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SECOND GENERATION ENVIRONMENTAL JUSTICE: CHALLENGES AND OPPORTUNITIES

Rachel D. Godsil

When it entered the national conversation, “environmental racism” seemed akin to the clear discrimination that animated the early civil rights movement. Like Jim Crow laws and the web of practices that segregated and legally disempowered people of color prior to the 1960s, the decisions of polluters and governmental bodies to site polluting facilities (particularly toxic waste facilities) in people of color communities lent themselves to clear condemnations and calls for equality.

In the 1990s, the environmental justice movement achieved many important victories. Grass-roots organizations throughout the nation were able to stave off new polluters and, as importantly, to push for clean-up of existing contamination. Regional EJ organizations were formed and important environmental justice centers were founded. The growing political power of the EJ movement led to changes at the federal and state levels as well. Most notably, President Clinton signed executive order 12898 in 1994, and in 1997, the Environmental Protection Agency (EPA) established a National Environmental Justice Advisory Council. States throughout the country were forced to confront the issue of environmental justice and a number adopted environmental justice laws.

The EJ movement’s successes are akin to the civil rights movement’s successes in tearing down Jim Crow and rendering unconstitutional de jure discrimination. Corporate polluters and state agencies are no longer able to assume that communities of color will quietly accede to the siting of new polluting facilities or to live amidst waste and contamination.

Among other techniques, including protest and political organizing, both movements used law successfully to obtain important results. However, activists in the EJ movement were highly conscious of the criticisms levied against the first wave civil rights movement -- that its strategies were dictated by lawyers to the detriment of community members. From its inception, then, EJ has sought to ensure that strategies and goals were determined by communities speaking for themselves rather than lawyers or other professionals.

This strategy has been very successful when iconic EJ battles – polluters from the outside seeking to locate in communities of color or massive waste that has been ignored by government regulators – are being fought. In these instances – and there are many still to fight -- lawyers clearly should play a supporting role to the front line warriors who actually live in the communities at issue. Similarly, many of the action items outlined by Robert Bullard in his classic work *Dumping in Dixie* have yet to be achieved – including the legal standard under which claims of discrimination are considered. Lawyers will be crucial to this effort as well.

However, in my talk, I would like to explore the role of lawyers when battle lines are not quite as clear. If a community is fractured in its response to a particular proposed use, how should EJ lawyers determine how to intercede? Most EJ lawyers are public interest lawyers who work without fees. Accordingly, the lawyer has discretion to decide who to represent – and therefore, which side in a battle to choose. My question is whether EJ has developed clear enough principles that it will be apparent which side of a given community is representing the EJ perspective. I will discuss three case studies to

consider these issues: one in the past, the Harlem River Rail Yard dispute, and two ongoing: the Brooklyn Atlantic Yard project, and post-Katrina New Orleans.