, *Farm Workers: Among the Least Protected*, EPA J., Mar.-Apr. 1992, at 13 (noting that as many as 313,000 of approximately 2 million farmworkers in the U.S. may suffer from pesticide-related illnesses annually).

Occupational hazards. See, e.g., ROBINSON, *supra* note 13, at 96-107 (stating that blacks have significantly higher exposure to occupational hazards than whites, and that blacks and Latinos have much higher occupational injury and illness rates than whites); James C. Robinson, *Exposure to Occupational Hazards Among Hispanics, Blacks and Non-Hispanic Whites in California*, 79 AM. J. PUB. HEALTH 629, 630 (1989) (discussing study that found Latino men to have more than double the risk of work-related illness or injury than white men, and black men to have a 41% greater risk than white men); James C. Robinson, *Racial Inequality and the Probability of Occupation-Related Injury or Illness*, 62 MILBANK Q. 567, 587-88 (1984) (finding that the average African-American worker is in an occupation which is 37% to 52% more likely to produce serious accident or illness than the occupation of the average white worker, and that African-American workers with the same level of education and job training as whites, on average, find themselves in substantially more dangerous occupations); James C. Robinson, *Trends in Racial Inequality and Exposure to Work-Related Hazards 1968-1986*, 65 MILBANK Q. 404, 412 (1987) (reporting that a survey of disabling injuries in 1968, 1977 and 1986 found that blacks faced risks of on-the-job injury one and one-half times those faced by whites and that in 1986, black women faced risks almost double those of white women); George Friedman-Jiménez, *Occupational Disease Among Minority Workers: A Common and Preventable Occupational Health Problem*, 37 AM. ASS'N OCCUPATIONAL HEALTH NURSES J. 64, 65 (1989) (describing two case studies showing that workers of color are overrepresented in the most hazardous jobs and as a result are at a high risk of developing occupational disease); Robert E.B. Lucas, *The Distribution of Job Characteristics*, 56 REV. ECON. & STAT. 530, 533 (1974) (asserting that African-American men have a 27% greater chance than whites of facing safety hazards and a 60% greater chance of facing health hazards in the workplace, and that African-American *women* face a 106% greater chance than whites of facing safety hazards and a 91% greater chance of facing health hazards); J. William Lloyd et al., *Long-Term Mortality Study of Steelworkers*, 12 J. OCCUPATIONAL MED. 151, 157 (1970) (finding that African-Americans working in coke oven operations showed double the expected mortality rate from

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the siting of environmentally dangerous facilities.[18] In California, for example, all three of the state's Class I toxic waste dumps — at Buttonwil-

malignant neoplasms); A.J. McMichael et al., *Mortality Among Rubber Workers: Relationship to Specific Jobs*, 18 J. OCCUPATIONAL MED. 178, 184 (1976) (reporting that a study of 6678 rubber workers found 27% of black workers, but only 3% of white workers, worked in most dangerous areas); Morris E. Davis, *The Impact of Workplace Health and Safety on Black Workers: Assessment and Prognosis*, 31 LABOR L.J. 723, 724 (1980) ("Black workers have a 37% greater chance than whites of suffering occupational injury or illness. Black workers are one and one-half times more likely than whites to be severely disabled from job injuries and illnesses and face a 20% greater chance than whites of dying from job-related injuries and illnesses."); Rebecca Villones, *Women in the Silicon Valley*, *in* MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN 172, 173 (Asian Women United of Cal. ed., 1989) (asserting that people of color, and especially immigrant workers, are concentrated in the most dangerous and lowest paying jobs in the electronics industry); George Friedman-Jiménez, Occupational Disease in African-American and Latino Workers, *in Minorities and the Environment, Public Hearing Before New York State Assembly Envtl. Conservation Comm.* 7 (Sept. 20, 1991) (transcript on file with the author) (finding that blacks and Latinos in New York City are clustered in high risk occupations, while whites are over-represented in low risk occupations) [hereinafter Friedman-Jiménez, Testimony to the New York State Assembly]. *See generally* Morris E. Davis & Andrew Rowland, The Occupational Health of Black Workers: A Bibliography (1979) (unpublished bibliography on file with the Labor & Occupational Health Program, Institute for Industrial Relations, Univ. of Cal. at Berkeley).

Noise pollution. See, e.g., BERRY ET AL., *supra* note 9, at 558, 573 (finding that noise pollution in three major urban areas is distributed inequitably by race).

Rat bite risk. See, e.g., BERRY ET AL., *supra* note 9, at 563, 567 (finding that the risk of rat bites in the Chicago area is distributed inequitably by race).

18. Mohai & Bryant, *Environmental Racism: Reviewing the Evidence*, *supra* note 8, at 164 (reporting that out of the 15 systematic studies done since 1971 examining disproportionate impact of environmental hazards by race or class, nearly every study has found an inequitable distribution of pollution by income; that all but one have found distribution inequitable by race; and that five out of the eight studies that compared race and income found race to be a stronger predictor). *See also* Freeman, *supra* note 10, 264-66 (asserting that air pollution is distributed inequitably by income and race in Kansas City, St. Louis, and Washington, D.C., with race a stronger indicator); Gelobter, *A Model*, *supra* note 10, at 68 ("These figures illustrate that, in urban areas, nonwhite-white inequities in average exposure by race are evident and exposure by income is slightly regressive. In general, however, urban differences in exposure to TSP by income group are small."). *But see* Burch, *supra* note 10, at 308, 313-15 (finding that air pollution in New Haven, Conn. is distributed inequitably by income, but not by race); Asch & Seneca, *supra* note 10, at 283 (stating that studies of Cleveland, Chicago, Nashville, and urban areas in 23 states show that poor people and people of color are exposed to more air pollutants than are more affluent people and whites, with income the stronger factor); Gianessi et al., *supra* note 10 (concluding that the U.S. air pollution policy implies a redistribution of benefits toward a minority population composed largely of nonwhite inhabitants of polluted urban areas).

Some environmental hazards have a disproportionate impact on people of color for reasons apparently unrelated to income. *See, e.g.*, Patrick G. West et al., *Minority Anglers and Toxic Fish Consumption: Evidence from a Statewide Survey of Michigan*, *in* RACE AND THE INCIDENCE OF ENVIRONMENTAL HAZARDS: A TIME FOR DISCOURSE, *supra* note 8, at 100 (finding, in a Michigan study, that African-American and Native-American anglers eat more fish than white anglers irrespective of income and more than is assumed by state health authorities who set discharge limits); Marjorie W. Moore, *Environmental Health and Community Action*, N.Y. ST. B.A. ENVTL. L.J., Feb.-May 1991, at 12 (stating that five out of Manhattan's seven municipal bus depots are in predominantly African-American and Latino West Harlem).

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low, Kettleman City and Westmorland — are in or near Latino[19] communities.[20]

Many interrelated factors contribute to today's situation including industry's tendency to seek inexpensive land in low income neighborhoods[21] as well as poor peoples' lack of political and economic power in resisting such intrusions.[22] The factors that have diminished certain communities' ability to resist undesirable land uses and pollution include the racist exclusion of people of color from decision-making processes and decision-making bodies,[23] racist and economic exclusion from "nicer" neighborhoods,[24] "expulsive zoning,"[25] the exploitation of workers' immigration status,[26] governmental neglect[27] and design,[28] and the

19. I use "Latino" rather than "Hispanic," as Hispanic is thought by many Latino activists to signify the white identity derived from Spanish heritage, ignoring the indigenous origins of most Latinos. *See, e.g.*, David E. Hayes-Bautista & Jorge Chapa, *Latino Terminology: Conceptual Bases for Standardized Terms*, 77 AM. J. PUB. HEALTH 61 (1987); Elizabeth Martinez, *Look at 500 Years*, Z MAG., Jan. 1992, at 52.

20. *See* CALIFORNIA DEP'T OF HEALTH SERVICES, DRAFT STATUS REPORT ON HAZARDOUS WASTE MANAGEMENT IN CALIFORNIA 65 (1989). Class I dump sites are designed for the disposal of some of the most dangerous, non-radioactive chemicals known to science. CAL. CODE REGS. tit. 23, § 2521 (1990). Buttonwillow is 52% Latino and 11% African-American; Kettleman City is 95% Latino; Westmorland is 72% Latino. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING, SUMMARY POPULATION AND HOUSING CHARACTERISTICS: CALIFORNIA 62, 66, 73 (tbl. 4, Sex, Race, and Hispanic Origin: 1990) (1991). In addition, two of the three serious proposals for toxic waste incinerators in California — those in Vernon and Kettleman City — were also in overwhelmingly Latino neighborhoods. The Vernon incinerator was stopped by community pressure; the Kettleman incinerator is still in the permitting process.

21. *See* Joan Z. Bernstein, *The Siting of Commercial Waste Facilities: An Evolution of Community Land Use Decisions*, 1 KAN. J. L. & PUB. POL'Y 83, 84 (1991).

22. *See* Rachel D. Godsil, Note, *Remedying Environmental Racism*, 90 MICH. L. REV. 394, 399 (1991).

23. *See, e.g., infra* notes 241-61 and accompanying text.

24. *See* C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW 18-23 (3d ed. 1974); Godsil, *supra* note 22, at 399-400; Gregory Lewis, *Blacks Still Suffer from Segregation, Housing Study Says: Affluent Forced to Remain in Poor Neighborhoods*, S.F. EXAMINER, Mar. 30, 1990, at A12.

Residential segregation today makes people of color vulnerable to toxic "attacks" in much the same way that segregation in the 19th century made African-Americans vulnerable to less subtle attacks. "[W]hites were able to focus their attacks because blacks were segregated into distinct neighborhoods in northern states, rendering it easy for white mobs to find the objects of their hostility." Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309, 340 (1991).

25. "Expulsive zoning" is the practice of permitting and promoting "the intrusion into black neighborhoods of disruptive incompatible uses that have diminished the quality and undermined the stability of those neighborhoods." Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, *in* ZONING AND THE AMERICAN DREAM 101 (Charles M. Haar & Jerold S. Kayden eds., 1990). One example is changing zoning laws to allow the expansion of polluting factories in black residential neighborhoods. *Id.* at 109-13; *see, e.g.*, Anderson, *Industries Crowding Out Communities*, *supra* note 5, at 1A ("Even when homeowners think they are protected by being zoned residential, politicians are quick to rezone land if a major industry wants to move in, said neighbors of several large companies.").

26. This may take several forms. If a worker complains about working conditions, she might be threatened with deportation or actually reported to the Immigration and Naturaliza-

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"success" of environmental laws.[29] The disproportionate burden is not

tion Service (INS). *See, e.g.*, Daryl Kelley, *Rancher to Pay $1.5 Million Fine in Slavery Case*, L.A. TIMES, Mar. 24, 1992, at A1, A24 (describing California grower who threatened to turn farmworkers over to immigration agents if they fled the inhuman working conditions on his ranch).

Employers also use immigrant workers' fears of deportation or loss of immigrant status to stop union organizing drives and keep workers in low-paying, dangerous jobs. Villones, *supra* note 17, at 173.

27. I use "neglect" charitably. Others have called "intentional" those governmental policies which seemingly neglect low-income communities and communities of color. *See, e.g.*, Robert Bullard & Beverly H. Wright, *Environmentalism and the Politics of Equity: Emergent Trends in the Black Community*, 12 MID-AMERICAN REV. SOC., Winter 1987, at 21, 25, 28 [hereinafter Bullard & Wright, *Environmentalism and the Politics of Equity*].

In the first study of distribution of *enforcement* of environmental laws (rather than distribution of hazards), the *National Law Journal* found that "[t]here is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor." Marianne Lavelle & Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law, A Special Investigation*, NAT'L L.J., Sept. 21, 1992, at S1. The *Journal's* investigation, based on census data, the environmental docket of the U.S. EPA, and the EPA's own record of performance at Superfund sites, found,

> Penalties under hazardous waste laws at sites having the greatest white population were about 500 percent higher than penalties at sites with the greatest minority population, averaging $335,566 for the white areas, compared to $55,318 for minority areas.
>
> . . . .
>
> For all the federal environmental laws aimed at protecting citizens from air, water and waste pollution, penalties in white communities were 46 percent higher than in minority communities.
>
> Under the giant Superfund cleanup program, abandoned hazardous waste sites in minority areas take 20 percent longer to be placed on the national priority action list than those in white areas.

Id. at S2.

The findings were part of a larger investigation and special edition of the *National Law Journal*, which included Marianne Lavelle, *The Minorities Equation: Race and Income, Variations on a Trend*, NAT'L L.J., Sept. 21, 1992, at S2; Marianne Lavelle, *An Industrial Legacy: Community Profile, Chicago*, NAT'L L.J., Sept. 21, 1992, at S3; Marcia Coyle, *Saying 'No' To Cancer Alley: Community Profile, Wallace, Louisiana*, NAT'L L.J., Sept. 21, 1992, at S5; Marianne Lavelle, *Negotiations Are Key to Most Fines: The Penalty Phase, Mixing Law and Science*, NAT'L L.J., Sept. 21, 1992, at S6; Marianne Lavelle, *Superfund, Ranking the Hazards: Examining EPA's Scoring System*, NAT'L L.J., Sept. 21, 1992, at S6; Claudia MacLachlan, *Nightmare on Calle Evelina: Community Profile, Tucson, Arizona*, NAT'L L.J., Sept. 21, 1992, at S7; Marcia Coyle, *Lawyers Try to Devise New Strategy*, NAT'L L.J., Sept. 21, 1992, at S8; Marcia Coyle & Claudia MacLachlan, *Getting Victimized by the Legal System*, NAT'L L.J., Sept. 21, 1992, at S8 [hereinafter Coyle & MacLachlan, *Getting Victimized by the Legal System*] among other excellent articles.

28. *See, e.g.*, CERRELL ASSOCIATES, POLITICAL DIFFICULTIES FACING WASTE-TO-ENERGY CONVERSION PLANT SITING 17-30 (1984) (commissioned by the California Waste Management Board) (identifying communities with a population under 25,000, rural communities, "old timer" residents, blue collar workers, conservatives, and those with less than a high school education as least likely to oppose the siting of garbage incinerators); *see also* Taliman, *supra* note 6; Earle Eldridge, *Interest Increases in Housing Nuclear Waste*, Gannett News Service, Jan. 9, 1992, *available in* LEXIS, Nexis Library, GNS file (reporting that five of seven jurisdictions being considered by the U.S. government for hosting a nuclear waste facility are Indian reservations).

29. *See infra* notes 90-96 and accompanying text.

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coincidental: low-income communities and communities of color are the targets of waste dumpers and other developers.[30]

Poor people and people of color also have the fewest resources with which to deal with environmental harms. They have the least mobility, both in terms of employment and residence, and thus, even in the face of toxic exposure, they usually cannot find new jobs or homes.[31] And while they live with the greatest dangers, poor people and people of color have the least access to health care and often can not get it at all.[32]

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30. *See, e.g.*, CERRELL ASSOCIATES, *supra* note 28, at 17-30.

In recent years, numerous waste-dumping companies have targeted Native American reservations to evade strict state and local laws. For example, a garbage disposal firm from Pittsburgh, Chambers Development, Inc., wrote to an Akwesasne chief in 1989: "Because the American Indian has many aspects of self-government over their reservation, they possess an opportunity to bypass the barriers to state-of-the-art waste disposal." Tomsho, *supra* note 6, at A9; *see also* BRADLEY ANGEL, THE TOXIC THREAT TO INDIAN LANDS: A GREENPEACE REPORT (1991).

While they are beyond the scope of this essay, other prominent cases of dumping on low-income communities and communities of color are found in the international arena. U.S.-based companies routinely "dump" chemicals, pesticides, medicines and other products that are banned in the United States in third world countries. Similarly, waste traders seek to dump U.S.-generated trash and toxic waste in developing countries. *See, e.g.*, Christopher Scanlan, *Do Firms Profit by Poisoning Kids?*, SAN JOSE MERCURY NEWS, June 16, 1991, at 1E (reporting that U.S. companies, such as Ethyl Corp., Chevron and Dupont, all manufacture and sell lead additives for gasoline consumed in Third World countries, despite a health-protective ban on such additives in the U.S. and Canada); John Conyers, *Poison and Power: The Export of Irresponsibility*, *in* CALL TO ACTION: A HANDBOOK FOR ECOLOGY, PEACE AND JUSTICE 209 (Brad Erickson ed., 1990) (discussing the fact that U.S. garbage is sent to Haiti, Guinea, and Zimbabwe, with major dumpsites planned for Guinea-Bissau, Guyana, Panama, the Congo, Guatemala, and other countries).

31. *See, e.g.*, Jane Kay, *State's Toxic Threat: Work Place Poison*, S.F. EXAMINER, Apr. 10, 1987, at A1, A13 (finding that workers stay in hazardous work places because they cannot afford not to work).

In the housing area, this may be because of economic powerlessness — poor people cannot afford to move — or because housing discrimination and residential segregation artificially restrict the areas in which they can live. *See* Bullard & Wright, *Environmentalism and the Politics of Equity*, *supra* note 27, at 25, 28; Robert Bullard & Beverly H. Wright, *Blacks and the Environment*, 14 HUMBOLDT J. SOC. REL., Fall/Winter and Spring/Summer 1986-1987, at 165, 166 [hereinafter Bullard & Wright, *Blacks and the Environment*]; Nancy Fagge, *The Hazardous Waste Controversy and the Struggle for Change*, *in* ENVIRONMENTAL RACISM: ISSUES AND DILEMMAS, *supra* note 8, at 10, 12; Charles Griffith, *A Theoretical Overview of Environmental Racism*, *in* ENVIRONMENTAL RACISM: ISSUES AND DILEMMAS, *supra* note 8, at 16, 17.

Native Americans have unique mobility problems. Those living on reservations can move away only at the expense of leaving their reservations, and often, their sacred historical, cultural and religious sites. For Indians, relocation in general could "[destroy] the very fabric of Indian society as a whole." Richard A. Du Bey et al., *Protection of the Reservation Environment: Hazardous Waste Management on Indian Lands*, 18 ENVTL. L. 449, 460 (1988).

32. Many poor people have no health coverage; only 42 percent of all individuals below the poverty level received Medicaid. . . . The uninsured poor in the United States include disabled people . . . young adults, childless couples, unemployable people below age 65, undocumented aliens, and anyone else who fails to meet Medicaid categorical eligibility criteria or is poor but not poor enough for Medicaid. Seventy-five percent are workers or their dependents. Minorities, young adults, people in rural areas, and people without high school degrees are disproportionately

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Those most vulnerable, such as recent immigrants with poor English language skills, are concentrated in the most dangerous sectors of our workforce, agriculture and heavy industry.[33] Poor people are also more likely than others to have multiple exposures to environmental dangers, facing more severe hazards on the job, in the home, in the air they breathe, in the water they drink, and in the food they eat.[34]

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represented.

Michele Melden et al., *Health Care Rights of the Poor: An Introduction*, 25 CLEARINGHOUSE REV. 896, 900 (1991). Thirty-one percent of all children lack health insurance of any kind. U.S. GEN. ACCOUNTING OFFICE, GAO/HRD-92-73FS, FEDERALLY FUNDED HEALTH SERVICES: INFORMATION ON SEVEN PROGRAMS SERVING LOW-INCOME WOMEN AND CHILDREN 24 (1992).

People of color also have a more difficult time getting adequate medical care than do whites. U.S. GEN. ACCOUNTING OFFICE, GAO/PEMD-92-6, HISPANIC ACCESS TO HEALTH CARE: SIGNIFICANT GAPS EXIST 10 (1992) (reporting that 33% of Latinos had neither private nor public medical insurance in 1989, compared with 19% of Blacks and 12% of Whites); Cassandra Q. Butts, *The Color of Money: Barriers to Access to Private Health Care Facilities for African-Americans*, 26 CLEARINGHOUSE REV. 159, 160 n.5, 161-62 (1992) (stating that African-Americans in both urban and rural areas are more likely than whites to face geographic barriers to health care and health care providers, and that a disproportionate share of hospital closings affect African-Americans with "the likelihood of closures . . . directly related to the percentage of African-Americans in the population of a city"); Marilyn Yaquinto, *Latinos Cited as Having Least Medical Coverage*, L.A. TIMES, Feb. 19, 1992, at A5; STEPHANIE POLLACK & JOANN GROZUCZAK, REAGAN, TOXICS & MINORITIES 2 (1984) (Policy Report for the Urban Environment Conference, Inc.) (noting that one in six and one-half black families had trouble getting medical care in 1982, as compared to one in eleven white families).

The problem is particularly acute for undocumented Latino farmworkers, who are concentrated in low-paying, high-risk jobs and are prohibited by law from receiving most government health benefits. *See* Peter L. Reich, *Jurisprudential Tradition and Undocumented Alien Entitlements*, 6 GEO. IMMIGR. L.J. 1 (1992); Peter L. Reich, *Public Benefits for Undocumented Aliens: State Law Into the Breach Once More*, 21 N.M. L. REV. 219, 220-23 (1991); Susan B. Drake, *Immigrants' Right to Health Care*, 20 CLEARINGHOUSE REV. 498, 503-04 (1986); U.S. GEN. ACCOUNTING OFFICE, GAO/HRD-92-46, HIRED FARMWORKERS: HEALTH AND WELL-BEING AT RISK 3, 24-25 (1992).

Further, many doctors have not been trained to recognize environmental illness, and thus those ill from pollution or other poisoning might not be properly diagnosed. *See* Villones, *supra* note 17, at 175. Doctors who treat poor people, people of color, and rural residents also often have fewer resources at their disposal and therefore less to offer those patients. Diana B. Dutton, *Children's Health Care: The Myth of Equal Access, in* IV BETTER HEALTH FOR OUR CHILDREN: A NATIONAL STRATEGY 375 (U.S. Dep't of Health & Human Services ed., 1981).

33. *See* Drake, *supra* note 32, at 501-02.

34. *See* Cole & Bowyer, *supra* note 12, at 17; Marion Moses, *Pesticide-Related Health Problems and Farmworkers*, 37 AM. ASS'N OF OCCUPATIONAL HEALTH NURSES J. 115 (1989); George Friedman-Jiménez, Testimony to the New York State Assembly, *supra* note 17, at 1.

The actual physical danger from toxics is compounded by the psychological stress of the threat of toxic exposure. Unger et al., *supra* note 8, at 55. Residents near a toxic site may feel degraded because their community is thought of as a "dumping ground" for other communities. R. George Wright, *Hazardous Waste Disposal and the Problems of Stigmatic and Racial Injury*, 23 ARIZ. ST. L.J. 777, 787 (1991).

Nor are the environmental problems described here the only problems that disproportionately affect poor people and people of color solely because of where they live. *See, e.g.*, Gary Williams, *"The Wrong Side of the Tracks": Territorial Rating and the Setting of Automobile Liability Insurance Rates in California*, 19 HASTINGS CONST. L.Q. 845, 847 (1992) (asserting

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This essay looks at the problem from a poverty perspective but remains cognizant of the special impacts of race. This is not to say that all poor people affected by environmental hazards are people of color — in fact, the great majority of poor people are white[35] — nor that people of color who are not poor are not disproportionately affected by toxic dangers. Both situations require a new look at environmental law. In the civil rights community, there is a growing awareness that civil rights law may provide remedies for preventing the disproportionate impact of toxic hazards on people of color.[36] To date, at least six federal civil rights suits have been brought around environmental issues.[37] The ambition of this

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that poor people and people of color pay higher automobile insurance premiums than others based solely on where they live, not on how they drive); Butts, *supra* note 32, at 160 n.5, 161-62 (discussing access to health care).

35. Of the poor, 66% are whites and 30% are blacks. Latinos, who the U.S. Census designates as "Hispanics" and can be of any race although 95% are classified as "white," constitute 17.2% of the poor. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, SERIES P-60, NO. 171, POVERTY IN THE UNITED STATES: 1988 AND 1989, at 4 (1991).

36. *See, e.g.*, Regina Austin & Michael Schill, *Black, Brown, Poor & Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 KAN. J.L. & PUB. POL'Y 69 (1991); Godsil, *supra* note 22; Luke W. Cole, *Remedies for Environmental Racism: A View from the Field*, 90 MICH. L. REV. 1991 (1992); Kelly M. Colquette & Elizabeth A. Henry Robertson, *Environmental Racism: The Causes, Consequences and Commendations*, 5 TULANE ENVTL. L.J. 153 (1991); Wright, *supra* note 34; Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U.L. REV. (forthcoming 1993); Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, U. KAN. L. REV. (forthcoming 1993); Vicki Been, *What's Fairness Got to Do With It? Environmental Equity and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. (forthcoming 1993). In addition, the *University of Colorado Law Review* recently devoted a special issue to "Race, Class, and Environmental Regulation." *See* 63 U. COLO. L. REV. 834 (1992).

37. These suits have alleged violation of civil rights laws for a variety of environmental abuses, including the siting of garbage dumps: Bean v. Southwestern Waste Mgmt. Corp., 482 F. Supp. 673 (S.D. Tex. 1979), *aff'd without op.*, 782 F.2d 1038 (5th Cir. 1986); East Bibb Twiggs Neighborhood Ass'n v. Macon-Bibb County Planning & Zoning Comm'n, 706 F. Supp. 880 (M.D. Ga. 1989), *aff'd*, 896 F.2d 1264 (11th Cir. 1989); R.I.S.E. Inc. v. Kay, 768 F. Supp. 1141 (E.D. Va. 1991). The operation of a garbage dump: Bordeaux Action Comm'n v. Metropolitan Nashville, No. 390-0214 (M.D. Tenn. filed Mar. 12, 1990). The siting of a PCB disposal site: NAACP v. Gorsuch, No. 82-768-CIV-5 (E.D. N.C. Aug. 10, 1982). And the siting of a toxic waste incinerator: El Pueblo para el Aire y Agua Limpio v. Chemical Waste Mgmt., No. CIV-F-91-578-OWW (E.D. Cal. filed July 7, 1991) (held in abstention pending final judgement in related state court case, *see infra* note 255). So far, no plaintiff has prevailed using civil rights *laws*, although a civil rights *approach* in a closely related case has succeeded: a community group blocked the siting of a toxic waste incinerator in part on the grounds that Spanish-speaking people had been excluded from the decision-making process. El Pueblo para el Aire y Agua Limpio v. County of Kings, No. 366045, slip op. at 10 (Cal. Super. Ct. Dec. 30, 1991) (ruling on submitted matter). In effect, the court found the community's rights to public participation had been violated. *See infra* note 255 and accompanying text. The civil rights field should continue to be explored for its political and educational value as well. *See* Cole, *supra* note 36, at 1997; Lazarus, *supra* note 36.

Further, while this piece will not explore civil rights strategies, it is important to recognize that the movement for environmental justice owes much in history, inspiration and tactics to the Civil Rights Movement. *See infra* notes 54-57 and accompanying text; Robert D. Bullard & Beverly H. Wright, *The Quest for Environmental Equity: Mobilizing the Black Community*

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essay, however, is to explore the poverty dimension of the problem, and the role that environmental and poverty lawyers can play in solving it.

While environmental problems disproportionately burden poor people and people of color, they cut across race and class boundaries, and thus create the potential for building multi-racial, multi-class and multicultural movements to address structural problems in society.[38] Indeed, many in the grassroots environmental movement conceive of their struggle as not simply a "battle against chemicals, but a kind of politics that demands popular control of corporate decision making on behalf of workers and communities."[39] Environmental problems, because they affect many people at once, illuminate the social and systemic, rather than individual, nature of the problems faced by poor people.[40] The impor-

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for Social Change, RACE, POVERTY & ENV'T (California Rural Legal Assistance Found. & Earth Island Institute Urb. Habitat Program, S.F., Cal.), July 1990, at 3, 15, 17; Nicholas Freudenberg & Carol Steinsapir, *Not in Our Backyards: The Grassroots Environmental Movement*, 4 SOC'Y & NAT. RESOURCES 235, 236 (1991).

38. In Emelle, Alabama, site of the nation's largest toxic waste dump, "black civil rights activists of the Minority Peoples Council and white environmentalists of Alabamians for a Clean Environment joined forces to work on the local hazardous waste problem — not a small point given the history of race relations in Alabama's black belt." Bullard & Wright, *supra* note 37, at 15-16. *But cf.* ROBERT D. BULLARD, DUMPING IN DIXIE 76, 100 (1990) (noting that the black environmental movement in the South exists separate from mainstream environmentalism).

In Los Angeles, California, residents from the mostly black and poor neighborhood of South Central L.A. built a coalition with wealthy white environmentalists from across the city to stop a garbage incinerator from being built in South Central. Cynthia Hamilton, *Women, Home & Community: The Struggle in an Urban Environment*, RACE, POVERTY & ENV'T (California Rural Legal Assistance Found. & Earth Island Institute Urb. Habitat Program, S.F., Cal.), Apr. 1990, at 3, 11; *see also* Jesus Sanchez, *The Environment: Whose Movement?*, CAL. TOMORROW, Fall 1988, at 11 (illustrating how South Central L.A. coalition bridged the traditional gap between working class minority groups and environmentalists to stop the siting of an incinerator).

In Kettleman City, California, farmworkers have joined farmers in a unique coalition to oppose the building of a massive toxic waste incinerator in their small, rural community. Miles Corwin, *A Toxic Issue: Proposed Waste Incinerator Unites Unusual Foes in Kings County*, L.A. TIMES, Feb. 24, 1991, at B1.

In Austin, Texas, residents of low-income, Latino neighborhoods on the east side are teaming up with affluent whites in West Austin to clean up groundwater contamination from a leaking gasoline tank farm. *See* Mike Ward, *'Greening' Closes Gap in Austin: Environment Fuses East, West*, AUSTIN AM.-STATESMAN, Mar. 8, 1992, at A1, A13.

These stories signify people overcoming perceived differences to recognize their common interest in preserving their communities from toxic intrusion, building a broad community base to address their struggles. One of the central lessons that can be drawn from the political organizing in the 1960's is the need for such a mass base for a movement to be successful. *See* Janice E. Perlman, *Grassrooting the System*, SOC. POL'Y, Sept.-Oct. 1976, at 4, 7.

39. Eric Mann, *Environmentalism in the Corporate Climate*, TIKKUN, Mar.-Apr. 1990, at 60, 64.

40. Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 760-64 (describing a lawyer's opportunity to help community members recognize common conditions). Even "individual" problems faced by the poor, such as a need for unemployment benefits, a disability claim, an eviction notice, or a school expulsion, can be recast as collective and political problems. *Id.* at 745; see also the Rat Day exam-

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tance of environmental issues, however, goes beyond their ability to illuminate structural problems in our economy and society: as the Reverend Ben Chavis of the United Church of Christ's Commission for Racial Justice notes, "the environment is not just a good organizing issue — it is — but an issue of life and death."[41]

It is within this context that we must examine the history and work of environmental lawyers and poverty lawyers, and put the strengths of both disciplines at the service of poor people facing environmental hazards. This new environmental poverty law should not only fight for environmental protection, but must be part of a broader push toward social and economic justice. Put simply, neither the environmental movement nor the social justice movement are capable of winning their fights on their own.[42] We must come together to realize the goals of both movements.

II
ENVIRONMENTAL MOVEMENTS AND ENVIRONMENTAL LAW

U.S. environmental law is an outgrowth of the "second wave" of the environmental movement in the United States.[43] The first wave began around the turn of the century, when John Muir, Teddy Roosevelt, and other lovers of wilderness advocated preserving natural spaces in the United States.[44] The second wave began in the 1960's, coalesced around Earth Day in 1970, and was institutionalized in the proliferation of legal-scientific groups like the Natural Resources Defense Council (NRDC), the Sierra Club Legal Defense Fund (SCLDF), and the Environmental Defense Fund (EDF), organizations that currently dominate the national environmental scene. A third wave has emerged in the past two decades,

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ple at *infra* notes 262-68 and accompanying text.

41. Reverend Ben Chavis, Remarks at the 10th Anniversary Celebration of the South-West Organizing Project (Nov. 16, 1991).

42. *See, e.g.*, Richard Delgado, *Zero-Based Racial Politics: An Evaluation of Three Best-Case Arguments on Behalf of the Nonwhite Underclass*, 78 GEO. L.J. 1929, 1930 (1990) ("The black and brown middle class is too small to carry out a rescue operation of the magnitude needed" to achieve social justice.); David Hahn-Baker, *The Need for Cultural Diversity and Environmental Equity*, *in* ENVIRONMENTAL RACISM: ISSUES AND DILEMMAS, *supra* note 8, at 5, 9; Paul Ruffins, *Environmental Commitment as if People Didn't Matter*, *in* ENVIRONMENTAL RACISM: ISSUES AND DILEMMAS, *supra* note 8, at 51, 56-57; Jordan & Snow, *supra* note 1, at 98-99 (listing nine reasons that the mainstream environmental movement should diversify).

43. For a provocative indictment of the second wave environmentalists, see Peter Montague, *What We Must Do: A Grassroots Offensive Against Toxics in the '90s*, 14 THE WORKBOOK 90, 92 (1989).

44. Like the succeeding second and third waves, the first wave of environmentalism was far from monolithic. It encompassed two divergent views that even today remain in tension: the preservationists, who advocated preserving wilderness *from* humans, and the conservationists, who wanted to preserve nature *for* human use through wise stewardship. *See* Peter Borelli, *The Ecophilosophers*, AMICUS J., Spring 1988, at 30, 30-32; William Tucker, *Is Nature Too Good for Us?*, HARPER'S, Mar. 1982, at 27.

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as communities affected by environmental problems have engaged in grassroots struggles for survival.

This section briefly examines the second wave, its associated field of environmental law, and the rise of the third wave. To inform our discussion of the need for environmental poverty law, the section then surveys some of the differences between the mainstream and grassroots waves of environmentalism.

A. *The Legal-Scientific Movement and the Emergence of Environmental Law*

The second wave of the environmental movement — what I call the "mainstream" environmental movement[45] — and the body of statutes and case law known today as "environmental law" grew out of the social ferment of the 1960's.[46] The second wave, made up overwhelmingly of lawyers,[47] focused primarily on legal and scientific approaches to environmental problems.[48] Second-wave lawyers helped write most of the environmental legislation with which we work today, from the National

45. By the term "mainstream environmental group," I mean primarily the "Group of Ten" environmental organizations, which are national in scope, advocacy, and membership. The "Group of Ten" label was first used by these groups — the nation's ten largest traditional environmental groups — in 1985. Robert Gottlieb, *Earth Day Revisited*, TIKKUN, Mar.-Apr. 1990, at 55.

46. The Civil Rights Movement and the anti-Vietnam War movement, the two movements in which the second wave has its roots, were explicitly social justice oriented. Bullard & Wright, *supra* note 37, at 3. The second wave environmentalists have moved away from this orientation. From a participatory strategy based on broad mobilization of the interested public, such as that used in the Civil Rights and anti-war movements, they moved to a power strategy based on litigation, lobbying, and technical evaluation. Bullard & Wright, *Blacks and the Environment*, *supra* note 31, at 167. The movement away from a participatory strategy paralleled the movement away from the social justice issues that were prominent in the speeches given on Earth Day in 1970. Jordan & Snow, *supra* note 1, at 71, 78. It also coincided with the mainstream groups' desire to run the environmental establishment or at least have power within it: "Shedding the radical skin of their amateur past seemed necessary to achieve that goal." *Id.* at 93.

47. For example, by 1983, the heads of the Sierra Club, NRDC, the Audubon Society, EDF, and the Wilderness Society were all attorneys. CHRISTOPHER MANES, GREEN RAGE: RADICAL ENVIRONMENTALISM AND THE UNMAKING OF CIVILIZATION 255 n.8 (1990).

48. For example, NRDC's mission statement used to read: "NRDC combines legal action, scientific research, and citizen education in a highly effective environmental protection program." *About NRDC*, AMICUS J., Fall 1989, at i. Following the challenge from the third wave environmentalists, NRDC has rewritten this mission statement to have a slightly more populist tone: "NRDC combines the power of law, the power of science, and the power of people in defense of the environment." *About NRDC*, AMICUS J., Spring 1991, at i; *see also* the discussion of the third wave *infra* part II.C. For analysis of the second wave and its focus on litigation, see generally Tom Turner, *The Legal Eagles*, AMICUS J., Winter 1988, at 25; Melia Franklin, *What's Four-Legged and Green All Over? . . . Sorting out the Environmental Movement*, CAL. TOMORROW, Fall 1988, at 14; Coombs, *supra* note 1, at 38 (In a Sierra Club national membership survey, "lawsuits and lobbying were strongly endorsed as appropriate methods . . . . More than two-thirds of the members, in each case, *strongly* agreed that they were appropriate. Only five percent disapproved." (emphasis in original)).

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Environmental Policy Act, to the Clean Air Act, the Clean Water Act and the rest of the environmental alphabet soup, such as RCRA, CERCLA, FIFRA, TSCA, and SARA.[49] These laws created complex administrative processes that exclude most people who do not have training in the field and elevate the expert to glory.[50] Many of the resulting regulations were honed by the emerging breed of environmental specialists — the EDF,[51] the Sierra Club, and NRDC — as anyone glancing through an environmental law casebook will quickly realize.

Having designed and helped implement most of the nation's environmental laws, the second wave has spent the past twenty-five years in court litigating. Lawsuits are now the primary, and sometimes only, strategy employed by mainstream groups.[52] As the executive director of the Sierra Club Legal Defense Fund stated in 1988, "Litigation is the most important thing the environmental movement has done over the past fifteen years."[53]

B. *The Rise of Grassroots Environmentalism*

In the past twenty years, a third wave of environmental activism has been slowly building across the country. Third wave activists are those most directly and most severely affected by environmental problems, such as people in communities facing poisoning from leaking toxic waste

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49. *See generally* WEST PUBLISHING COMPANY, SELECTED ENVIRONMENTAL LAW STATUTES: 1991-92 EDUCATIONAL EDITION (1991).

50. Some have even argued that environmental regulations have *hurt* poor people and people of color because, under regulation, dumpers have concentrated environmental ills in certain neighborhoods, whereas before environmental regulation there was dumping in every neighborhood. *See, e.g.,* Ruffins, *supra* note 42, at 54; *see also supra* notes 9-18.

51. The Environmental Defense Fund's history has an unusual twist. During its first years, it consisted solely of a group of about 40 scientists with an activist bent. In 1969, just two weeks before California Rural Legal Assistance (CRLA) planned to initiate action to ban the use of DDT, EDF heard of the plan and asked to join CRLA's clients, six farmworkers. CRLA agreed, believing that EDF would add some scientific credibility to their complaint. EDF, having no lawyers on staff, hired private counsel to represent them because CRLA could not represent a nonindigent client. Interview with Ralph Santiago Abascal, General Counsel, CRLA, in S.F., Cal. (May 13, 1992) (Abascal was the attorney who brought the case).

The "coalition" eventually succeeded. *See* Environmental Defense Fund v. Dep't of Health Educ. & Welfare, 428 F.2d 1083 (D.C. Cir. 1970); Environmental Defense Fund v. Hardin, 428 F.2d 1093 (D.C. Cir. 1970); Environmental Defense Fund v. EPA, 510 F.2d 1292 (D.C. Cir. 1975).

52. "[T]he legal victories won in the late sixties and early seventies formed the foundation on which the modern environmental movement is built," according to John Adams, the executive director of NRDC. Turner, *supra* note 48, at 27-28. Another pioneer of the environmental law field states, "In no other political and social movement has litigation played such an important and dominant role. Not even close." *Id.* at 27 (quoting David Sive).

53. *Id.* at 27 (quoting Frederick Sutherland). It is important to note that this is not to say that all lawsuits are ill-conceived — as this Article explains, there are many ways to bring lawsuits.

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dumps, dangerous incinerators, or pesticide drift — people fighting for the survival of their communities and their children.[54]

The third wave burst into national prominence in the late 1970's, as President Jimmy Carter declared Love Canal, New York a disaster area and evacuated residents of a housing development built on a former toxic waste dump.[55] While Love Canal and the subsequent evacuation at Times Beach, Missouri are perhaps the best known examples of third wave, or "grassroots," environmentalism, similar stories take place every day in all parts of the United States.[56] For example, Citizens Clearinghouse for Hazardous Wastes, an organization founded by former residents of Love Canal, assists grassroots activists nationwide and has worked with over 7,000 local groups in the ten years since its founding.[57]

Until recently, the traditional environmental law community largely ignored third wave environmentalists.[58] Moreover, racism and other

54. *See* Hamilton, *supra* note 38, at 3; Freudenberg & Steinsapir, *supra* note 37, at 237. For the Love Canal example see LOIS M. GIBBS, LOVE CANAL: MY STORY (1982).

55. Freudenberg & Steinsapir, *supra* note 37, at 237; *see also* GIBBS, *supra* note 54.

56. *See, e.g., Action Line*, EVERYONE'S BACKYARD (Citizen's Clearinghouse for Hazardous Wastes, Falls Church, Va.), Apr. 1992, at 9 (listing progress by dozens of grassroots groups in 45 states); *Action Line*, EVERYONE'S BACKYARD (Citizen's Clearinghouse for Hazardous Wastes, Falls Church, Va.), Dec. 1991, at 10 (listing actions by dozens of grassroots groups in 47 states); ENVIRONMENTAL POLITICS: LESSONS FROM THE GRASSROOTS (Bob Hall ed., 1988) (discussing case studies of 10 grassroots struggles in North Carolina).

57. *Who We Are*, EVERYONE'S BACKYARD (Citizen's Clearinghouse for Hazardous Wastes, Falls Church, Va.), Apr. 1992, at 2; *see also* ROBERT BULLARD, PEOPLE OF COLOR ENVIRONMENTAL GROUPS DIRECTORY 1992 (1992) (listing 205 grassroots environmental groups run by people of color).

58. There are notable exceptions to this over-generalization. For example, the Sierra Club worked with the Urban Environment Conference and the National Urban League to put on the City Care conference on the urban environment in 1979. *See* National Urban League et al., *City Care*, *in* NATIONAL CONFERENCE ON THE URBAN ENVIRONMENT PROCEEDINGS (1979). I thank George Coling for bringing the historical networks among the environmental community, poor people, and people of color to my attention. Coling directed the Urban Environment Conference's environmental justice efforts. *See* Urban Env't Conference, Resource Book — "Taking Back Our Health": An Institute on Surviving the Toxics Threat to Minority Communities (Jan. 1985) (conference handbook).

Additionally, individuals within the Group of Ten have taken cases on behalf of poor people and recognize the intersection between social justice and environmental issues. *See, e.g.*, Matthews v. Coye, No. C90-3620 EFL (N.D. Cal. Oct. 17, 1991) (stipulation for settlement and dismissal without prejudice) (case brought by NRDC, also involving the ACLU and legal services offices, which forced California to test children for lead poisoning); Keith v. Volpe, 352 F. Supp. 1324 (1972), *aff'd*, 506 F.2d 646 (1974), *cert. denied*, 420 U.S. 908 (1975) (case blocking the Century Freeway in L.A.); *see also* R. Michael Wright, *Introduction* to ROGER D. STONE, WILDLANDS & HUMAN NEEDS: REPORTS FROM THE FIELD 4 (1991) (report by a former World Wildlife Fund vice president discussing the progress of seven Wildlands & Human Needs Projects exploring the linkages between environmental deterioration and poverty).

Furthermore, at least one national group, Greenpeace, as well as regional groups like San Francisco's Citizens for a Better Environment, have come to see the value of and the opportunities in working with grassroots groups in low-income communities. *See, e.g.*, Brenda Norrell, *Conference Addresses Toxic Waste Dumps on Indian Lands*, THE SUN (Flagstaff, Ariz.), June 28, 1990 (reporting a Greenpeace co-sponsored conference); CITIZENS FOR A BETTER

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prejudices have excluded third wave activists from the mainstream environmental movement.[59] In fact, some grassroots activists regard the mainstream environmental groups as obstacles to progress, if not outright enemies.[60] As the third wave grows in numbers and power, it will

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ENVIRONMENT, *supra* note 10, at 116. Two groups operating nationally, Citizens Clearinghouse for Hazardous Wastes and the National Toxics Campaign, are outgrowths of grassroots campaigns and work almost exclusively with fellow third wave groups. *See, e.g.,* Franklin, *supra* note 48 (profiling the Citizens Clearinghouse for Hazardous Wastes); Jane Kay, *The Kettleman City Story*, EPA J., Mar.-Apr. 1992, at 47 (citing the National Toxics Campaign's support for grassroots resistance to the siting of a hazardous waste incinerator).

59. *See* Jordan & Snow, *supra* note 1, at 75-78 (detailing racist exclusion of people of color from early conservation clubs and hunting preserves). Several southern California chapters of the Sierra Club, for example, formerly deliberately excluded blacks and Jews from membership; when the San Francisco chapter tried in 1959 to introduce a policy of inclusion of the "four recognized colors" into the Sierra Club, the resolution failed. *Id.* at 76; STEPHEN FOX, JOHN MUIR AND HIS LEGACY: THE AMERICAN CONSERVATION MOVEMENT 349 (1981); *see also supra* note 1.

60. A sample of opinions from the grassroots movement for environmental justice is enlightening. For example, an organizer of the First National People of Color Environmental Leadership Summit has said:

> Delegates [to the summit] also raised questions about the leadership of the National Wildlife Federation, whose board members include Dean Buntrock of Waste Management, Inc., the nation's largest toxic waste disposal company. . . . Summit delegates who are engaged in life and death struggles with Waste Management were hard-pressed to understand why such a corporation is represented on the board of directors of one of the largest and most influential environmental organizations.

Dana Alston, *Transforming a Movement*, RACE, POVERTY & ENV'T (California Rural Legal Assistance Found. & Earth Island Inst. Urb. Habitat Prog., S.F., Cal.), Fall 1991-Winter 1992, at 1, 29.

Two community organizers with the SouthWest Organizing Project have related their observations:

> In early 1990, letters signed by the SouthWest Organizing Project and hundreds of other social and racial justice activists and organizations were submitted to the "Group of Ten." The letters charged that the environmental movement has shown little willingness to recognize the legitimacy of or provide support to the struggles to alleviate the poisoning of communities of color. Moreover, the mainstream groups have only token involvement of people of color in their operations and policy-making bodies. Furthermore, some national environmental groups have taken steps in local communities which have actually been detrimental to the interests of people of color.

Michael Guerrero & Louis Head, *The Environment — Redefining the Issue*, *in* WE SPEAK FOR OURSELVES: SOCIAL JUSTICE, RACE AND ENVIRONMENT 11, 11 (Dana Alston ed., 1990).

A community activist who is president of Concerned Citizens of South Central Los Angeles observed: "We tend to see traditional environmental groups negotiating about things that will affect a certain community, and [our] community doesn't want what is decided for them." Robin Cannon, Community Organizing and the Need for Environmental Poverty Law, Remarks at Public Interest Law Conference, Univ. of Oregon, Eugene, Or. (Mar. 13, 1992).

A grassroots activist living near the Stringfellow Acid pits and active with Citizens Clearinghouse for Hazardous Wastes explained:

> Mainstream environmental organizations from the Sierra Club to the World Wildlife Fund and the Environmental Defense Fund have become part of "the system" where being "reasonable" is the driving force, and there is little consideration of the impact on people. These organizations are staffed primarily by scientists, lawyers, economists and political lobbyists. Although many of these groups may have an adversarial relationship with agencies such as the EPA their differences are frequently of degree rather than substance, with an emphasis on tightening or enforcing existing laws rather than developing a new approach. . . .
>
> The U.S. environmental movement has become an elite group of do-gooders that

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increasingly set the environmental agenda. If mainstream environmental groups wish to remain relevant in environmental struggles in the 1990's and beyond, and build bridges to potential allies, they would do well to heed the third wave's call.[61]

C. *Differences of Experience and Perspective*

The differences between mainstream and grassroots environmentalists help explain why traditional environmental lawyering has failed low-income communities. The differences also point to ways to fashion effective — and new — responses to the environmental problems faced by those communities. At least three characteristics separate the groups and individuals in the third wave from those in the second wave: motives, background, and perspective.

First, the groups often have different motives. While mainstream environmentalists are generally motivated by aesthetic, recreational[62] and biological considerations (or, even, by concern for career opportunities[63] or organizational stability[64]), grassroots activists are often fighting for their health and homes.[65] Third wave environmentalists have an immediate and material stake in solving the environmental problems they

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> believe *they* know what is best for others: they practice a particularly offensive mode of advocacy that is patronizing at best and degrading at worst. It has become a movement that makes decisions and negotiates compromises for others while remaining isolated from where people actually live.

Penny Newman, Women and the Environment in the United States of America: An Issue of Health, Safety and Social Justice 12-14 (1992) (unpublished manuscript, on file with author).

A staffer at Tennessee's Highlander Center asserted:

> We are not always well served by the Environmentalist establishment in Washington. Perhaps with the best of intentions they have legitimated a system of destruction. Their batteries of lawyers and lobbyists battle over insignificant or irrelevant measures while implicitly recognizing the right of polluters to carry on business as usual. They are caught up in a deadly game, thrilled at the prospect of being 'players.'

Paul deLeon, *The STP Schools: Education for Environmental Action*, NEW SOLUTIONS, Summer 1990, at 22, 23.

61. "Given the changing population of California, if we don't expand our constituency we will lose our strength as advocates and ultimately fail," according to Johanna Wald, a senior attorney with the NRDC in San Francisco. Nina Schuyler, *City Dwellers Search for Their Place in the Sun*, S.F. DAILY J., July 1, 1992, at 26, 28. As Mari Matsuda points out, "We don't learn from talking only to ourselves." Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L. J. 1329, 1389 (1991).

62. Jordan & Snow, *supra* note 1, at 80, 81-84.

63. MANES, *supra* note 47, at 57 (asserting that new environmental professionals of the 1970's and 1980's see the environment not as a cause, but as an opportunity to build a career). Manes also describes environmental professionals in the second wave as moderating their demands in hopes of political appointments. *Id.* at 58-59; *see also* DAVE FOREMAN, CONFESSIONS OF AN ECO-WARRIOR 201 (1991) (postulating that most people who work for environmental groups are not conservationists but technicians).

64. *See* FOREMAN, *supra* note 63, at 204 (concluding that the viability of mainstream groups has become more important to them than their environmental mission).

65. *See* RICHARD MOORE, TOXICS, RACE & CLASS: THE POISONING OF COMMUNITIES 10 (1991).

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confront: the hazards they face affect the communities where they *live*, and may be sickening or even killing them or their children.[66] Because grassroots activists have such a personal stake in the outcome of particular environmental battles, they are often willing to explore a wider range of strategies than mainstream environmentalists.

Second, grassroots environmentalists are largely, though not entirely, poor or working class people; many are people of color.[67] This contrasts sharply to the second wave, which is overwhelmingly white and middle class in its staff,[68] membership, and perspective.[69] Because of the second wave's roots in the first wave of environmental activism, which focused on wilderness rather than public health hazards, and because of its reliance on litigation, second wave activists have found it difficult to recognize or work with the third wave of environmental activists. Even when the second wave addressed public health concerns, its approach relied on litigation and legislation. Grassroots activists bring different life experiences and cultural histories to the table, and because of their backgrounds, often have greater distrust for the law[70] and more experience with non-legal strategies than mainstream environmentalists.

The third difference is largely an outgrowth of the first two differences: most third wave activists have a social justice orientation, seeing environmental degradation as just one of many ways their communities

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66. Magdalena Avila explains: "I didn't choose this fight, it chose me." Magdalena Avila, Keynote speech at the University of Michigan Law School Symposium on Race, Poverty & the Environment (Jan. 25, 1992). As Esperanza Maya of Kettleman City, a grassroots activist fighting a toxic waste incinerator, says: "It makes me want to cry that a big company like that can come in and take over your lives. It's not fair. They say we're emotional and not to listen to us. How can you not be emotional? This is our home. We live here." Carol D. Rugg, *Residents Fight Proposed Incinerator*, MOTT EXCHANGE, Fall 1991, at 7, 9.

67. *See* Jordan & Snow, *supra* note 1, at 87.

While some in the mainstream environmental movement think that people of color do not care about environmental issues, studies have shown that environmental concern is as high, if not higher, in communities of color as in white communities. *See, e.g.*, Mohai & Bryant, *Race, Class and Environmental Quality in the Detroit Area*, *supra* note 8, at 45-46 (asserting that in Detroit blacks rate seriousness of local environmental problems higher than whites). Nor is this a recent phenomenon. *See, e.g.*, Edward Greer, *Air Pollution and Corporate Power: Municipal Reform Limits in a Black City*, 4 POL. & SOC'Y 483, 487 (1974) ("[T]he black population of Gary [Indiana] is aware of and deeply concerned with the problem of air pollution.").

68. *See* Jordan & Snow, *supra* note 1, at 73 (noting that in 1990 the Sierra Club had no black or Asian-American staffers and just one Latino among its 250 employees, and that the Audubon Society had only three blacks among 350 staffers).

69. *See* Sanchez, *supra* note 38, at 13; Carl Anthony, *Why African Americans Should Be Environmentalists*, RACE, POVERTY & ENV'T (California Rural Legal Assistance Found. & Earth Island Inst. Urb. Habitat Program, S.F., Cal.), Apr. 1990, at 5, 5.

Those who seek to exploit the United States natural resources have long criticized the mainstream environmental movement as a white, upper middle class movement. *See, e.g.*, Tucker, *supra* note 44, at 31-32. It is ironic, and ominous, that the movement is now hearing that refrain from those who should — and could — be its natural allies.

70. *See infra* notes 98-106 and accompanying text.

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are under attack.[71] Because of their experiences, grassroots activists often lose faith in government agencies and elected officials,[72] leading those activists to seek remedies that are more fundamental than simply stopping a local polluter or toxic dumper.[73] Many third wave environmentalists take a holistic view, seeing structural societal change as a way to alleviate many of the problems — poverty, crime, joblessness, environmental degradation — their communities endure.[74]

III
WHY ENVIRONMENTAL POVERTY LAW?

It should be clear why poor people need legal representation in the environmental arena: poor people bear the brunt of environmental hazards. What may not be clear is why environmental law and its traditional practice will not adequately address the needs of poor people. First, because mainstream and grassroots environmentalists perceive pollution differently, they have different approaches to preventing pollution. Only the mainstream environmentalists were involved in writing the laws, however. As a result, traditional environmental law does not work well for pollution's primary victims: poor people. Second, poor people have traditionally fared badly with the law and are often deeply skeptical about its utility. Finally, using environmental laws may actually further disempower low income communities.

This section examines the failure of mainstream environmental law to adequately address the needs of those most affected by pollution and concludes by comparing its failures with those of other public interest disciplines. The section illustrates the theoretical and tactical differences between mainstream environmental lawyering and environmental poverty lawyering, differences which are obstacles to introducing traditional environmental lawyering into community-based struggles for environmental justice.

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71. *See* Moore, *supra* note 18, at 13 ("People of color, organizing in their communities, are making a lasting contribution to the environmental movement: they are changing the movement's language from one of pollution control and regulation to one of social justice."); Anthony, *supra* note 69; Austin & Schill, *supra* note 36, at 71; Bullard & Wright, *supra* note 37, at 14-15; Laura Pulido, Latino Environmental Struggles in the Southwest, at xiii (1991) (unpublished Ph.D. dissertation, University of California at Los Angeles (School of Urban Planning)) (on file with author).

72. Unger et al., *supra* note 8, at 57. Anecdotal evidence shows that even among children living near toxic waste sites, there was a "loss of faith in governmental institutions." *Id*; *see also* Freudenberg & Steinsapir, *supra* note 37, at 237, 239 (noting that in one survey of grassroots groups, 45% of those responding claimed that government agencies had blocked their access to needed information).

73. *See infra* text accompanying notes 75-84.

74. *See, e.g.,* Gottlieb, *supra* note 45, at 58 (Through their struggles, grassroots activists find "that the way to deal with a particular dumpsite ultimately [leads] to the notion of industrial restructuring and dramatic political change."); MOORE, *supra* note 65, at 10. The implications of this analysis are discussed *infra* section III.

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A. *Environmental Law as the Problem, Not the Solution*

Environmental laws are not designed by or for poor people. The theory and ideology behind environmental laws ignores the systemic genesis of pollution. Environmental statutes actually legitimate the pollution of low-income neighborhoods. Further, those with political and economic power have used environmental laws in ways which have resulted in poor people bearing a disproportionate share of environmental hazards.

1. *Two Views of the Political Economy of Pollution*

Mainstream and grassroots environmentalists generally have different views of the causes of pollution, and thus offer different solutions to the problem of pollution. The legal-scientific movement's law and policy in the past twenty-five years has largely been based on a "single bad actor" understanding of the causes of pollution.[75] This "bad actor" theory holds that pollution occurs when a particular actor (such as a polluting corporation) acts outside societal norms; laws are thus written to punish particular violators of pollution standards.

Because of their class, cultural background, and historical experience,[76] and because of their firsthand knowledge of pollution and polluters, grassroots environmental activists see things differently. Engaging in what some critical race theorists and critical legal scholars have called

75. This discussion is in part adapted from Michael Albert's distinctions between conspiracy and institutional theories. *See* Michael Albert, *Conspiracy? . . . Not!*, Z MAG., Jan. 1992, at 17, 17-19. The institutional vs. single bad actor theory can also be loosely analogized to what Alan Freeman calls the "perpetrator perspective" in civil rights laws. Freeman argues that anti-discrimination law is based on a model of discrimination that is focused on individual bad people (the "perpetrator perspective") rather than a model that is based on the institutional nature of racism (the "victim perspective"). *See* Alan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1052-57 (1978). Both environmental laws and civil rights laws have as their remedy the neutralization of the perpetrator's inappropriate conduct, rather than the amelioration of the conditions which caused the action. Both schools have at their core the idea of the "violation," a concept that is "ultimately indifferent to the condition of the victim; [the law's] demands are satisfied if it can be said that the 'violation' has been remedied." *Id.* at 1054. In the same way that one can evade responsibility for discriminatory conduct by "showing that the action was taken for a good reason," one can also obtain authorization for environmental degradation under U.S. and state environmental laws if one shows that the action is to be taken for good reason. *Id.* at 1055; *see, e.g.*, CAL. CODE REGS. tit. 14, § 15093(a) (1992) (specifying conditions for "statement of overriding considerations" in environmental impact reports).

76. *See supra* notes 54-74 and accompanying text. As two Constitutional scholars noted in a discussion of the Second Amendment, "Throughout American history, black and white Americans have had radically different experiences with respect to violence and state protection . . . . [F]or many of those who shape or critique . . . policy, the state's power and inclination to protect them is a given. But for all too many black Americans, that protection historically has not been available. Nor, for many, is it readily available today." Cottrol & Diamond, *supra* note 24, at 359.

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"unmasking,"[77] grassroots activists have uncovered, through their own experiences, the hidden power dynamics of pollution and environmental laws. They have acquired an "institutional" understanding of the political economy of pollution,[78] which stands in contrast to the single bad actor theory. The institutional theory posits that the *normal operations* of some institutions (such as U.S. corporations) generate environmental hazards.[79] People living in or near industrial communities know that law-abiding companies and law-breaking companies differ in degree only: both put pollutants out the smokestack, and both thus poison nearby communities. In contrast to the single bad actor model, which seeks to identify and punish individual bad actors, the institutional model identifies individual polluters "not as explanations themselves,"[80] but merely as part of an overall system centered on maximizing profit.

Mainstream environmentalists see pollution as the *failure* of government and industry — if the environmentalists could only shape up the few bad apples, our environment would be protected. But grassroots activists come to view pollution as the *success* of government and industry, success at industry's primary objective: maximizing profits by externalizing environmental costs.[81] Pollution of our air, land, and water that is literally killing people is often not in violation of environmental laws.[82]

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77. *See, e.g.*, Matsuda, *supra* note 61, at 1394 (stating that the work of critical race theorists and other progressive scholars has been "unmasking a grab for power described as science, unmasking a justification for tyranny disguised as history, unmasking an assault on the poor disguised as law").

78. *See* Albert, *supra* note 75, at 17.

79. *See, e.g.*, Howard Hawkins, *Ecology*, Z PAPERS, Jan.-Mar. 1992, at 31. For similar analyses in the field of civil rights, see Richard Delgado, *Recasting the American Race Problem*, 79 CAL. L. REV. 1389, 1393 (1991) (reviewing ROY L. BROOKS, RETHINKING THE AMERICAN RACE PROBLEM (1990)) (asserting that although law treats racism as an anomaly, "racism and racial subordination are the *norm* in our society rather than the exception"); Freeman, *supra* note 75, at 1052-57; Alan Freeman, *Antidiscrimination Law: The View From 1989*, 64 TUL. L. REV. 1407, 1409-13 (1990); DERRICK BELL, RACE, RACISM AND AMERICAN LAW 2-3 (1980) [hereinafter BELL, RACE, RACISM AND AMERICAN LAW]. *See generally* DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987); DERRICK BELL, FACES AT THE BOTTOM OF THE WELL (1992). Because civil rights laws have been narrowly interpreted by courts using a "single bad actor" approach, it is also unlikely that they alone will form an effective tool against the disproportionate burden of pollution borne by communities of color. Cole, *supra* note 36, at 1995-97. *But see* Godsil, *supra* note 22, at 421-25 (proposing new civil rights law to address environmental racism).

80. Albert, *supra* note 75, at 17.

81. For the relatively uncontroversial view that companies act to maximize profits and that pollution is an externality, see Dennis Brion, *An Essay on LULU, NIMBY and the Problem of Distributive Justice*, 15 B.C. ENVTL. AFF. L. REV. 437, 443 (1988). *See also* Wright, *supra* note 34, at 779 (finding that residents near toxic dump sites bear externalities); John H. Adams, *The Mainstream Environmental Movement*, EPA J., Mar.-Apr. 1992, at 25, 25 (concluding that the impact of pollution is borne by people of color and the poor, because costs are not internalized by polluters and society).

82. *See* Newman, *supra* note 60 (arguing that pollution, and its predictable deaths, are legalized through the system of risk assessment). *Cf.* Freeman, *supra* note 75, at 1050 ("Black Americans can be without jobs, have their children in all-black, poorly funded schools, have

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Grassroots environmentalists, realizing this, have a far more radical and systemic view of the changes needed to eliminate pollution.[83]

These widely divergent perceptions lead to the inevitable tension between the second and third wave environmentalists: mainstream environmentalists are uncomfortable with third wave environmentalists' challenge to the second wave's system while grassroots environmentalists are distrustful of mainstream groups' comfort in working within the system, a system which grassroots environmentalists recognize as responsible for the degradation of their communities.[84]

2. *Control vs. Prevention*

Because environmental laws were designed around the single bad actor model, they have failed to serve low-income communities. Traditional environmental law has focused on pollution *control*: on technologies to be placed on the end of the pipe to control or clean up the poisons coming out. This concept is the foundation for the complex regulatory scheme[85] designed and honed by the mainstream environmental movement.

In contrast, grassroots activists have a different understanding and approach. Community activists have to live with the results of environmental groups' compromises with industry and the government. Thus, while the legal-scientific groups are bickering with the government and chemical companies about how many parts per million of certain chemicals are "safe" for release into the atmosphere, citizens groups are pressing for the elimination of the chemicals themselves and arguing for a change in the processes that produce these chemicals in the first place.

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no opportunities for decent housing, and have very little political power, without any violation of antidiscrimination law.").

83. *See, e.g.*, Freudenberg & Steinsapir, *supra* note 37, at 240, 243; *see also supra* text accompanying notes 71-74. Delgado and Freeman arrive at similar views through their analysis of civil rights laws. *See* Delgado, *supra* note 79; Freeman, *supra* note 75.

84. Grassroots activists often encounter mainstream environmentalists when the latter have determined that a community issue is important and requires their attention. Jordan and Snow describe this interaction and its underlying tension:

> The top-down approach seems to [the grassroots group] to be disempowering, paternalistic, and exclusive, no matter where it is used. When mainstream environmentalists arrive to "help" with community issues, they are thus confronted with a dilemma: The people they intend to help often see them as indistinguishable from "the enemy." The mainstreamers, the regulators, and the developers all seem to use the same language, wear the same clothing, and employ the same kind of decision-making process. They seem all too willing to "cut a deal," leaving the affected communities at risk, uninformed, and disempowered.
>
> Thus, in the policy arena, the mainstream and new environmentalists can *seem* to be working side by side on identical issues, while in reality they are at odds over the most fundamental questions in a democracy: Who shall choose, and how shall the choices be made?

Jordan & Snow, *supra* note 1, at 90.

85. *See* OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, SERIOUS REDUCTION OF HAZARDOUS WASTE 145-54 (1986) (describing the pollution control culture).

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Citizen groups — which have had the daily experience of environmental hazards — know better than anyone else the need for toxics use reduction and elimination. "What we don't want in our backyard, we don't want in anyone else's, either," says Juana Gutierrez, whose community group, Mothers of East Los Angeles, defeated a proposed toxic waste incinerator.[86]

Grassroots activists around the country, by stopping the siting of toxic waste disposal facilities in their communities, have begun to force industry to move from pollution *control* to pollution *prevention*.[87] Put simply, because so few waste disposal sites exist, and because it is so difficult to establish new sites, the price of toxic waste disposal has risen to the point where companies are seriously working to replace toxic inputs to their manufacturing processes in order to minimize the production of toxic waste.[88] By forcing companies to pay a cost closer to the true societal cost of toxic waste, grassroots activists have forced companies to begin to reduce toxic waste production.[89]

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86. Juana Gutierrez, Toxic Waste Incineration and Its Impacts on Communities, Remarks at Public Interest Law Conference, Univ. of Oregon, Eugene, Or. (Mar. 13, 1992). Community activist Espy Maya of Kettleman City echoes this sentiment, stressing that local residents fighting an incinerator are not NIMBY's ("Not in My Back Yard"). "We don't want the incinerator in Kettleman, or anywhere else. If we had serious toxic use reduction, we wouldn't need the incinerator anywhere." *Small Community Derails Toxic Incinerator*, NOTICIERO (CRLA, Inc., S.F., Cal.), Winter 1992, at 1, 8. *See also Where We Come From and Who We Are*, EVERYONE'S BACKYARD (Citizen's Clearinghouse for Hazardous Wastes, Falls Church, Va.), Feb. 1992, at 5 (postulating that the grassroots movement has gone from NIMBY to NIABY — "Not in Anybody's Backyard"); Freudenberg & Steinsapir, *supra* note 37, at 243 (discussing the transformation from NIMBY to NIABY).

87. Freudenberg & Steinsapir, *supra* note 37, at 242. This once-radical approach is now favored by state and federal governments. *See generally* OFFICE OF POLLUTION PREVENTION, U.S. ENVTL. PROTECTION AGENCY, POLLUTION PREVENTION 1991: PROGRESS ON REDUCING INDUSTRIAL POLLUTANTS (1991) (describing federal, state and private pollution prevention programs).

88. *See* BARRY COMMONER, MAKING PEACE WITH THE PLANET 103-40, 178-90 (1990).

89. *See, e.g.*, California Department of Health Services, State and Industry Join Together to Reduce Hazardous Waste (Sept. 7, 1990) (press release) (announcing goal of California to reduce incinerable hazardous waste by 50% by 1992, citing lack of incinerators in the state). For an analysis of the economic effects of forcing companies to internalize the costs of toxic waste disposal, see Been, *supra* note 36 (arguing that those who buy products whose production results in toxic waste will reduce their consumption once the price of the product reflects its true social cost).

The successful blocking of toxic waste facilities is having an unintended consequence: the increased dumping of that waste in Third World countries. SAMUEL EPSTEIN ET AL., HAZARDOUS WASTE IN AMERICA 365 (1982). Such dumping is strongly opposed by grassroots environmental activists. *See, e.g., The First National People of Color Environmental Leadership Summit: Principles of Environmental Justice*, RACE, POVERTY & ENV'T (California Rural Legal Assistance Found. & Earth Island Inst. Urb. Habitat Prog., S.F., Cal.), Fall 1991-Winter 1992, at 32.

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3. *NIMBY Works*

While the drafters of environmental laws may have thought those laws were "neutral," their application has caused the inequities in the siting of unwanted facilities. The result of the laws is unequivocal: poor people and people of color bear a disproportionate share of environmental burdens.[90] And while we may decry the *outcome*, environmental laws are working as designed. Such a disproportionate burden is legal under U.S. environmental laws.[91]

Environmental laws, and the siting of polluting facilities, are products of a political process which has historically excluded poor people, and in which poor people remain grossly under-represented.[92] The importance of the political process is heightened by the procedural emphasis of many environmental laws. Lacking substantive standards, such statutes depend on the vigor of the political process for achieving environmental goals. In the end, it is those with political clout who win in the administrative process or siting decision. Because siting decisions are political decisions, the outcome — more facilities in poor communities — is neither surprising nor unpredictable.[93] Thus, the decisions to place unwanted facilities in low-income neighborhoods are made not *in spite* of our system of laws, but *because* of our system of laws.

When middle-class neighborhoods say NIMBY (Not in My Back Yard) and use environmental laws to defeat proposed locally unwanted land uses (LULU's), such as toxic waste dumps or polluting industry, the developers usually go to a different neighborhood, where opposition is less organized and powerful.[94] Thus, LULU's end up in poor neighbor-

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90. *See supra* notes 3-20 and accompanying text.

91. In fact, one federal judge, in assessing the placement of a garbage dump in a predominantly African-American community, used the legality under *environmental* laws to defeat a claim of violation of *civil rights* laws. R.I.S.E., Inc. v. Kay, 768 F. Supp. 1144, 1149-50 (E.D. Va. 1991). The judge ruled against allegations by Residents Involved in Saving the Environment (R.I.S.E.), a bi-racial community organization challenging the siting of a regional garbage dump near their community in King & Queen County, Virginia, that the County had violated their civil rights by placing the landfill in a 64% African-American neighborhood. The court found that R.I.S.E. had not provided sufficient evidence of intentional discrimination by the County government: the court viewed the County's decision as based on economic and environmental considerations. *Id.* at 1149-50.

92. Even after adoption of the Constitution, many states restricted voting rights to property owners. WARD E.Y. ELLIOTT, THE RISE OF GUARDIAN DEMOCRACY 35-39 (1974). Poll taxes were not made unconstitutional until 1964. U.S. CONST. amend. XXIV.

93. While those with less wealth have traditionally had much less access to and clout within the political system than those with more wealth, race plays a central factor in political decisions as well. Moreover, racial discrimination affects all people of color, not just poor people of color. As Richard Delgado points out, blacks face "more discrimination, stress, insecurity, school failure, and psychological and physical health problems" than whites, even at comparable income levels. Delgado, *supra* note 79, at 1391.

94. Bullard & Wright, *supra* note 37, at 3; Robert D. Bullard, *Environmental Inequities Suffered by People of Color: A Case Study on Houston*, *in* ENVIRONMENTAL RACISM: ISSUES AND DILEMMAS, *supra* note 8, at 40, 41; *see also* Godsil, *supra* note 22, at 396, 402-03 (point-

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hoods and in communities of color. It is *because* the law works for white middle-class communities that it does not work for the poor, or for people of color. Based on their studies of the Southern U.S., sociologists Robert Bullard and Beverly Wright have called public officials' and developers' response to NIMBY the "PIBBY principle" — "Place in Blacks' Back Yard."[95] They point out that poor people and people of color suffer not only at the siting stage, but at the enforcement stage as well: "Black and lower-income neighborhoods often occupy the 'wrong side of the tracks,' and subsequently receive differential treatment when it comes to enforcement of environmental regulations."[96]

B. Rejecting a Legal Answer to a Political Problem[97]

The NIMBY and PIBBY syndromes point out a rather obvious fact: poor people and people of color have less access to the legal system than wealthier white people. Poor 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: the law has stripped people of their land,[98] denied them the right to vote,[99] and rejected their very personhood.[100] Thus, poor people and people of color generally do not trust the law, even when

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ing out that the common result of opposition to hazardous waste facilities by well-meaning, NIMBY environmentalists in affluent communities is that the sites are placed in predominantly poor, powerless communities of color).

95. Bullard & Wright, *supra* note 37, at 3; *see also* Mohai & Bryant, *Race, Class and Environmental Quality in the Detroit Area*, *supra* note 8, at 44 (finding through statistical analysis that race has an even stronger independent effect than income in predicting the location of hazardous waste facilities).

96. Bullard & Wright, *Environmentalism and the Politics of Equity*, *supra* note 27, at 25; *see also* Lavelle & Coyle, *supra* note 27, at S1 (indicating that EPA's enforcement has been more diligent in white communities than in black communities).

97. Nothing in this section should suggest that community groups should not use the law. My point is that the law is only one of many tools available and should be seen, and used, as such.

98. *See, e.g.*, PETER MATTHIESSEN, IN THE SPIRIT OF CRAZY HORSE 4-32 (1983) (describing the taking of Lakota lands by the United States government under the Black Hills Act of 1877); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 363-73 (1987) (examining the United States' internment of Japanese-Americans during World War II, which resulted in the loss of homes and property, and the taking of Native Hawaiian lands).

99. *See supra* note 92 (discussing poor people and the vote). People of color were systematically excluded from the vote. BELL, RACE, RACISM AND AMERICAN LAW, *supra* note 79, at 129-31. The Constitution also failed to provide any mention of women, who were not given the right to vote until 1920. *See* U.S. CONST. amend. XIX.

100. The U.S. Constitution and subsequent Supreme Court decisions legitimized enslavement of African-Americans. *See* U.S. CONST. art. I, § 2, cl. 3 (counting three-fifths of slave population for apportionment purposes), *amended by* U.S. CONST. amend. XIV; U.S. CONST. art. I, § 9, cl. 1 (allowing the importation of slaves until 1808); U.S. CONST. art IV, § 2, cl. 3 (requiring escaped slaves to be "delivered up" to their masters), *amended by* U.S. CONST. amend. XIII; Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 426-40 (1857).

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they use its institutions.[101] They understand both the need to use the law and that the system is stacked against them. "You do what you can with whatever you've got when you're in a fight," writes Gerald López, "the more desperate the struggle, the more willing you are to try anything — even the law."[102] People of color have long experience with the "dissonance of combining deep criticism of law with an aspirational vision of law,"[103] a dual or multiple consciousness which allows survival despite oppression.[104]

Poor people and people of color also understand that most problems faced by their communities are not legal problems, but political and economic ones. Even if the law is "on their side," unless poor people have political or economic power as well, they are not likely to prevail.[105] Given this experience, poor people understand that environmental hazards are not legal problems, but political problems:[106] someone in the government has decided to allow a company to dump in their neighborhood, or to pollute their air. Thus, a *political* tool is required to change that decision: a community-based movement to bring pressure on the person or agency making the decision. Using a legal strategy, rather than a political one, would likely fail these communities: a legal victory

101. Gerald P. López, *Latinos in the Law: Meeting the Challenge*, 6 CHICANO L. REV. 1, 5 (1983) ("In some circles, it became quite nearly a Latino loyalty oath to disrespect and openly scorn the legal institutions in which one was working and the lawyers through whom one was acting.") [hereinafter López, *Latinos in the Law*]; Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 4 (1989) (describing a housekeeper coming to regard "law and lawyers as more dangerous than helpful") [hereinafter López, *The Work We Know So Little About*]; Austin Sarat, *". . . The Law is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343, 346 (1990) (explaining that welfare recipients have inside knowledge of the law and thus have few illusions about what it is or can do for them); *see also* Michael Bennett & Cruz Reynoso, *California Rural Legal Assistance (CRLA): Survival of a Poverty Law Practice*, 1 CHICANO L. REV. 1 (1972) (discussing CRLA's role in restoring faith in the legal system among Chicanos); Matsuda, *supra* note 98, at 338 (citing nonwhite lawyers' use of legal doctrine and ideas while simultaneously attacking legalized acts of oppression).

102. Gerald P. López, *A Declaration of War by Other Means*, 98 HARV. L. REV. 1667, 1672 (1985) (reviewing RICHARD E. MORGAN, DISABLING AMERICA (1984)); *see also* PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 163-64 (1991) ("To say that blacks never fully believed in rights is true. Yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before . . . .").

103. Matsuda, *supra* note 98, at 333.

104. *See id.* at 335-36, 338-42; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 584 (1990) [hereinafter Harris, *Race and Essentialism in Feminist Legal Theory*]. For a general discussion of the concepts of people of color's "dual consciousness" — their access to the perspectives of the dominant group and their particular subculture, see W.E. B. DUBOIS, THE SOULS OF BLACK FOLK 17 (Fawcett Publications 1961) (1953); Angela P. Harris, *On Doing the Right Thing: Education Work in the Academy*, 15 VT. L. REV. 125, 131 (1990) [hereinafter Harris, *On Doing the Right Thing*].

105. *Cf.* Giles v. Harris, 189 U.S. 475, 488 (1903) (decision by Justice Holmes stating that it would do little good to give blacks the vote as this edict would be ignored at the local level).

106. *See, e.g.*, Fagge, *supra* note 31, at 12.

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does not change the political and economic power relations in the community that led to the environmental threat in the first place.[107]

C. *Environmental Law as a Tactical Mistake*

Even if environmental laws had been designed by poor people and solutions to their environmental problems could be found through the legal system, the traditional practice of environmental law would still fail poor communities on a tactical level. We can examine this problem by asking three questions: Who is in charge? Whose turf do we play on? And what are we winning?

1. *Who's in Charge?*

> *Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves.*
>
> —Stephen Wexler,
> National Welfare Rights
> Organization[108]

Following Wexler, pollution will not be stopped by people who are not being polluted. If environmental degradation is stopped, it will be stopped by its victims. They can only stop it if they work at it together. The lawyer who wants to serve pollution's victims must put her skills to the task of helping those people organize themselves and must try to understand their conception of the environmental problem. If we as environmental lawyers are to make environmental lawyering relevant to the people, we must follow their lead. Solutions to poor peoples' environmental problems should be found by the victims of those problems, not by environmental lawyers.[109]

This stance is in direct opposition to traditional environmental lawyering, which has relied on an implicitly paternalistic model of the lawyer as the expert, imposing her ideas on the rest of us.[110] Most mainstream environmental groups are not responsible to those communities most affected by their actions, nor are they accountable to their memberships.[111] The model proposed below[112] is based on allowing low-

107. *See, e.g., infra* notes 262-68 and accompanying text; *see also infra* note 181.

My call for non-legal action should not be read as an implicit rights critique, but merely as a tactical decision.

108. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970). Wexler's insight is no less keen 20 years later.

109. *Cf. id.* at 1066 (indicating that the poor must fully control poverty law practices because lawyers' biases obscure real problems).

110. *See, e.g., supra* notes 46-53 and accompanying text.

111. *See* Jordan & Snow, *supra* note 1, at 73-74.

112. *See infra* notes 177-236 and accompanying text.

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income communities to speak for themselves by helping them gain a voice in the decisions which affect their lives.

2. *Whose Turf Do We Play On?*

Tactically, taking environmental problems out of the streets and into the courts plays to the grassroots movement's weakest suit. Unlike traditional environmental groups, who are comfortable in court, most poor people find the legal system foreign and intimidating.[113] They do not see it as an arena in which they have power.[114] In struggles between a polluter and its host community, two types of power exist: the power of money and the power of people.[115] Polluters generally have the money, while communities have the people. Thus, it is a tactical mistake to take a dispute into court, where polluters have the best lawyers, scientists and government officials money can buy. In court, the community must rely on "experts" and outside help rather than their own actions; this strategy necessarily involves just one or two people speaking for the community. On the other hand, a community-based political organizing strategy can be broad and participatory, including all members of the community. Taking a struggle into court — and away from community activists and the power of people — may thus actually disempower the community and its activists.[116]

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113. *See, e.g.*, Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L. J. 1603, 1706 (1989); *see also supra* notes 92-107 and accompanying text.

114. Gerald López, for example, writes about the experience of immigrant women in deciding whether or not to pursue litigation:

> These women simply find themselves drawn to those informal strategies more within their control and less threatening than subjecting the little they have to the invasive experience and uncertain outcomes of the legal culture. Their collective past has taught them that seeking a legal remedy for their problems will not likely improve their position, and may well disassemble their fragiley constructed lives.

López, *The Work We Know So Little About*, *supra* note 101, at 9.

115. *Organizing Training and Outreach*, EVERYONE'S BACKYARD (Citizen's Clearinghouse for Hazardous Wastes, Falls Church, Va.), Feb. 1992, at 6.

116. "People just sat back and kind of shut up once the lawsuit was underway," reports community activist Florence Robinson regarding her community's struggle against a toxic waste incinerator. Sheri E. Porath, Class Action Suits and Environmental Pollution 24 (Fall 1990) (unpublished manuscript, on file with the author). Such disempowerment may be even more of a danger when representing poor people. As Derrick Bell points out, in the civil rights context,

> It is essential that lawyers "lawyer" and not attempt to lead clients and class. Commitment renders restraint more, not less, difficult, and the inability of black clients to pay handsome fees for legal services can cause their lawyers, unconsciously perhaps, to adopt an attitude of "we know what's best" in determining legal strategy. Unfortunately, clients are all too willing to turn everything over to the lawyers.

Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 512 (1976).

The worst situations appear to take place in the personal injury realm, where lawyers victimize their clients by taking huge attorneys fees out of settlements of toxic tort cases, while individual plaintiffs often receive little compensation. *See* Coyle & MacLachlan, *Getting Vic-*

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At the same time, there *is* a role for outsiders. Most community groups in low-income areas desperately need scientific expertise and sensitive legal representation — legal representation that fits within a community-based organizing strategy and that is controlled by the community. Both environmental and poverty lawyers can help community groups wade through the tortuous administrative processes involved in siting facilities. Although residents of these communities are experts in their own right,[117] they often do not have the training in law and science needed to decipher the regulations and scientific reports and must go outside their communities to secure such expertise.[118]

3. *What Are We Winning?*

The traditional law practice of serving individual clients can actually disempower people and hinder the organizing efforts necessary to wage a successful struggle.[119] This may prevent a community's victory in the fight at hand and dampen prospects for long-term change. Such disempowerment can happen in at least four ways.

First, even if plaintiffs win in court, they may not be organized enough to take advantage of, or enforce, that victory. As two early antipoverty advocates recognized in working with migrant farmworkers,

> [F]armworkers are not necessarily benefited just because they win in court. Winning a case in the Supreme Court might be widely reported, but it gives no assurance that the case's beneficiaries will demand their new rights or that the losers will terminate their illegal practices. Clearly farmworkers can best realize their rights by organizing themselves to counterbalance the powers of the corporate agribusinesses that employ them.[120]

Second, winning an easy victory may remove an important organizing tool from the community, making it more difficult to build and sustain a lasting community power base. As long-time poverty lawyer Gary Bellow puts it, "[t]he worst thing a lawyer can do — from my perspective — is to take an issue that could be won by political organization and win it in the courts."[121]

Third, the traditional style of lawyering, where there is no attempt to build a community group, but only to represent individual clients, may

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timized by the Legal System, *supra* note 27.

117. *See infra* notes 180-85, 252 and accompanying text.

118. Bullard & Wright, *Environmentalism and the Politics of Equity*, *supra* note 27, at 27.

119. *See, e.g.*, *infra* text accompanying notes 259-61.

120. Bennett & Reynoso, *supra* note 101, at 20. This lesson has been learned by some in the environmental movement. *See, e.g.*, Turner, *supra* note 48, at 37 ("[E]nvironmental litigation is only as good as the political sophistication and organization that back it up.").

121. PHILIP B. HEYMANN & LANCE LIEBMAN, THE SOCIAL RESPONSIBILITIES OF LAWYERS: CASE STUDIES 24 (1988); *see also* Michael J. Fox, *Some Rules for Community Lawyers*, 14 CLEARINGHOUSE REV. 1, 5-6 (1980) ("[L]egal action can often have a deflating impact on the group itself, even if successful.").

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hurt "poor people by isolating them from each other."[122] This is especially true if collective struggle is translated into an individual lawsuit, with the result that the momentum of the community's struggle is lost.[123]

Finally, to the extent that the "law serves largely to legitimize the existing social structure and, especially, class relationships within that structure,"[124] the use of the law itself may deter one's clients from thinking of or implementing more far-reaching remedies. Working "within the system" will most often strengthen, rather than challenge, the institutions which work daily against poor people.[125]

It should be clear that a new practice of law — environmental poverty law — must be built to address both the substantive and procedural challenges of working with low-income communities to respond to environmental hazards.

D. *The Failure of Environmental Lawyers in Context*

Understanding the failure of the mainstream environmental movement to meet the needs of the grassroots movement is crucial to developing an approach that transcends such failure. Viewing the shortcomings of the legal-scientific model in the context of other social and legal movements, such as the civil rights and poverty law movements, illuminates common themes and suggests common solutions.

Mainstream environmental groups' failure to represent the interests of those most affected by environmental dangers mirrors similar failures in other social and legal movements.[126] Professor Derrick Bell identifies an analogous split in the civil rights movement, where civil rights attorneys rallying around a particular ideal sometimes overlooked the real

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122. Wexler, *supra* note 108, at 1053.

123. William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming . . .*, 15 LAW & SOC'Y REV. 631, 639-40 (1981); *see also* Porath, *supra* note 116, at 24.

124. Freeman, *supra* note 75, at 1051.

125. *See* Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1366-69 (1988) (discussing this phenomenon in the context of the Critical Legal Studies movement); López, *supra* note 102, at 1671-73 ("[D]efining disputes as rights in conflict . . . expresses a particular image of human-relationships — one that often denies certain aspects of human personality and possibilities for communities."); White, *supra* note 40, at 741-42 (discussing the risk of "reinforc[ing] within the community the hegemony of the oppressor's law"); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2428-29 (1989) (indicating the difference between traditional legal language, which "sterilize[s]" facts, and "storytelling," which "attack[s] and subvert[s]" the system).

126. The failure of mainstream environmental groups to reach out to people of color, while not examined here, has historical antecedents in the women's suffrage movement, where the failure of white women to look at issues of racial oppression prevented alliances between white and black women. Harris, *Race and Essentialism in Feminist Legal Theory*, *supra* note 104, at 586-87.

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needs of black parents.[127] Just as grassroots activists have accused the mainstream environmental movement of pursuing strategies inimical to grassroots' interests, Bell contends that civil rights lawyers who spearheaded the desegregation movement actually performed a disservice to black parents, by single-mindedly pursuing the goal of racial balance in all school districts, with the result that the actual *quality* of education for black children declined.[128]

Bell identifies several reasons for the failure of civil rights lawyers, reasons which are directly comparable to the reasons for the failure of the mainstream environmental movement: the attorneys sought a symbolic victory,[129] their support was from middle class people who were not suffering from the harm being challenged,[130] the attorneys were isolated from the communities which bore the impact of their work,[131] the attorneys may have become lost in "narcissistic gratification" and directed suits more to their own needs than to those of their clients,[132] and the attorneys steadfastly refused to recognize reverses in their campaign, reverses brought on in part by their rigidity.[133]

Poverty lawyers have also struggled with the tension between their vision of the "public interest" and their clients' interests.[134] As Edgar and Jean Cahn noted in 1970, "Of . . . concern are the moral implications of a group of independent lawyers free to choose their own version of the public interest. This raises the critical question of accountability in a democratic society."[135] Perhaps more troubling in the 1990's is the fact

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127. Bell, *supra* note 116.

128. *See id.* at 487-88. Professor Bell, like this author, does not question the experience and commitment of mainstream attorneys; he merely questions why they will not recognize the futility of their approach. *Id.* at 488.

129. *Id.* at 489.

130. *Id.* at 490 (asserting that civil rights attorneys " 'answer to a miniscule constituency while serving a massive clientele' ") (quoting school expert Ron Edmonds). Bell quotes one civil rights lawyer's analysis of the role of financial contributions to mainstream civil rights groups:

> An apt criticism of the traditional civil rights lawyer is that too often the litigation undertaken was modulated by that which was 'salable' to the paying clientele who, in the radical view, had interests threatened by true social change. Attorneys may not make conscious decisions to refuse specific litigation because it is too 'controversial' and hard to translate to the public, but no organization dependent on a large number of contributors can ignore the fact that the 'appeal' of the program affects fund-raising.

Id. (quoting former NAACP LDF lawyer Leroy Clark). Some in the grassroots environmental movement have made the same observation about the mainstream environmental movement. They assert that the failure of mainstream groups to deal with social justice issues is a case of not wanting to bite the hands that feed them. *See* Jordan & Snow, *supra* note 1, at 92.

131. Bell, *supra* note 116, at 491.

132. *Id.* at 493.

133. *Id.* at 482.

134. *Id.* at 491 n.63, 493; Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U.L. REV. 337, 342 (1978).

135. Cahn & Cahn, *supra* note 2, at 1008.

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that many legal services attorneys have fallen into a routinized practice which is disempowering to their clients, who see the legal services office as another government bureaucracy indistinguishable from the welfare or housing agency.[136] We must be vigilant so as not to replicate in our work the structures of inequity which we seek to break down in larger society.

All of this said, however, environmental poverty lawyers do have a role to play in the fight against environmental degradation of poor peoples' communities.[137] By practicing law in a way that empowers people, that encourages the formation and strengthening of client groups, and that sees legal tactics in the context of broader strategies, attorneys can be part of the movement for environmental justice.[138]

IV
LEGAL SERVICES FOR POOR PEOPLE

Poverty lawyers pioneered many of the empowerment techniques this Article proposes. To illustrate the promise and weakness of poverty law in the environmental field, this section briefly examines the history of legal services for poor people, describes two of its early defining characteristics, community-based lawyering and the practice of empowerment, and concludes with a look at an important constraint faced by legal services attorneys.

A. The Rise of Poverty Law

The provision of free legal aid to poor people in the United States dates from the turn of the century, but the modern poverty law movement began with the creation of various store-front legal services offices under the Office of Economic Opportunity (OEO) during Lyndon Johnson's War on Poverty in the mid-1960's.[139] "Poverty law," as conceived of and practiced by its early adherents, looked very different from tradi-

136. *See infra* notes 161-65 and accompanying text.

137. *See, e.g.,* White, *supra* note 40, at 762. According to White,

> [T]he outsider with professional skills does have a distinct role to play in the mutual learning practice. . . . The outsider helps bring people together, sets a tone in which collective learning can take place, and teaches a practice of critical reflection by leading the group through its first sessions and helping it plan its first actions. In contrast to the conventional professional, however, the outsider . . . does not claim to possess privileged knowledge about politics or reality.

Id.

138. Cole, *supra* note 36, at 1997 ("The courts are an arena in which sometimes it is impossible not to play; we must be there when our client groups call on us to take the struggle into that forum. . . . But any legal strategy not firmly grounded in, and secondary to, a community-based political organizing strategy is ripe for failure.").

139. Roger C. Cramton, *Crisis in Legal Services for the Poor*, 26 VILL. L. REV. 521, 522-25 (1981); EARL JOHNSON JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM 5-14 (1974). For an excellent bibliography on the early years of the Legal Services movement, see Allen Redlich, *Who Will Litigate Constitutional Issues for the Poor?*, 19 HASTINGS CONST. L.Q. 745, 745 n.2 (1992).

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tional lawyering, and even from the lawyering on behalf of poor people that had taken place before the advent of legal services.[140] The vision of those who created the legal services program was to "design new social, legal, and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope and ambition . . . ."[141]

The legal services programs of the 1960's set out to make this vision a reality. Fueled by idealistic young lawyers and government appropriations, the legal services program grew throughout the country so that almost every county was covered by some kind of legal services representation. While all legal services offices experienced a radical and significant decline in funding in the 1980's under the Reagan and Bush administrations,[142] today there are more than 2000 legal services offices across the country.[143] Their location and their historical commitment to empowerment work make them ideal places for grassroots environmental activists to seek and receive sensitive, effective legal advice and representation.[144]

One of the central strategies employed by legal services attorneys was the community-based law office. A few visionary attorneys also consciously designed a practice based in part on client empowerment. These two legal services strategies, which together are part of the environmental poverty law model set forth in Part V, are explored below.

B. *Community-Based Lawyering*

By design, legal services offices are uniquely positioned — geographically and politically — to serve poor people: they are community-based and have both significant ties to and a history in poor communities. The architects of legal services determined, correctly, that the surest way to

140. Alan Houseman, *A Short Review of Poverty Law Advocacy*, 25 CLEARINGHOUSE REV. 834, 834 (1991). While "legal aid" programs had been around for years, primarily as charitable efforts of local bar associations, they rarely sought to enforce the rights of poor people, and they failed to represent groups or provide community education. *Id.*

141. HARRY P. STUMPF, COMMUNITY POLITICS AND LEGAL SERVICES: THE OTHER SIDE OF THE LAW 143 (1975) (quoting E. Clinton Bamberger, Jr., Director of the OEO Legal Services Program, Address at the National Conference of Bar Presidents (Feb. 19, 1966)).

142. *See infra* notes 172-74 and accompanying text.

143. *See generally* NATIONAL LEGAL AID AND DEFENDER ASS'N, THE 1991/92 DIRECTORY OF LEGAL AID AND DEFENDER OFFICES IN THE UNITED STATES AND TERRITORIES (1991) (providing a listing of over 2000 civil legal aid offices).

144. I make this statement with one significant caveat: legal services offices, while traditionally *in* and *for* low-income communities, including many communities of color, have a long way to go before they are *of* communities of color. Legal services' hiring, like that of the entire profession, must become significantly more representative of the communities the legal services offices serve if we are to enhance our effectiveness as advocates with and for those communities. I thank Professor Regina Austin, a long-time board member of Community Legal Services of Philadelphia, and Alice Brown, of the NAACP Legal Defense Fund, for this insight. *See* John O. Calmore, *Exploring the Significance of Race and Class in Representing the Black Poor*, 61 OR. L. REV. 204 (1982) (arguing that the black poor must develop their own social institutions in order to overcome the combination of racism and classism).

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be responsive to poor peoples' problems was to open offices in low-income communities, offices that would be a part of, and accessible to, those communities.[145] Thus, across the country, legal services offices are located in the low-income communities they serve.[146] Some offices have advisory councils made up of community residents.[147] Through these councils, legal services offices have the opportunity both to hear community problems and to disseminate key information.[148]

The offices often have a long history of working in and with a community. They have developed working relationships with coalitions of poor peoples' groups and a good idea of who in the local power structure is an ally. Finally, most community law offices are trusted by the communities in which they work and are sensitive to those communities' needs.

Because of its location and community ties, the local legal services office may be the first place that a grassroots group goes to look for a lawyer. Poor people concerned about a problem in the geographically isolated communities of Window Rock, Arizona or Wolf Point, Montana, for example, probably will not go to Washington, D.C., to look for a lawyer;[149] they will go to the local legal aid office.[150] Another compelling motive for people to seek help at a legal services office is that poor peoples' lawyers provide their services for free. Because many of those who face environmental hazards are poor people, many could not otherwise afford a lawyer. Legal services offices are, for many, the only game in town. These offices, in hundreds of communities across the U.S., are logically part of the first line of defense for low-income communities facing environmental dangers.[151]

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145. *See* FRANCES FOX PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE 266 (1971). For an account of the storefront community action agency that was the precursor to the first community-based law offices, see *id.* at 290-95.

146. This is in contrast to mainstream environmental groups, which are clustered in major urban areas like New York, Washington, D.C., and San Francisco. While New York, Washington, D.C. and San Francisco *do* have environmental problems, the environmental groups' offices are not located in those neighborhoods bearing the brunt of the pollution in those cities.

147. Bennett & Reynoso, *supra* note 101, at 4.

148. *See id.* at 4.

149. They may not even look for a lawyer at all. *See* López, *The Work We Know So Little About*, *supra* note 101, at 6-7.

150. Indeed, there are legal services offices in Window Rock and Wolf Point: DNA/Peoples' Legal Services, Inc. and Montana Legal Services Association, respectively. *See* NATIONAL LEGAL AID AND DEFENDER ASS'N, *supra* note 143, at 4, 48.

151. Legal services "is perhaps the only effective and reliable tool available to the poor" to ensure their legal rights. Houseman, *supra* note 140, at 835. Legal services' community base is important for another reason: if poverty lawyers begin to take on environmental cases, those communities most affected by environmental hazards may decide which cases are brought. Today, the power to bring cases or participate in agency decision-making processes is largely exercised by mainstream environmental groups and industry. As one student of environmental law points out, "the decision as to which 'public' interests will enjoy representation before [administrative agencies] rests primarily with the private attorneys and the foundations that

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C. *Practicing Empowerment Through Poverty Law*

In the minds of some early legal services lawyers, the idea of client empowerment went hand-in-hand with community-based offices.[152] Legal services advocates recognized the context of their advocacy: poor people face a myriad of problems, legal and otherwise.[153] Legal problems were a symptom of poverty; their alleviation did little to solve the underlying problem. Empowerment strategies were one approach designed to go beyond amelioration.[154] As the first head of the Legal Service Corporation described it,

> One major purpose of OEO legal services was to assist groups of poor people in organizing as groups. The formation of voting blocs would exert pressure on governmental institutions; poor people would acquire self-confidence and self-direction by participation in the power struggles of a pluralist society; and they would benefit from more favorable decisions by legislatures, administrative bodies, and the courts.[155]

Thus, a central goal of legal services was "empowerment" — building the capacity of clients to take control over decisions affecting their lives. Legal services attorneys also realized early on that eligible clients far outnumbered the lawyers that could represent them and thus looked to strategies which would help large numbers of poor people at once or which would build poor peoples' capacity to solve their own problems.[156] Some programs employed full time "community workers," who did community education and mobilization work around the legal rights of poor people.[157]

The empowerment strategies used by some early legal services offices included increasing client information through community educa-

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provide the funding for such representation." Richard B. Stewart, *Reformation of Administrative Law*, 88 HARV. L. REV. 1667, 1764 (1975). "This procedure for selecting the interests that will receive representation is unsatisfactory because it contravenes the rationale for expanded participation rights by giving private individuals the discretion to determine which interests will be favored in agency decisionmaking." *Id.* Stewart urges that resources be made available to those interests currently unrepresented to facilitate their participation in government processes. *Id.* at 1761. Environmental poverty law is one such concrete allocation of resources.

152. *See* HEYMANN & LIEBMAN, *supra* note 121, at 24; Cramton, *supra* note 139, at 524 (noting that early legal services focused on social justice and political organization of the poor).

153. Cramton, *supra* note 139, at 524-25.

154. The discussion of empowerment strategies *infra* is adapted from Joel F. Handler, *Community Care for the Frail Elderly: A Theory of Empowerment,* 50 OHIO ST. L.J. 541, 544 (1989), and informed by White, *supra* note 40, at 740-41.

155. Cramton, *supra* note 139, at 524-25.

156. *See* John Dooley & Alan Houseman, *Legal Services in the '80s and Challenges Facing the Poor*, 15 CLEARINGHOUSE REV. 704, 704 (1982).

157. The full potential of community workers has seldom been reached, as early (and later) poverty lawyers' *methods* of integrating community work into legal work were even less effective. Several legal services programs, like California Rural Legal Assistance and Farmworkers Legal Services of North Carolina, still employ community workers and see them as integral to their offices' work.

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tion about legal and other processes; improving clients' personal skills by training lay advocates to represent themselves and others in administrative fora; increasing collective strength by organizing client groups; improving links between and among client groups, both locally and nationally; and increasing client control over resources such as public housing, by helping client groups come up with strategies for self-management of such resources.[158] Legal services offices filed lawsuits with the larger framework of social action and client empowerment, not mere legal victory, in mind.

Certainly, not all poverty lawyers practiced this way in the 1960's; most did not.[159] Lawyers may well have resisted letting community workers play a fully participatory role in strategic decisions. Today, legal services attorneys rarely, if at all, use the empowerment model.[160] The heady ideas of the 1960's almost immediately gave way under the crushing load of client problems.[161] Much legal services work, now known as "traditional," is comprised of routine "service" work, helping individual clients solve individual legal problems.[162] Even "impact" cases — where a case is brought on behalf of a single client to have a broad impact on law or policy[163] — are rarely conducted with empowerment in mind.

Some commentators have opined that traditional legal services work, which avoids challenging the existing distribution of resources and power, has not fundamentally helped poor people, but has actually *strengthened* the current system by allowing poor people to believe that the system might work for them.[164] Others have called the routinized legal services approach to poor people "infantilizing" because a visit to the legal services office is similar in the client's experience to an encounter with any other government bureaucracy and because clients must be-

158. *See, e.g.*, PIVEN & CLOWARD, *supra* note 145, at 315-16.

159. *See* Wexler, *supra* note 108, at 1064, 1067.

160. Many of the tools used in the 1960's are today proscribed by statute. *See* Cramton, *supra* note 139, at 528; *infra* notes 171, 209 and accompanying text.

161. Some of those who watched the shift from client empowerment to traditional lawyering decried its happening. *E.g.*, Cahn & Cahn, *supra* note 2, at 1007 n.5 ("It must, however, be recognized that the new focus on the advocacy role of lawyers represents politically a turning away from attempts to underwrite the advocacy function by non-lawyers and thus is, at least partially, an elitist, and implicitly anti-democratic development.").

162. The service model "assumes that the social order is fundamentally sound, with the legal services program serving as a means of ensuring that the proper authorities hear poor people's grievances." HEYMANN & LIEBMAN, *supra* note 121, at 23. For this reason, we should reject the traditional service model, while recognizing the valuable contributions to poor peoples' lives that legal services attorneys and paralegals practicing in this manner have made.

163. A practice based on impact litigation is sometimes called the "law reform" model. *See, e.g.*, *id.* at 24.

164. *See, e.g.*, Richard Abel, *Law Without Politics*, 32 UCLA L. REV. 474, 614 (1985).

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come victims for legal services attorneys to help them.[165] This compromise of the original promise and potential of community-based legal services offices must be reversed. The model of empowerment described in this essay is a sympathetic challenge to the traditional legal services model, a gentle push to get legal services lawyers to rediscover empowerment as a goal of lawyering and as a means of social change.[166]

D. A Constraint: Attacks on Legal Services

Aside from styles of legal practice, there is a very real external constraint legal services attorneys face in doing environmental poverty work: legal services funding and activities are perennial targets of some extremist conservatives and their allies in Congress and the White House.[167]

Because "[p]overty is both a cause and a consequence of underrepresentation in the legal-political process,"[168] any representation of poor people in that process is bound to push up against those interests which profit from poor people remaining poor. Almost from the inception of legal services programs in the 1960's, legal services attorneys have faced attacks on their organizations from those interests challenged by their legal advocacy: landlords, growers, government agencies and elected officials.[169]

Beginning in the late 1960's, and for the more than two decades following, poverty lawyers have faced the threat of defunding and endured a hostile political climate, not because their work is ineffective but precisely because it *is* effective.[170] Those political and economic interests threatened by legal services have succeeded in getting certain prohibitions placed on what legal services offices can do with federal funds.[171]

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165. *E.g.*, Sarat, *supra* note 101, at 354 n.30. Many have pointed out that poor people see legal services as just another obstacle in the government bureaucracy. *See, e.g., id.* at 351-52 (describing a welfare client who noted that a legal services attorney gets his paycheck from the same place — the U.S. government — as welfare department workers).

166. Some poverty lawyers are similarly calling for rejuvenation of our field. *See, e.g.*, Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. PUB. INT. L.J. 49 (1991).

167. Another legal services constraint is the priority-setting process: within legal services, because of finite resources, environmental work must compete with legal services' other compelling priorities. *See infra* notes 227-36 and accompanying text.

168. Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069, 1072 (1970).

169. *See* Bennett & Reynoso, *supra* note 101, at 6-8; Jean Cobb, *Power Struggles*, COMMON CAUSE MAG., July-Aug. 1987, at 7, 17-21.

170. *See, e.g.*, Cobb, *supra* note 169, at 18 (suggesting that many migrant farmworker legal aid programs, with litigation success rates of over 90%, are targets of political pressure from growers); *see also* Wexler, *supra* note 108, at 1051 (arguing that more effective poverty lawyers are more likely to have their jobs eliminated by government). *See generally* Cramton, *supra* note 139 (examining the history of legal services and attacks made against it); Bennett & Reynoso, *supra* note 101 (providing a history of early attacks on CRLA); Gregory Goldin, *Legal Aid After Reagan*, CAL. LAWYER, Dec. 1987, at 35 (analyzing two decades of attacks on legal services and the resulting shift in morale of attorneys at CRLA and elsewhere).

171. Statutes and regulations adopted under President Nixon place restrictions on repre-

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In addition, the Reagan administration drastically cut federal funds for legal services. Today those funding levels are a third less in real dollars than in 1981.[172] The Reagan administration tried repeatedly to entirely eliminate the legal services program; its attacks had a devastating impact on the morale and quality of legal services work.[173] The federal Legal Services Corporation, once the mentor program for legal services offices across the country, became actively, and often viciously, hostile to the mission of legal services.[174] Relations between the federal agency and local programs are still tense.

The twin attacks of advocacy restrictions and funding cutbacks have forced legal services attorneys to develop more creative approaches to poverty law.[175] Environmental poverty law is one such creative approach, seeking to broaden legal services' effectiveness by embracing a pressing issue which has great potential for community mobilization and empowerment.[176]

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senting clients seeking abortions, fighting for school desegregation, trying to organize laborers, or resisting military conscription. *See, e.g.*, 42 U.S.C. §§ 2996e(d)(5), 2996f(b)(6)-(10) (1988); 45 C.F.R. §§ 1608, 1610 (1991). Further restrictions imposed under the Reagan administration include prohibitions on the advocacy of gay rights and the representation of undocumented immigrants, limitations on lobbying administrative and legislative bodies, and obstacles to class action suits. *See, e.g.*, Appropriations — Fiscal Year 1981, Pub. L. No. 96-536, 94 Stat. 3166 (1980); Continuing Appropriations, Pub. L. No. 97-377, 97 Stat. 1874 (1982); 45 C.F.R. §§ 1612, 1617, 1626 (1991) (placing various restrictions on legal services expenditures). *See also* Stephen A. Rosenbaum, *Pro Bono Publico Meets Droits de L'Homme: Speaking a New Legal Language*, 13 LOY. L.A. INT'L & COMP. L.J. 499, 502 (1991). These regulations, particularly those limiting the ability to bring school desegregation suits, have a disproportionate impact on people of color. *See* Maura Irene Strassberg, *The Constitutionality of Excluding Desegregation from the Legal Services Program*, 84 COLUM. L. REV. 1630, 1638-39 (1984).

172. Claudia MacLachlan, *An Unclear Future*, 14 NAT'L L.J., Oct. 14, 1991, at 1, 42 (reporting that the 1991 national legal services budget was $327 million, just $6 million more than the 1981 appropriation, and that the budget would have to be $500 million to keep pace with inflation).

173. Dooley & Houseman, *supra* note 156, at 708. Dooley and Houseman describe the likely result if the attempt to eliminate legal services had succeeded: "Poor people without lawyers essentially have no enforceable rights." *Id.*

174. *See, e.g.*, Susan D. Rice, *CRLA Continues Battling Legal Services Corporation*, SAN JOSE POST RECORD, Mar. 10, 1992, at 1.

175. *See, e.g.*, Dooley & Houseman, *supra* note 156, at 717; National Legal Aid & Defender Ass'n & Project Advisory Group, *Future Challenges: A Planning Document for Legal Services*, 22 CLEARINGHOUSE REV. 628 (1988).

176. A complementary goal of environmental poverty law is to tap the knowledge and resources of environmental attorneys and mainstream environmental groups and put them to work for poor people. Environmental groups' lack of government funding renders them largely immune from the "biting the hand that feeds them" syndrome. *Cf.* Wexler, *supra* note 108, at 1051 ("It is usually the government which pays a poverty lawyer; it is also often the government that a poverty lawyer will oppose in his client's interests. Thus, the more effective a poor people's lawyer, the more problems he poses for those who pay him.").

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V
PRACTICING ENVIRONMENTAL POVERTY LAW

Environmental poverty advocacy can only be called lawyering for social change. Its practitioners see environmental issues as opportunities to build broad social movements that will ultimately address other issues. Its goal is not solely to win the battle at hand, but to empower the client community. Environmental poverty lawyers must embrace three central tenets: client empowerment; group representation; and law as a means, not an end. These styles and tools of practice are overlapping and mutually reinforcing. This section examines the significance of each tenet in practice and offers three corresponding questions environmental poverty advocates may ask themselves in evaluating their own practice. The section concludes with a discussion of how environmental cases fit within traditional legal services priority areas.

A. Client Empowerment

"Client empowerment" occurs when a lawyer's practice helps clients realize and assert greater control over decisions which affect their lives.[177] Empowerment is also a process which enables individuals to participate effectively in collective efforts to solve common problems. Joel Handler defines empowerment as "the ability to control one's environment."[178] Client empowerment is about creating in the client community the dynamics of democratic decision making, accountability, and self-determination — ideals which one would like to create in society.[179]

In the environmental poverty law context, empowerment means enabling those who will have to live with the results of environmental decisions to be those who actually make the decisions.[180] "Community-based" and "community-led" are key descriptive and prescriptive phrases for the environmental poverty lawyer, who should seek to decentralize power away from herself and to her clients. The client empowerment model is thus the reverse of the legal-scientific mode of lawyering used by mainstream environmental groups.[181] Rather than solving a

177. *See supra* notes 152-58 and accompanying text.

Lucie White calls legal practice that focuses on empowerment "third dimensional lawyering." White, *supra* note 40, at 760-66. Gerald López calls it "the rebellious idea of lawyering." López, *supra* note 113, at 1608.

178. Handler, *supra* note 154, at 544.

179. *See* Mann, *supra* note 39, at 64. Such empowerment and liberation of poor communities and communities of color is ultimately empowering of the dominant society as well. Matsuda, *supra* note 61, at 1330-31.

180. "Sound decisions will come only as those who know the landscape and will suffer the risks deliberate together." White, *supra* note 40, at 764.

181. "Once a legal issue is presented to lawyers, as 'experts' they tend to take it over. They may succeed in solving the client's immediate legal problem, but the client's position of powerlessness is reinforced when the lawyer simply 'takes over.' " *Id.* at 740 (quoting GEOFF BUDLENDER, LAWYERS AND POVERTY: BEYOND ACCESS TO JUSTICE 17 (Second Carnegie

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problem *for* a community, the empowerment model calls upon attorneys to help community members solve their own problems.[182]

"Empowerment law" is more a *method* than a *product*, a practice through which the lawyer helps the group learn empowering methods of operation.[183] Empowerment of clients is the answer to the political organizers' eternal question: "What happens when we go away?"[184] By helping people take control over the decisions which affect their lives, an attorney leaves the community stronger than when she arrived.[185]

One simple way this plays out in the environmental context is in who takes part in the environmental review of a proposed facility.[186] The client empowerment model posits that the people who actually bear the burden of pollution are experts in their own right: the client's beliefs and experiences are as valid, or more valid, than those of the traditional "experts" — scientists, consultants, attorneys — fielded by industry, government and environmental groups.[187]

Poor communities have an implicit distrust of the legal-scientific approach and its attendant "expertise."[188] Such expertise often does not match with their experiences.[189] "It doesn't take a degree from Harvard

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Inquiry into Poverty and Development in Southern Africa, Conference Paper no. 91, 1984)).

182. *See, e.g.*, López, *supra* note 113, at 1608. Sometimes simply having an attorney can be empowering for poor people. Sarat, *supra* note 101, at 363-64.

This model assumes that community residents are willing to be active in their own defense. This is not always the case: people often have a psychological need to pass on their problems to someone else to be resolved. We as lawyers have a tendency to take on the problems. Further, many want simply to have their "individual" problem dealt with and are willing to sacrifice the group's goal to meet this need. Part of the environmental poverty lawyer's role in such situations is pointing out that without collective effort, everybody loses. I thank Ellen Mendoza, a ten-year veteran of Oregon Legal Services, for these insights.

183. White, *supra* note 40, at 764. In the words of Paulo Freire, "The more people participate in the process of their own education, the more the people participate in the process of defining what kind of production to produce, and for what and why, the more the people participate in the development of their selves." MYLES HORTON & PAULO FREIRE, WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE 145 (Brendon Bell et al. eds., 1990); *see also id.* at 53-55 (attributing the Highlander Center's success to a continuing commitment to listen and adjust to the community's interests).

184. HEYMANN & LIEBMAN, *supra* note 121, at 23, 25.

185. *See infra* notes 256-61 and accompanying text.

186. This idea is developed in greater detail in the Kettleman City case study below. *See infra* notes 246-55 and accompanying text.

187. *See* White, *supra* note 40, at 761-62; Bullard & Wright, *supra* note 37, at 16. Many grassroots activists have in fact developed great technical expertise. Peter M. Sandman, *Getting to Maybe: Some Communications Aspects of Siting Hazardous Waste Facilities*, 9 SETON HALL LEGIS. J. 437, 446-47 (1985).

188. *See* Freudenberg & Steinsapir, *supra* note 37, at 239-40. Freudenberg and Steinsapir characterize grassroots groups' attitude toward scientific and technical expertise as "ambivalent," although many such groups have close and positive relationships with scientists. *Id.*

189. Nor is this distrust misplaced.

> [C]ommunity distrust of risk estimates by experts is not irrational. The experts generally work for interests with a stake in reassuring answers. Even with total integrity, non-resident experts in pursuit of a site can be expected to reach less cautious conclusions than residents with no special interest in siting. Moreover, there is ample

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or Yale to know that incinerators mean smoke," says Mary Lou Mares, a farmworker and activist living in Kettleman City, California.[190] Charlotte Bullock of South Central Los Angeles puts it this way: "The [L.A. City] Council is going to build something in my community which might kill my child . . . I don't need a scientist to tell me that's wrong."[191]

Recognizing community residents as experts and validating their experiences and knowledge are keys to empowerment.[192] One social justice organization, Tennessee's Highlander Center, has created "schools" to bring together community activists to share experiences; through the sharing process itself, participants see the value of their own knowledge and are empowered.[193] The act of listening to the stories of those who have traditionally been excluded from decisionmaking processes is what Mari Matsuda calls "looking to the bottom."[194] Such a "bottom-up" perspective is critical to client empowerment and the effective practice of environmental poverty law.

B. Group Representation

Group representation is, simply, representing an organized group rather than an individual client or unaffiliated clients. In the environmental poverty law model, an attorney typically represents a community group, meeting periodically with members or leaders of that group to determine the legal "piece" of the group's strategy and tactics.[195]

> precedent in the last several decades of siting experience to justify fears of a lack of integrity, or of incompetence or callousness. . . . It is rational to distrust the experts even without any expertise of one's own. People who are trying to sell a hazardous waste facility are no different from people who are trying to sell, say, insulation for a home. One does not have to understand what they are saying technically to suspect that they are not to be trusted.

Sandman, *supra* note 187, at 446.

190. Dan Morain, *Hundreds Fight Incinerator Plan*, L.A. TIMES, Oct. 13, 1991, at A3.

191. Hamilton, *supra* note 38, at 11.

192. *See* White, *supra* note 40, at 760-62; PAULO FREIRE, THE PEDAGOGY OF THE OPPRESSED 57-66 (1970). As activist Robin Cannon of Concerned Citizens of South Central Los Angeles says, "You have to draw on the strengths of everyone in your community. . . . People bring different things to the organization." Cannon, *supra* note 60.

193. *See* deLeon, *supra* note 60, at 22-23; Carol Polsgrove, *Unbroken Circle*, SIERRA, Jan.-Feb. 1992, at 130, 132, 140; Aldon Morris, *Introduction: Education for Liberation*, SOC. POL'Y, Winter 1991, at 2, 3; Maxine Waller, *Local Organizing: Ivanhoe, Virginia*, 21 SOC. POL'Y, Winter 1991, at 62, 63; Judi Bari & Judith Kohl, *Environmental Justice: Highlander After Miles*, 21 SOC. POL'Y, Winter 1991, at 71, 73.

194. *See* Matsuda, *supra* note 98, at 324. "The imagination of the academic philosopher cannot recreate the experience of life on the bottom. Instead we must look to what Gramsci called 'organic intellectuals,' grass roots philosophers who are uniquely able to relate theory to the concrete experience of oppression." *Id.* at 325 (citing Antonio Gramsci, *The Intellectuals*, *in* SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 5 (Quintin Hoare & Geoffrey N. Smith eds., 1971)).

195. Group representation differs in form and substance from two other oft-used types of litigation: *impact litigation* and *class actions*. Impact litigation involves suits on behalf of one or several individuals that, if successful, change law or policy and have an impact on a large number of people. Group representation may be, but is not necessarily, impact litigation.

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Group representation is central to lawyering for social change, for a variety of reasons.[196] By representing a group, the lawyer ensures that she is not representing a narrow, unique, or selfish individual interest. It allows the lawyer to address many peoples' problems at once, rather than using limited time and resources for individual cases.[197] By representing a group, the attorney provides a basis for forming or strengthening "community" and provides a tangible benefit to those who join the community group.[198] The community group also serves as a vehicle for generating resources and assistance, both within and outside the legal arena, and provides emotional support for local residents during long struggles.

Further, a community group is the ideal educational tool for attorneys to use in fostering community knowledge of legal rights and remedies. While the community educates the lawyer about its troubles and concerns, she can educate group members about the reach of the law. This education can be a starting point for finding both legal and non-legal remedies.

Conversely, the group is also an excellent source of feedback for an attorney, who can hear from group members whether a chosen strategy worked or not. Building on the community's experiences, the lawyer can thus fashion more effective strategies.[199]

Representation of groups is also one way to build the "people power" necessary to win environmental struggles.[200] Individuals facing

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Class actions involve suits on behalf of a group of individuals (the "class") who are similarly situated and who usually seek some financial gain in the class action suit. Group representation, as envisioned here, is more a *style* of lawyering than a particular arrangement of clients.

196. This discussion of group representation is informed by my conversations with Joel Reynolds, an environmental poverty lawyer with the Natural Resources Defense Council in Los Angeles. For instructive comments on working with community groups in the poverty law context, see Fox, *supra* note 121, at 1, 2; SAUL ALINSKY, REVEILLE FOR RADICALS 76-88 (1946).

197. Dooley & Houseman, *supra* note 156, at 716 (Group representation "provides an economical and efficient means of using scarce resources to serve a large number of poor persons. Poor persons' groups can provide support to group members involved in litigation or other forms of advocacy. Most importantly, such groups can and will undertake direct efforts to participate in the processes of government.").

198. Wexler, *supra* note 108, at 1054.

199. As my friend and colleague Catherine Ruckelshaus, of the Employment Law Center, writes,

> If a particular strategy or plan is chosen and then implemented, the group can report back to the practitioner what the resulting effect(s) was. If the strategy worked, and the goals were achieved, the practitioner and group can feel good about their analysis of the problem. If the remedies "won" do not translate into real relief to the community, it is time for the practitioner and the group to go back and reassess the problem and try a new tack. Practitioners working with many individual clients too often do not go back and check with the client months later to see if the workers' compensation award or unlawful detainer action challenge worked in real terms; for a practitioner working with a group, it's easier to get an update from the community.

Letter from Catherine Ruckelshaus, Staff Attorney, Employment Law Center (A Project of the Legal Aid Society of San Francisco), to the author (Sept. 21, 1992) (on file with author).

200. *See supra* text accompanying notes 113-18. For examples of the success of grassroots

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environmental problems have little chance of solving those problems alone; they are too often discounted as insignificant by decision makers. Thus, the formation of a community group for collective action is crucial to success.[201] Finally, the presence of an organized group in a community makes that community a less likely target for siting future undesirable facilities.[202]

Representing groups, although sometimes difficult, can make a lawyer's job easier. Group members can do background research, media work, and community education that a lawyer might otherwise have to do. In this way, members learn new skills while lightening the environmental poverty lawyer's load. And, in some situations, the group's collective action provides the basis for winning a lawsuit.[203]

Group representation is directly related to client empowerment, as the dynamics of the group can serve to empower individual members. And, in the other half of the dialectic, empowered individuals can enhance the group's power and effectiveness. Recognizing the strengths and experiences of each member of the group makes both the group and its members stronger. Group action allows a client to take part in something that he or she would never imagine doing alone; it allows expression of individual desires (such as protection of home or children) in the context of a collective, community-centered campaign.[204] A person's consciousness is raised simply by taking part in the group and in the struggle. This consciousness, in turn, informs future group action.[205]

Depending on the situation, a community group may or may not exist around the issue which the lawyer is being asked to address. Environmental poverty lawyers can often take advantage of existing community groups; for example, a strong tenants' group fighting a slumlord may want to challenge a polluting industry in the neighborhood.[206]

Legal services attorneys must comply with certain federal regulations when providing legal representation to group clients,[207] but these

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groups in a variety of contexts, see Perlman, *supra* note 38.

201. Brion, *supra* note 81, at 497.

202. *See, e.g.,* Fox, *supra* note 121, at 7.

203. *See, e.g., infra* note 255 and accompanying text (describing an instance where a judge overturned approval of incinerator based in part on the volume of group's letters in the administrative record); *infra* text accompanying note 268 (recounting how a group helped an attorney identify similar cases to bring together).

204. *See* Hamilton, *supra* note 38, at 12.

205. *See, e.g., id.*; *infra* notes 250-52 and accompanying text.

206. Many legal services offices have longstanding relationships with poor people's groups and advocates, including tenants' groups, welfare rights organizations, civil rights groups, social service organizations, community development corporations, and immigrants' rights groups.

207. *See, e.g.,* 45 C.F.R. § 1612.10 (1991). According to Alan Houseman, federally-funded legal services offices "can provide legal advice and representation to organizations that are primarily made up of eligible clients. Such groups can be represented to the same extent as an individual eligible client. [The Legal Services Corporation] has also ruled that recipients

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rules are relatively easy to meet. Because they do not receive money from the federal government, environmental lawyers and groups will not face these hurdles to group representation.[208]

If a group does not yet exist, the lawyer can assist in creating one.[209] The first phase in building a group is to identify people who might be experiencing similar problems in the same area. Thus, during an initial intake interview, an attorney might ask questions such as, "Are there other people in your building/workplace/neighborhood who are experiencing the same problem?" Once similarly situated people are identified, the client can be the group's organizer. An attorney might prompt the client, "Can we set up a meeting with all the tenants/workers/neighbors who are interested?" The initial client can ask three to five neighbors or co-workers to a house meeting; those neighbors can invite three to five neighbors to the next series of house meetings, and so on. The client can use the lawyer to entice neighbors to join the group; representation offers them a benefit for affiliating with the group. One way to encourage the formation of a group is to deny representation to persons not members of

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can use LSC funds to represent community based organizations without a membership but which devote their activities to helping eligible clients." Alan W. Houseman, Questions and Answers on Legislative and Administrative Advocacy, Training and Organizing 8 (Oct. 1991) (unpublished outline, on file with author). Where a group is ineligible, an LSC-funded program can often use funds from other, less restrictive public sources, such as states' Interest on Lawyers' Trust Account (IOLTA) programs. *Id.* When this is not possible, the LSC-funded program can represent individual eligible members of the group and seek out private practitioners or a mainstream environmental organization to represent the group. *Id.* at 9.

208. In fact, many environmental lawyers already primarily represent groups. However, group representation, as envisioned by the environmental poverty law model, is not the same as simply having a citizens' group as the named plaintiff in a lawsuit; environmental lawsuits are often brought on behalf of a national environmental group or a local citizens' group. The model suggested here uses group representation as a foundation for building a strong and successful community group, which will be active in many arenas outside of lending its name to legal briefs. Group representation alone, without the accompanying two principles of empowerment and law as a means not as an end, may indeed be disempowering. *See supra* part III.C.2.

209. Because of their historical effectiveness in using this means of client empowerment, legal services attorneys are expressly forbidden from organizing new groups with federal funds. *See* 45 C.F.R. § 1612.10(a) (1991). This prohibition has three parts. Legal services programs with federal funds

> 1. Cannot organize or initiate the formation of any association, federation, labor union, coalition, network, alliance or similar entity.
>
> 2. Cannot use funds to communicate with anyone to advocate that they organize or join an existing organization.
>
> 3. Cannot hold or support a meeting whose principal purpose is to advocate that attendees organize or join an organization.

Alan W. Houseman, Legislative and Administrative Representation and Other Activities Regulated by 45 C.F.R. 1612.10, at 10 (Oct. 1991) (unpublished outline, on file with author).

Because of these regulations, legal services attorneys relying on federal funding must be careful not to do such organizing work or to do it with funding from other sources. Legal services attorneys can, of course, represent groups and provide *legal* assistance to eligible clients who are attempting to form or organize a group. 45 C.F.R. § 1612.10(b) (1991); Houseman, *supra*, at 10; *see also supra* notes 207-08.

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the group.[210] Building and sustaining a community group is essential for the ultimate success of the environmental poverty lawyer's work; the earlier she communicates that to community leaders, the sooner the group will come together.

C. *Law as a Means, Not an End*

> *We must not become dependent or complacent when we have the lawyer in, because the legal strategy may fail.*
>
> —Robin Cannon,
> Concerned Citizens of
> South Central Los Angeles[211]

While our first instinct as lawyers might be to use legal tactics, they may not achieve the results our clients desire. Other tactics may be more useful in generating public pressure on an unresponsive bureaucracy or polluting corporation: tactics such as community organizing, administrative advocacy, or media pressure.[212] Because environmental problems are political problems — some government official is allowing one actor to pollute the neighborhood of another — non-legal tactics often offer the best approach. As is so often the case, there may not even *be* a legal solution to the problem faced by the community.[213] Or, the legal approach may radically disempower a client community and thus should be avoided. Translating a community's problems into legal language may render them meaningless; as Lucie White points out, "Through the process of voicing grievances in terms to which courts can respond, social groups risk stunting their own aspiration."[214] Further, "litigation often abstracts, sanitizes, and transforms human rage and pain and sorrow into a legally appropriate product."[215] Finally, lawsuits take fights into the arena most controlled by the adversary and least controlled by the community.[216] For all of these reasons, environmental poverty lawyers must look to the broadest range of strategies in addressing environmental problems faced by the poor. Environmental poverty lawyers must be as comfortable holding a house meeting or a press conference as going into

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210. *See* Wexler, *supra* note 108, at 1054.

211. Cannon, *supra* note 60.

212. *See* Sanford Lewis, *Local Campaigns and the Law*, *in* FIGHTING TOXICS: A MANUAL FOR PROTECTING YOUR FAMILY, COMMUNITY AND WORKPLACE 234, 237 (Gary Cohen & John O'Connor eds., 1990).

213. *See, e.g.*, White, *supra* note 40, at 750, 766.

214. *Id.* at 757; *see also* López, *supra* note 113, at 1610, 1613 (asserting that a responsible representative needs to do more than translate social situations into traditional legal solutions); Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1, 36 n.77, 37, 54-55 (1984).

215. López, *supra* note 113, at 1710.

216. *See* Cole, *supra* note 36, at 1996; López, *supra* note 113, at 1615 n.22; *supra* notes 113-18 and accompanying text.

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court. Non-legal strategies will assume even more importance in the coming years as the courts continue their conservative swing.[217]

Even if we pursue a legal strategy, we must be aware of its strategic potential for organizing and educating our client communities as well as the general public. And we must be sensitive to a legal strategy's potential to disempower our clients. While much of our focus as lawyers is on the outcome of a struggle — the *product* — some of the most important neighborhood changes happen through the *process* of the struggle itself: creation of a sense of community, education (and self-education) of residents, development of leaders, empowerment of participants, and recognition of common problems. These movements give their participants a voice, often for the first time, in the governing of their lives. Litigation can play a role in that process. As Professor Derrick Bell notes, "Litigation can and should serve lawyer and client as a community-organizing tool, an educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support."[218]

D. *Three Questions for Effective Advocacy*

Activists for social change have long relied on three questions in evaluating prospective strategies and tactics.[219] These three questions parallel the three tenets of environmental poverty law:

1. Will it educate people?
2. Will it build the movement?
3. Will it address the root of the problem, rather than merely a symptom?

Will the strategy educate people? This broad question fits the empowerment model of legal services because education is a key to empowerment. Environmental poverty lawyers must broadly construe their concept of "education" — it should encompass education of a client or client group by the lawyer,[220] education of policymakers or decisionmakers, and education of the public.[221] Further, the educational process should be two-way: a lawyer must not only educate her clients, but also be educated by them.[222] By increasing the community's knowl-

217. Progressive public interest legal groups have increasingly been forced by ideologically unfriendly judges to find answers outside of the courtroom. Jean Field, *Leaving the Court Behind*, CAL. LAWYER, Feb. 1992, at 22.

218. Bell, *supra* note 116, at 513.

219. These questions are adapted from Michael Kazin, *The Peace Movement: Signs of Life . . . And Intelligence?*, SOCIALIST REV., Sept.-Oct. 1987, at 113, 115.

220. White, *supra* note 40, at 765 (Poor people's lawyers "must act more like teachers, turning every moment into an occasion for clients to practice skills and build connections that will enable them to make change.").

221. Cole, *supra* note 36, at 1997; *see, e.g.*, White, *supra* note 40, at 767.

222. López, *supra* note 113, at 1608, 1629.

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edge, and others' knowledge of the community's problems, the community's persuasive power is necessarily strengthened.

Will it build the movement? Group representation is a self-conscious strategy to build local movements by developing local community groups. Community groups and their lawyers should look for tactics that draw new members into a group, rather than alienate potential supporters. An environmental poverty law model which is based on community education and empowerment will necessarily "build the movement," while a narrow legal approach will almost certainly fail to build anything.[223]

Does the strategy address the cause rather than the symptoms of a problem? Environmental issues — like most legal services issues such as housing, health care access and (un)employment — are systemic. The disproportionate burden borne by poor people is a direct result of the system of economic organization in the United States and the corresponding inequities in the distribution of political power. Legal solutions to the environmental problems faced by poor people most often treat only the symptom, the environmental hazard itself. Embracing non-legal approaches, and legal approaches which treat the law as a means rather than an end, can help environmental poverty lawyers attack the root cause of the environmental problems faced by their clients, political and economic powerlessness.

These three questions, when asked regularly and answered honestly, can help an environmental poverty lawyer sort out her strategies and assess her tactics. As any legal services attorney can attest, we need all the help we can get.

This is not easy work. It takes time and hard work to bridge the barriers of race and class (most attorneys come from different class and cultural backgrounds than the poor people for whom they will work).[224] As one African-American woman activist has written about forming multicultural coalitions, "You don't go into coalition because you just *like* it. The only reason you would consider trying to team up with somebody who could possibly kill you, is because that's the only way you can figure you can stay alive."[225] Part of the historical reluctance of environmental lawyers (and poverty lawyers) to practice this type of law may come from fear: of the clients, of themselves, of the unknown, of difficult

223. *See, e.g., infra* notes 241-61 and accompanying text.

224. "[T]he task of interpreting another culture's conventions and values is difficult and often involves painstaking trial and error. . . . To represent well, lawyers must be able and willing to think like insiders in both the client's and the legal world; in a very real way, the lawyer must be bicultural and bilingual." López, *Latinos in the Law*, *supra* note 101, at 3; *see also* Wexler, *supra* note 108, at 1052 (suggesting that poverty lawyers may become frustrated by a lack of client acceptance which results from social, cultural, or psychological differences).

225. Bernice Johnson Reagon, *Coalition Politics: Turning the Century*, *in* HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 356-57 (Barbara Smith ed., 1983).

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political situations, and of the increased work this style of lawyering inevitably entails.[226] And the rewards — "empowerment" of one's clients or recognition in "the community" for one's work — are often ephemeral and not as easily quantified as the "wins" or "losses" to which lawyers are accustomed.

E. Setting Priorities

Legal services offices have not traditionally done "environmental" work. While some legal services offices have taken "environmental" cases, such cases are exceptions to the rule.[227] Legal services organiza-

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226. For more on the difficulties of practicing in an empowering or transformative manner, see López, *supra* note 113.

227. Ralph Abascal, an attorney with California Rural Legal Assistance (CRLA), became perhaps the first environmental poverty lawyer in the country when in 1969 he brought a lawsuit on behalf of farmworkers to ban DDT. CRLA's long history of pesticide involvement stems from that suit. *See supra* note 51.

Legal services offices in every area of the country have brought environmental suits. Based on my research in the field, a selective list of legal services involvement in environmental poverty issues includes:

Pesticides. Like CRLA, which does pesticide work through all of its 17 offices statewide, many legal services programs serving migrant farmworkers have done pesticide work on behalf of their clients. These programs include the Migrant Legal Action Program in Washington, D.C.; Farmworkers Legal Services of North Carolina, Raleigh and Newton Grove, N.C.; Florida Rural Legal Services (statewide); Texas Rural Legal Aid (statewide); Michigan Migrant Legal Assistance, Grand Rapids, Mich.; and Southern Minnesota Legal Services, St. Paul, Minn. The Legal Aid Society of Orange County (California) recently brought a pesticide case in an urban area, representing homeless people trying to stop the spraying of the pesticide malathion in the Los Angeles area. Tulevich v. Voss, 734 F. Supp. 425 (C.D. Cal. 1990). *See generally* Charles Horwitz & Shelley Davis, Protecting Farmworkers from Pesticides: A Legal Services Corporation Attorneys' Pleading and Practice Manual (Dec. 1986) (unpublished manual formulated by the Migrant Legal Action Program, on file with author).

Garbage Dumps. In South Dakota, Dakota Plains Legal Services represented members of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation in a suit against the U.S. Environmental Protection Agency, the Bureau of Indian Affairs, the Indian Health Service, and the tribe. The suit alleged failure to comply with requirements of the Resource Conservation and Recovery Act and the Indian Health Care Facilities Act in the operation of 14 garbage dumps on the reservation. *See* Blue Legs v. EPA, 668 F. Supp. 1329 (D.C.S.D. 1987). CRLA currently represents the group California Indians for Cultural and Environmental Protection in its efforts to block the siting of a garbage dump on the Los Coyotes Reservation in San Diego County.

Strip mining, coal mine safety, black lung disease. Appalachian Research and Defense Fund of Kentucky has focused on coal-related environmental issues affecting poor people for the past 20 years through education, litigation, and legislation. *See* APPALACHIAN RESEARCH & DEFENSE FUND OF KENTUCKY, INC., SUMMARY OF MAJOR CASE ACTIVITIES AND LITIGATION 1987-1989, at 1-21, 112-18 (1990); Phyllis Walker, *Focus On: Floyd County*, BALANCING THE SCALES, Nov. 21, 1991, at 28; Kerry Bader, *Coalfield Lawyers: Appalachian Research & Defense Fund of Kentucky*, ENVTL. POVERTY LAW WORKING GROUP NEWS (Center on Race, Poverty & the Environment, S.F., Cal.), Summer 1992, at 4, 5.

Lead paint abatement. Bronx Legal Services in New York brought a major class action suit to force the clean up of lead contaminated public housing. *See* New York City Coalition to End Lead Poisoning v. Koch, 524 N.Y.S.2d 314 (N.Y. Super. Ct. 1987). Other programs, such as Advocates for Basic Legal Equality in Toledo, Ohio, have brought similar cases. In San Francisco, the San Francisco Neighborhood Legal Assistance Foundation, the National

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tions, faced with the daily crush of housing, health, public benefits, immigration, education, and consumer problems, largely saw environmental work as peripheral to their mission. Those that considered it at all left it to the environmental groups. The "parents" of legal services, Edgar and Jean Cahn, decried the rise of environmental law in the late 1960's as a distraction from doing social justice work, because they felt it was an allocation of public interest law resources to white, middle-class concerns.[228]

My call for legal services attorneys to do environmental work should not be seen as an attempt to displace legal services' traditional priorities, all of which need *increased* attention as the number of poor people in the United States continues to grow.[229] Rather, environmental

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Youth Law Center, the Child Care Law Center, and the CRLA Foundation are active members of a city-wide coalition drafting lead abatement legislation.

Testing for lead poisoning in children. The Legal Aid Society of Alameda County, California, and the National Health Law Project were part of a broad coalition that successfully sued the state of California to ensure that low-income children were tested for lead poisoning. *See* Matthews v. Coye, No. C90-3620 EFL (N.D. Cal. Oct. 17, 1991) (stipulation for settlement and dismissal without prejudice).

Nuclear power issues. Montgomery County Legal Aid of Pennsylvania challenged the Nuclear Regulatory Commission's permitting of a nuclear facility with an insufficient evacuation plan. Knoxville Legal Aid Society, in Tennessee, is working to get a radioactive waste dump in a low-income community cleaned up.

Preservation of open space. San Mateo County Legal Aid in Daly City, California, represented Citizens to Save San Bruno Mountain in an attempt to preserve open space and a low-income community from development.

Water rights. In Honolulu, the Native Hawaiian Legal Corporation has represented Native Hawaiians in a number of cases concerning water rights and land use planning. Carl Christenson, *The Unique Land Use Controversies of Hawaii: Native Hawaiian Legal Corporation*, ENVTL. POVERTY LAW WORKING GROUP NEWS (Center on Race, Poverty & the Environment, S.F., Cal.), Summer 1992, at 8, 9. CRLA has done extensive work on water issues for over 20 years.

Toxic waste incinerators. CRLA's San Francisco, Delano and Fresno offices, and the Western Center on Law and Poverty and the Legal Aid Foundation of Los Angeles, have represented community groups fighting toxic waste incinerators.

Air Pollution. Texas Rural Legal Aid's Kerrville office represented a client who lived downwind from a cedar oil plant and challenged the plant's permits. CRLA's Modesto office unsuccessfully challenged the siting of a tire-burning plant near a low-income community in Stanislaus County, California.

Prisons. The Legal Aid Foundation of Los Angeles represented the community group Mothers of East Los Angeles in their challenge to the construction of a prison in their community. Mary Lee, *Land Use and Planning — The Stakes are High for Poor Neighborhoods*, LEGAL SERVICES SECTION NEWS (Legal Services Section, The State Bar of Cal., S.F., Cal.), Fall 1991, at 7, 8.

Contaminated industrial sites. South Chicago Legal Clinic's Environmental Law Program has worked with Chicago-area community groups to get polluted properties cleaned up. Miles Dolinger, *Fighting Back Through Education*, ENVTL. POVERTY LAW WORKING GROUP NEWS (Center on Race, Poverty & the Environment, S.F., Cal.), Summer 1992, at 5, 6.

228. Cahn & Cahn, *supra* note 2, at 1005. Nothing in this article should be taken as a call to focus further legal or other attention on white, middle-class concerns; the understanding and documentation of pollution's impacts on the poor were underdeveloped in 1970.

229. Peter G. Gosselin, *Poverty Rate in U.S. Hits 8-Year High: Middle-Class Gives Back*

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cases complement the traditional priority areas of housing, health, and labor and are part of a preventive legal services strategy.[230] For example, while lead poisoning is clearly a health issue, it also is known to cause learning disabilities, making it an education issue now and a potential labor issue later; malnutrition in children makes them more susceptible to lead and other toxic poisoning, creating health and environmental problems; lead poisoning is also most common in poorly-maintained, older, deteriorating buildings, making it a housing issue.[231] Garbage or toxic waste incinerators may cause health problems in nearby residents, making them a health issue. The environmental hazards of pesticide poisoning in the fields or coal dust in the mines are also labor issues, and pesticide contamination of wells serving low-income tenants is a housing issue.[232] In the oppressive world of poverty, the boundaries between issues are blurry and overlapping; change in one area often has an impact on other issue areas.

Because of their community-wide nature, environmental issues offer lawyers the unique opportunity to galvanize and organize legal services clients to press for their own rights. Given the realities of access to justice for low-income people, if legal services attorneys do not take environmental cases on their behalf, no one will.[233]

Legal services priorities are set at the local and regional level by client groups and legal services attorneys. The legal services programs around the country that have done environmental cases have taken them at the request of their clients,[234] a clear message that poor people value at least some environmental activism. Programs that turned away environmental cases did so because of lack of expertise or because the cases did not "fit" the program's priorities. Creative legal services workers and clients can help their programs redefine environmental issues as poor peoples' issues. Those legal services workers who encounter obstacles at the priority-setting level can point to the many suits brought by other

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Gains of '80s, BOSTON GLOBE, Sept. 4, 1992, at 1.

230. For a concrete example of an environmental poverty law approach to a housing law problem, see the Rat Day example *infra* notes 262-68 and accompanying text.

231. *See* Nick Freudenberg & Sally Kohn, *The Washington Heights Health Action Project: A New Role for Social Service Workers in Community Organizing*, CATALYST, Nov. 13, 1982, at 7, 9-12.

232. Water contamination has been recognized as a poverty law issue for some years. *See generally* MARGOT J. STEADMAN & ALICE G. HECTOR, WATER LAW: A GROWING DIMENSION OF POVERTY LAW (1983) (handbook for poverty lawyers produced by the National Clearinghouse for Legal Services); 1 E. PHILLIP LEVEEN & LAURA B. KING, TURNING OFF THE TAP ON FEDERAL WATER SUBSIDIES 22-25 (1985) (report on water policy issued by the Natural Resources Defense Council and the California Rural Legal Assistance Foundation).

233. *See supra* notes 149-51 and accompanying text.

234. CRLA Foundation's California Communities at Risk Project, for example, which focuses solely on environmental hazards faced by the poor, was created in response to pressure from clients on the CRLA Board of Directors to do more work on toxics issues. CRLA's priority areas include "Rural Health and Environmental Justice." *See also supra* note 227.

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legal services programs,[235] and to the national network of environmental poverty lawyers.[236]

VI
WHAT DOES IT LOOK LIKE?

The two stories which follow provide a glimpse of "real life" situations which environmental poverty lawyers confront. Telling these stories should help challenge traditional approaches to environmental problems by pointing out both the limitations of traditional lawyering and the possibilities of environmental poverty law.[237] While both stories illustrate the hard work entailed in environmental poverty law, they also represent discrete, replicable situations.[238]

The stories are, obviously, told from the author's perspective. And, in the interests of full disclosure, I was the "young lawyer" in the first story. Other participants in the events described might have different, equally valid stories about those events, stories which might even disagree with the version presented.[239] The story is offered not so much to construct my own version of social reality,[240] but to demonstrate how two different styles of lawyering might "solve" the same legal problems.

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235. *See supra* note 227.

236. The Environmental Poverty Law Working Group, initiated and coordinated by California Rural Legal Assistance and the CRLA Foundation, was formed in 1991 and involves attorneys and legal workers in over 250 legal services programs nationwide. It publishes the quarterly newsletter, *Environmental Poverty Law Working Group News*. The Working Group was formed in part to address another significant hurdle to legal services offices taking on environmental cases: lack of expertise. The Working Group strives to provide local offices with the resources, back-up and litigation support they need to undertake environmental cases.

237. As Critical Race Theorists have written, storytelling is a powerful means of countering prevailing wisdom. *See, e.g.*, López, *supra* note 214, at 31-35; Delgado, *supra* note 125, at 2414-15; Matsuda, *supra* note 61, at 1332.

238. This section should be read with two caveats in mind. First, the stories I tell are merely short episodes — each took place over a two to three week period — in long sagas of community resistance, sagas which may take years to play out fully. While the stories are examples of successful environmental poverty law advocacy, it takes many such small successes to achieve lasting victory. Second, the stories are not an attempt to romanticize this work, but to put forward models replicable by other poor peoples' advocates. I have necessarily glossed over the differential effects of the strategies described on the two communities. In real life, many people felt empowered, some did not, and some felt disempowered. Environmental poverty lawyers must face, analyze, and deal with these impacts. The organizer's three questions are a good starting point. *See supra* note 219 and accompanying text.

239. In fact, several of the participants in the story reviewed earlier drafts of this Article and disagreed with parts of my descriptions and interpretations; their voices helped shape the form the story now takes. *See generally* López, *supra* note 214, at 31-32 (noting that a storyteller will play up or play down certain elements of a story to convince an audience that a particular meaning should be given to the facts).

240. *See* Delgado, *supra* note 125, at 2415.

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A. Public Participation in Kettleman City

Background. Kettleman City is a small, farmworker community located in California's San Joaquin Valley. The community is ninety-five percent Latino, and seventy percent of its 1,100 residents speak Spanish in the home.[241] Most residents work in the agricultural fields that stretch out in three directions from the town. Many of Kettleman City's residents have lived there for years and own their own homes, purchased with low-interest loans from the Farmers Home Administration.

Kettleman City also hosts the largest toxic waste dump west of Louisiana.[242] Established without the community's knowledge or consent in the late 1970's, Chemical Waste Management's (CWM) Kettleman Hills Facility is a Class I toxic waste landfill. Just four miles from town, it may legally accept just about any toxic substance produced.[243]

In 1988, CWM proposed to build a toxic waste incinerator at the dump. A Greenpeace organizer tipped off the Kettleman City community about the proposal and gave residents information on toxic waste incinerators. Feeling that the incinerator would threaten their health, homes, and livelihoods, Kettleman City residents organized a community group, *El Pueblo para el Aire y Agua Limpio* (People for Clean Air and Water), held demonstrations, and pressured their local officials. In 1989, they also secured the legal representation of the California Rural Legal Assistance Foundation (CRLAF).

The young lawyer handling the case — his first — was faced with a dilemma. The Kings County Planning Department, the local agency responsible for granting permits for the project, had issued a dense, tedious, more than 1,000-page Environmental Impact Report (EIR) on the proposed incinerator.[244] The County had refused to translate the EIR into Spanish, despite repeated requests from Kettleman City residents. Kettleman City residents wanted to take part in the EIR process. The lawyer needed comment on the EIR, so that the administrative record would reflect the deficiencies of the document and the process. The lawyer faced a choice: the traditional mode of environmental lawyering or a new environmental poverty law approach.

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241. BUREAU OF THE CENSUS, *supra* note 20, at 13; KINGS COUNTY PLANNING AGENCY, KETTLEMAN CITY AREA GENERAL PLAN 1984-1994, at 11 (1984) (approved by Kings County Planning Commission on June 4, 1984; adopted by Kings County Board of Supervisors on July 3, 1984).

242. COMMISSION FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, *supra* note 8, at 50.

243. *See* CAL. CODE REGS. tit. 23, § 2521 (1990); 1 MCLAREN, REVISED DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT, KETTLEMAN HILLS FACILITY PROPOSED HAZARDOUS WASTE INCINERATOR 11-2 (1990) [hereinafter REVISED DRAFT EIR] (prepared for Kings County Planning Commission).

244. *See* 2 REVISED DRAFT EIR, *supra* note 243.

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Traditional approach. In the traditional model of environmental advocacy, the lawyer reads and analyzes the EIR document, shares parts of it with selected experts, and then writes extensive, technical comments on the EIR on behalf of a client group. These comments are submitted to the agency and form the basis of later lawsuits if the agency does not respond adequately.[245]

Lawyering for social change model. The lawyer attempts to involve and educate the community while addressing the root of the problem: that the County is ignoring and dismissing the needs of Kettleman City residents without fear of repercussions because the residents are not organized.

Environmental poverty law in Kettleman City: How it worked. The lawyer chose the latter strategy. Working with several key leaders in the community, he and a CRLAF community worker held an initial series of three house meetings in Kettleman City. Each meeting was held in a different home, and all were held on the same day.

At a typical meeting, the community leaders would explain the incinerator proposal to eight to ten residents. The lawyer would then describe parts of the EIR and the County's response to the community's requests. The residents would ask questions, which the leaders and the attorney would answer to the best of their abilities. Discussions among the residents would ensue about the incinerator and why it was to be located in Kettleman City. The conversations were not limited simply to the incinerator, however. Residents would tell stories of health symptoms they had experienced (which they blamed on the existing toxic waste dump), of past dealings with County officials, and of other incidents they felt were important. Since the meetings involved almost entirely monolingual Spanish-speakers, the meetings were held in Spanish, with the community worker translating for the lawyer.[246]

At the end of each meeting, the leaders and the attorney would ask each person present to write a letter of comment on the EIR to the Planning Commission. The letters — almost all in Spanish — questioned the Planning Commission about the incinerator, and also asked to have the EIR documents translated so that Kettleman residents could take part in

245. *See* CAL. PUB. RES. CODE § 21177 (West 1984) ("No action may be brought . . . unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person.").

246. The attorney's limited Spanish fluency precluded his dominating — or even, sometimes, taking part in — the conversations. This language barrier emphasized his "outsider" status and proved to be a significant hurdle to developing an empowering relationship for both the attorney and the clients. However, other observers have seen a benefit to a language barrier. As Lucie White found in a similar cross-cultural situation, "This language barrier actually served an essential function; it ensured that villagers would think together about their problems, rather than simply handing them over to a lawyer to be solved." White, *supra* note 40, at 731.

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the process. The meetings were as inclusive as possible: if a person was not literate, he or she would dictate a letter to a more educated Kettleman resident; children were encouraged to write as well. Out of the first three meetings, the community group generated twenty-five letters of comment on the EIR.

At the first meetings, people were asked to hold future meetings in their own homes, with five to eight of their neighbors. The community worker followed up with community leaders to ensure that the meetings continued. Over the course of the following three weeks more house meetings were held, and many more letters were written. When the EIR's public comment period closed, the record contained 162 comments from individuals — 126 of them from Kettleman City residents. More importantly, 119 of the comments — seventy-five percent of all comments by individuals on the EIR — were in Spanish.[247]

Although the results of such organizing are difficult to quantify[248] — except, of course, for the large volume of letters — the letter-writing campaign served several important purposes. It brought Kettleman City residents together to learn about and discuss the incinerator. It allowed community leaders to bring Kettleman City residents up to date on the project. It informed the community of upcoming opportunities for participation, including a hearing before the Planning Commission.[249] It encouraged individuals to take action — writing a letter — and to express themselves both in the house meetings and on paper. It validated residents' experiences with and concerns about the incinerator and the siting process by creating an opportunity to discuss and affirm them. People could collectively share other individual problems, tell their stories,[250] and, through that process, see the commonality of their experiences.[251]

247. 1, 2 McLaren, Final Subsequent Environmental Impact Report, Kettleman Hills Facility Proposed Hazardous Waste Incinerator (1990) (prepared for Kings County Planning Commission) [hereinafter Final EIR]. The number of comments contained in the Final EIR represented comments from more than 10% of Kettleman City's 1100 residents, an impressive number of comments — it was as if 75,000 people in San Francisco commented on a particular project. *Id.*

248. *See* Kalima Rose, *Women Organizing Women: A New Outlook for the '90s*, Folio (KPFA-FM, Berkeley, Cal.), Mar. 1992, at 1, 1.

249. Although it was held more than 40 miles from their homes, more than 200 Kettleman City residents came to the public hearing on the incinerator several months later.

250. As Richard Delgado notes, members of subordinated communities have long used the telling of stories as an "essential tool to their own survival and liberation," both by using them as "means of psychic self-preservation" and as "means of lessening their own subordination." Delgado, *supra* note 125, at 2436. Stories also promote group solidarity: "Storytelling emboldens the hearer, who may have had the same thoughts and experiences the storyteller describes, but hesitated to give them voice. Having heard another express them, he or she realizes, I am not alone." *Id.* at 2437; *see, e.g.*, Cecil Williams, No Hiding Place: Empowerment and Recovery For Our Troubled Communities 56-58 (1992) (discussing the effect of stories of faith and resistance on the new generation at Glide Memorial Church in San Francisco).

251. This process resembled the Highlander schools' more structured format for drawing out peoples own experiences and knowledge. *See supra* note 193 and accompanying text. Lu-

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Lastly, the letter-writing campaign allowed residents to tell their stories to the Planning Commission, to act as "experts" in their own case.[252]

Rather than gathering the residents' stories and translating them into narrow legal points (or even into English), the lawyer sought to facilitate the people of Kettleman City speaking for themselves.[253] By asking others to hold meetings in their homes, the attorney and the community leaders fostered a sense of ownership of the campaign among members of the community. And finally, the letters created a stunning administrative record. The County could no longer claim that Kettleman residents and Spanish-speakers were not interested in the project: more than ten percent of the community had written letters to the Planning Commission. The attorney had helped create what he needed — the administrative record — in a way which fostered community action rather than stifling it.[254]

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cie White, drawing on the works of Paulo Freire, calls this type of approach the "dialogic process of reflection and action," through which subordinated communities can "gradually liberate their consciousness from internalized oppression." White, *supra* note 40, at 761-62.

The process also resembled the "consciousness raising" groups widely used in the feminist movement in the early 1970's, which were a "process of developing an awareness of group political oppression through the sharing of individual experiences." Harris, *On Doing the Right Thing*, *supra* note 104, at 125 n.3; *see also* White, *supra* note 40, at 728 n.120, 760 n.219 (noting the discussion of consciousness raising in feminist literature); CATHERINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 83-105 (1989) (arguing that consciousness raising groups lead women, through their participation, to become conscious of their oppression as common rather than individual); Angela P. Harris, *Categorical Discourse and Dominance Theory*, 5 BERKELEY WOMEN'S L.J. 181, 184-85 (1989-90) (describing MacKinnon's discussion of the use of consciousness raising).

252. The letter-writing campaign was a self-conscious attempt by the lawyer and community leaders to get Kings County decisionmakers to look at sources of "knowledge" outside the traditional "expert" class. This "expert" class is largely supported by its work for industry. It has historically excluded women, people of color and working class people from participation in creating its "knowledge." As Mari Matsuda writes about similar exclusion from the creation of legal "knowledge": "This segregation results in a legal knowledge uninformed by the rich and provocative knowledge of outsiders. . . . A system of legal education that ignores outsiders' perspectives artificially restricts and stultifies the scholarly imagination." Mari J. Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN'S L. J. 1, 2-3 (1988). At Kettleman City, the lawyer and organizers sought to challenge the restricted and stultified imagination of local Kings County decision makers.

In encouraging the people of Kettleman City to tell their stories, the lawyer also sought to empower them, for the very act of telling the stories was an expression of power. *See* Gerald Torres & Kathryn Milun, *Translating* Yonnondio *by Precedent and Evidence: The Mashpee Indian Case*, 1990 DUKE L.J. 625, 627. "[T]he myths and realities of racial domination are contested through countermyths of racial solidarity. The empowering capability of identity politics involves the production of these stories, these counternarratives." Stuart A. Clarke, *Fear of a Black Planet: Race, Identity Politics, and Common Sense*, SOCIALIST REV., July-Dec. 1991, at 37, 55.

253. For the dangers in translating community problems into legal language, see *supra* notes 214-18 and accompanying text.

254. Unfortunately, Kings County chose to respond to each of the Spanish comments in English. *See* FINAL EIR, *supra* note 247. This lack of response was one of several factors that led the community group to sue the County and Chemical Waste Management.

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The letter-writing campaign was an instance of empowering the client using group representation and non-litigation avenues. Ironically, by using tactics other than litigation, the campaign facilitated the litigation that ultimately resulted. The Kings County Board of Supervisors ultimately approved the incinerator proposal, and the environmental poverty lawyer was forced to take the County to Court. The Court overturned the County's approval, in part because of the County's exclusion of Spanish-speakers.[255]

The letter-writing campaign also provided solid answers to the three questions environmental poverty lawyers must ask themselves.[256] It educated people both in the community and in the County government.[257] The campaign built the movement by bringing house meetings into new homes and involving residents who had not participated in the group to that point. Finally, it addressed the root of the problem, by using the EIR public comment process as an organizing focus and forcing the County decision makers to listen to the people of Kettleman City.

By contrast, a traditional approach would have educated Kettleman City residents that they were not intelligent or able enough to take part in the process.[258] It would have reinforced, rather than challenged, what Joel Handler calls the "psychological adaptions of the powerless — fatalism, self-deprecation, apathy, and the internalization of dominant values and beliefs."[259] The traditional approach would not have built the move-

255. "The residents of Kettleman City, almost 40 percent of whom were monolingual in Spanish, expressed continuous and strong interest in participating in the CEQA review process for the incinerator project at the CWM's Kettleman Hills Facility, just four miles from their homes. Their meaningful involvement in the CEQA review process was effectively precluded by the absence of Spanish translation." El Pueblo para el Aire y Agua Limpio v. County of Kings, No. 366045, slip op. at 10 (Cal. Super. Ct. Dec. 30, 1991) (ruling on submitted matter). This part of the ruling was based on the significant and continued attempts by people of Kettleman City to take part in the process, not the least of which was the letter-writing campaign. The judge's decision was also based on technical environmental grounds, suggesting the benefits of integrating traditional environmental cases with community involvement strategies. *Id.*

256. *See supra* notes 219-26 and accompanying text.

257. The tremendous outpouring of letters — *i.e.*, stories — from Kettleman City residents during this campaign challenged the Planning Commission's and the Board of Supervisors' own stories about the people of Kettleman City. Those decision makers "told" two types of stories. First, informally they said that "those Mexicans don't care about anything down there." Second, in their formal voice, County decisionmakers repeatedly told the public, "The EIR process affords full participation by all responsible agencies and interested organizations and individuals." For examples of the formal story, see FINAL EIR, *supra* note 247, at C80-4, C81-4, C82-4, C87-4. As Richard Delgado notes, "The dominant group creates its own stories . . . [that] provide it with a form of shared reality in which its own superior position is seen as natural." Delgado, *supra* note 125, at 2412. The stories told by Kings County decisionmakers were directly challenged by the telling of competing stories by the people of Kettleman City, which showed that the community both cared about the incinerator and was being excluded from the process.

258. *See, e.g.*, Steve Bachmann, *Bachmann & Weltchek: Acorn Law Practice*, 7 LAW & POL'Y 29, 32 (1985).

259. Handler, *supra* note 154, at 542. Handler describes the "culture of silence" that oc-

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ment and would have perpetuated, rather than confronted, the problem of the people of Kettleman City not being heard.[260] A traditional approach would not have highlighted the need for Spanish translation of the EIR, which was so apparent after the campaign. As Señor Auscencio Avila wrote, in Spanish, demanding a Spanish translation of the EIR, "To not do this is to keep the community ignorant of what is going to happen, and to keep the community without any political power, and to suppose that we do not have the mental ability to deal with our own problems."[261]

B. "Rat Day"

Professor Gary Bellow's "Rat Day" story provides a second, and archetypal, example of environmental poverty law. The story is based on Bellow's experiences with the Community Action Agency of the United Planning Organization in Washington, D.C., in 1965.[262] The following fictionalized version takes place in Gotham City, and concerns what at first blush most would consider a housing problem: rats. Some might question its inclusion in an environmental article. However, substandard housing conditions and rat bites are certainly environmental hazards for those subjected to them. Not surprisingly, a study of environmental dangers has found that poor people and people of color bear a disproportionate share of the risk of rat bites.[263]

Background. A young man came into a legal services attorney's office one morning with an eviction notice. The man was a tenant in a large tenement owned by a wealthy downtown banker. The lawyer, considering the standard eviction defense of warranty of habitability, asked about conditions in the apartment; she had seen many clients from the same run-down neighborhood of Gotham City and had an idea of what

curs when dependent people internalize the values of the powerful. *See id.* at 543. John Gaventa found similar patterns in his study of Appalachia, where, in a vicious cycle, powerlessness caused people to withdraw and have even fewer defenses against the values of the powerful. *See* JOHN GAVENTA, POWER AND POWERLESSNESS: QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY 23 (1980). Such quiescence may be even more pronounced in low-income communities that are further degraded or stigmatized by being made dumping grounds for others' toxic wastes. Wright, *supra* note 34, at 787, 790.

260. *See generally* Matsuda, *supra* note 61, at 1388 ("To tell people they cannot express themselves in the way that comes naturally to them is to tell them they cannot speak.").

261. Letter from Auscencio Avila to Charles Gardner, Kings County Planning Commission (Apr. 21, 1990), *in* FINAL EIR, *supra* note 247, at C-35 ("[Al] no hacer esto es mantener la comunidad en la ignorancia de lo que ocurre en la ciudad esto mantiene a la comunidad sin poder politico y hacer suponer que no tenemos la capacidad mental para enfocar nuestros problemas.").

262. Bellow, who took part in Rat Days, tells this story to his classes. I have embellished this version. I am appreciative of Professor Bellow both for originally teaching me the story, and for subsequently discussing it for this Article.

263. BERRY ET AL., *supra* note 9, at 563, 567 (showing that risk of rat bites in Chicago is distributed inequitably by income and race).

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the housing stock was like. The client described poor plumbing and heat, broken windows, and lousy maintenance, but complained most loudly about the rats — rats that ate his food, scampered across his bed at night, and that had recently bitten a small baby down the hall. The tenant said that his apartment probably would be fit to live in, except for the rats.

The lawyer had two choices. The first was the traditional legal services response in housing cases; the second was a response developed from a social justice perspective.

Traditional approach. The lawyer represents the tenant in housing court, arguing warranty of habitability. If the judge is sympathetic, the tenant wins and gets to stay in his rat-infested apartment. If not, the tenant is evicted. In either case, the quality of the housing stock and the level of tenant activity remain the same.

Lawyering for social change approach. The lawyer seeks to address the root of the problem: the landlord is not maintaining the building and the tenants do not appear organized enough to do anything about the landlord's inaction.

Environmental poverty law and Rat Day: How it worked. Perceiving the rat problem as an organizing tool, the lawyer asked more questions about the little girl who was recently bitten by a rat. The lawyer also tried to determine how many other tenants were experiencing a rat problem. She worked with the tenant to call a small meeting of the other residents living on the tenant's hall. The meeting was set up in the tenant's apartment on an evening after work.[264] The client made a simple flyer — "Come meet with a lawyer about what we can do about the RATS" — and the lawyer copied it for him on the office machine. The client distributed the flyer to other residents on his hallway.

About half the people who lived on the hall showed up for the meeting. Nearly all of them complained of rats — rats eating their bread, getting in their clothes drawers, walking up to and over babies left unattended. The tenants reported finding rat droppings everywhere in their apartments. They agreed that something needed to be done. Most also agreed to contact three other tenants each, and to encourage them to come to a building-wide meeting the following evening.

At the meeting the next night, the group from the original tenant's hall outlined the plan they had developed and solicited other tenants' input and approval. The plan went forward. A delegation of tenants went to the city's Office of Housing and filed a formal complaint about the housing conditions in their building. Within two weeks, an inspector

264. Note that the attorney took simple steps toward empowerment such as determining culturally appropriate and logistically convenient times for meetings, as well as holding the meeting on turf both familiar and comfortable to the participants. For the importance of such small steps to challenging a model of lawyering based on domination of clients by an attorney, see López, *supra* note 113, at 1609-10, 1616, 1618-19.

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from the city inspected the building. She found numerous violations, wrote up a $100 citation against the landlord, and left. When the tenants contacted her again to report that there had been no change in the conditions since her inspection, she informed them that the city had done as much as it could or would do.

Finding the city unresponsive, the tenants met again and adopted a backup plan. A group of tenants, accompanied by the lawyer for moral support, met with an exterminator, asking for help. The group said that it could not afford extermination right then, but thought that the landlord would pay once the extermination was done; if not, the tenants promised to pay a small amount each month until the exterminator's bill was paid.[265] But, the tenants pointed out, if their Rat Day plan worked, the exterminator would have work all up and down their street for months to come. The exterminator agreed to fumigate the building without being paid up front.

On the appointed day, all the tenants in the building moved their food and children out of their apartments so the exterminator could go to work. The lawyer had worked with a group of the tenants to teach them how to write a press release,[266] which was then copied on the legal services office copy machine.[267] A committee of tenants had informed the press that there would be a press conference at the apartment building early in the evening, with "great visuals." They held a block party in the street in front of their building, inviting residents of neighboring apartments to join them in the festivities. They danced to music as the exterminator went to work.

At the end of the day, the exterminator finished up and let the tenants back into the building. The organizing group handed out plastic gloves to the tenants, who went into the building and started bringing out the dead rats they found in their apartments: rats which died under their beds, in their kitchens, and in their bathrooms. A crowd of neighbors from nearby apartments began to gather as the first tenants came out with rats and deposited them in a pile by the curb. The press arrived and television cameras lapped up the image of tenant after tenant carrying out rats to be placed on the growing pile. The leadership of the tenants' group began their press conference. They charged that the landlord had failed to maintain the building and failed to control the rats. They recounted their experiences with the unresponsive city bureaucracy. They

265. In the real life situation upon which this story is based, the Community Action Agency paid the exterminator's fee as a litigation expense.

266. Improving the personal and collective skills of the client group is a key part of empowerment. *See supra* notes 180-82 and accompanying text.

267. Federally-funded legal services offices can use Legal Services Corporation funds to distribute literature, produced by client organizations, to other clients or other advocates. Houseman, *supra* note 207, at 9.

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told how they were forced to bargain for the extermination and how they could not afford to pay for it. They gave out the landlord's home and office addresses, as well as phone numbers for city officials (including the mayor), to interested reporters. As tenants kept bringing rats out of the building, the pile in front of the spokespeople grew by the minute.

Their videotapes full of shots of gruesome dead rats and empowered tenants, the television reporters rushed downtown to find the landlord. They got good footage of him trying to block the television cameras from filming him in his expensive downtown office, while his co-workers and banking partners wondered about the commotion. Other television reporters, not as organized as the first crews, missed the landlord at the office and had to settle for shots of him slamming the door in their faces at his posh apartment uptown. The evening news was full of shots of rats, with cutaways to the biggest rat, the landlord, yelling at the television camera operators. The next day's papers told the same story: "Slumlord Called Rat by Fed-Up Tenants." The exterminator's bill was paid in full by the landlord, who agreed to meet with the tenants' committee about other problems in the building. The mayor's office, feeling the public pressure, pushed the Office of Housing to increase, for a time, its enforcement work.

In the lawyering for social change scenario, the lawyer may still have to go to court to keep her client in the apartment complex — we can not give up our traditional roles even as we expand our advocacy to be more effective — but at least some of the tenant's problems are *solved* by the encounter, rather than simply maintained. The tenants of the building are becoming organized and have already won an impressive victory from the landlord.[268] Also, through the collective process, other eviction cases from the same building are likely to emerge, allowing the lawyer to bundle individual cases into what legal services attorneys call "focused service work." This kind of advocacy enables a judge to see the pattern of poor conditions in many of the units in the same building. Again, through using nonlegal means, the attorney has improved her chance of success in the legal arena.

The Rat Day story embodies the three strategies of environmental poverty law: empowerment of a client community, group representation, and non-legal alternatives to problem solving. It also meets the organizer's three criteria: educating people, building the local movement, and structurally addressing the problem at hand.

268. Such victories help break the cycle of powerlessness and fatalism present in subordinated communities and encourage future action. GAVENTA, *supra* note 259, at 25; *see also* White, *supra* note 40, at 752 (discussing how the repeated experience of domination leads to apathy, which is then used to legitimate the regime in power).

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CONCLUSION

This Article has attempted to describe the urgent need, and great potential, for environmental poverty law. First, the Article pointed out the disproportionate burden of pollution borne by poor people and examined the historical responses of both the environmental and poverty law communities. Finding much in environmental law which fails to work for poor people, and much promise in certain poverty law strategies, the Article laid out a model of practice based on client empowerment, group representation, and a narrow role for legal tools. This model draws on the strengths of legal services advocacy and at the same time offers environmental attorneys a new approach to environmental problems. Two case studies of successful environmental poverty law advocacy served to spark discussion and to present replicable models for practice.

My agenda, at its broadest level, is to make the work of environmental and poverty lawyers more responsive to those communities bearing the brunt of environmental dangers. This agenda also seeks to make lawyers' work a meaningful contribution to the movement for environmental and social justice in the United States. Environmental poverty law is not easy work. And, at the same time, it is the only type of environmental legal work which will truly save the planet. It is up to us.

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