

# Foreword

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A cornerstone of the environmental justice movement is to allow residents of communities to speak for themselves. To understand the themes explored in the transcripts and articles in this special issue, it is important to first understand the history of this movement, a portion of which is summarized in the following excerpt from the upcoming Third Edition of *Environmental Justice, Law, Policy, & Regulation*.

On September 15, 1982, 6,000 truckloads of soil contaminated with polychlorinated biphenyls (PCBs) began rolling into a landfill in the town of Afton, North Carolina. Residents of Afton, located in Warren County, 50 miles north of Raleigh-Durham, objected to the disposal of this highly toxic material in their community. Organizing themselves into the Warren County Citizens Concerned about PCBs, the concerned citizens took to the streets to make their voices heard, many laying down in front of trucks to stop the dumping of toxic waste. Within a couple of weeks, more than 414 protesters had been arrested. The protest attracted the attention and support of a broad coalition of national civil rights leaders, elected officials, environmental activists, and labor leaders. Among national leaders converging on Warren County was the Reverend Benjamin Chavis, arrested on the third day of the protests. Reverend Chavis, who had worked alongside Dr. Martin Luther King, Jr., in the 1960s, and would later lead the NAACP, could see what was happening in Warren County. The town of Afton was 84% African American. Warren County had the highest percentage of blacks in the state and was one of the poorest counties in the state.<sup>1</sup> Toxic waste spread out across 14 counties in North Carolina was being hauled and dumped in Afton for reasons that Reverend Chavis termed “environmental racism.” The Warren County protests would not stop the dumping at Afton, but did give rise to an enduring movement we know today as environmental justice.

After Warren County, communities of color alarmed conventional environmental organizations, regulators, and industry leaders with further allegations of environmental racism. These charges reflected long-standing frustration on the part of such communities, and their view that people of

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1. ROBERT BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 30 (3d ed. 2000).

color systematically receive disproportionately greater environmental risk while white communities systematically receive better environmental protection. Across the country, communities of color began to challenge the siting of hazardous waste facilities, landfills, industrial activities, and other risk-producing land practices within their community. The roots of the environmental justice movement lie in diverse political projects—the civil rights movement, the grassroots anti-toxics movement of the 1980s, organizing efforts of Native Americans and labor, and, to a lesser extent, the traditional environmental movement.<sup>2</sup>

“Environmental Justice” soon came to mean more than skewed distributional consequences of environmental burdens to communities of color. Becoming multi-issue and multi-racial in scope, the movement began to address disparities borne by the poor as well as people of color, acknowledging the substantial overlap between the two demographic categories. Concerns about regulatory processes surfaced as well. Often, the communities most impacted by environmentally risky activities had been excluded from important decision-making proceedings, sometimes intentionally so and sometimes because of a lack of resources, specialized knowledge, and other structural impediments. Initially, environmental justice activists used direct action such as demonstrations as the primary means to raise public awareness of the issue.

Largely in response to this early activism, several investigations and studies were undertaken which lent support to charges of environmental injustice. For example, a 1983 report by the U.S. General Accounting Office found that in the Environmental Protection Agency (EPA) Region IV, three of four major offsite hazardous waste facilities in the Southeast were located in predominantly African American communities. In 1987, a national study by the United Church of Christ Commission for Racial Justice found a positive correlation between racial minorities and proximity to commercial hazardous waste facilities and uncontrolled waste sites. Significantly, the study found that race was a more statistically significant variable than income. This early activism also culminated in an extraordinary gathering of grassroots activists at the First National People of Color Environmental Leadership Summit in Washington, D.C. on October 24–27, 1991, where the Principles of Environmental Justice were adopted.<sup>3</sup>

... After some progress on environmental justice under the Clinton Administration, the Bush Administration took a different approach,

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2. See generally LUKE COLE & SHEILA FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT (2001) (providing a history of the environmental justice movement and the numerous community-led initiatives involved).

3. Delegates to the First National People of Color Environmental Leadership Summit held on Oct. 24–27, 1991, in Washington D.C., drafted and adopted seventeen principles of Environmental Justice. See generally EJNET, *Principles of Environmental Justice* (Apr. 6, 1996), <https://www.ejnet.org/ej/principles.html> (stating the seventeen principles of Environmental Justice). Since adopted, “the Principles have served as a defining document for the growing grassroots movement for environmental justice.” Nat. Res. Def. Council, *The Principles of Environmental Justice (EJ)* (Mar. 16, 2016), <https://www.nrdc.org/resources/principles-environmental-justice-ej>.

redefining “environmental justice” to mean environmental protection for everyone, and de-emphasizing the need to focus special attention on minority and low-income populations. As a result, and because of the perception that the Administration generally was hostile to environmental justice claims, advocates largely shifted their attention to state and local governments to remedy environmental disparities. Reinvigorated efforts to address environmental justice returned to the federal government with the Obama Administration—and went underground again with the Trump Administration, which attempted to eliminate the EPA Office of Environmental Justice through slashed budgets.<sup>4</sup>

. . . Nevertheless, significant “police power” remains at the state and local level of government [to further environmental justice] . . . .

. . . States have responded in a variety of ways to the challenges raised by the environmental justice movement. While a handful of states have not taken any action and others have taken only modest steps, some have been fairly aggressive . . . .

. . . In California, although clouded by the state’s controversial greenhouse gas cap-and-trade program, California agencies have begun adopting environmental justice policies and implementation plans. In 2018, the California State Lands Commission convened an Environmental Justice Working Group to develop recommendations for the California State Lands Commission update of its environmental justice policy. The resulting policy incorporates the following goals: promote equity; increase awareness of the Commission’s work; increase and support equitable public access; identify and engage with impacted communities; analyze proposed projects to reduce impacts to and increase benefits for environmental justice communities; honor the importance of tribes’ ancestral homelands; build trust and form relationships with local communities, tribal communities and environmental justice communities and groups; support cleaner industry; advance climate equity; increase public participation; and greater agency accountability.<sup>5</sup> In 2019, the California Public Utilities adopted, subject to review and update every two years, an “Environmental and Social Justice Action Plan” with the goal of expanding public inclusion in Commission decision-making and improving services to targeted communities across California. California state agencies have also established environmental justice advisory panels, for instance the Air Resources Board’s Environmental Justice Advisory Committee (AB 32) and the Energy Commission and Public Utilities Commission’s Disadvantaged Communities Advisory Group (SB 350). The California Attorney General’s office has also established a Bureau of Environmental Justice within the Environment Section at the California Department of Justice to oversee, investigate and enforce the law to protect

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4. See Uma Outka & Elizabeth Kronk Warner, *Reversing Course on Environmental Justice Under the Trump Administration*, 54 WAKE FOREST L. REV. 393, 400–01 (2019).

5. Calif. State Lands Comm’n, *Environmental Justice Policy* 2–6 (2018), <https://www.slc.ca.gov/wp-content/uploads/2018/11/EJPolicy.pdf>.

people and communities that endure a disproportionate share of environmental pollution and public health hazards.<sup>6</sup>

*“So . . . why have and why do government agencies make bad decisions?”*

Professor Alan Ramo<sup>7</sup> always asked his student clinicians this question. The question implicitly raises another: How can we achieve environmental justice? It is important to note that government agencies, environmental organizations, and community-based organizations each have varying definitions of environmental justice. However, in order to achieve environmental justice, we must first consider why government agencies make decisions that disproportionately impact low-income communities and communities of color. The history of the environmental justice movement has shown us that political power plays a significant role in creating environmental (in)justice. From the Warren County protests to more recent efforts to force government agencies to consider environmental justice, community organizing has been—and continues to be—critical to the success of any environmental justice campaign.

On February 8, 2019, Berkeley Law’s Students for Economic and Environmental Justice (SEEJ), along with the Thelton E. Henderson Center for Social Justice and the Center for Law, Energy & the Environment, organized a day-long symposium, *Ground-Truthing Injustice*, which sought to contribute to the environmental justice movement. As detailed in the event description,

**Ground-Truthing Injustice** is focused around the hope that, as the Trump Administration actively works to discredit the movement, actors in the environmental justice movement and members of environmental justice communities can shed light on the truth. This one-day symposium is designed to reach social justice oriented undergraduate and graduate students who consider environmental justice best left to environmentalists, and low-income students and students of color who have not considered environmental justice issues in their communities. It is also intended to provide direction for students to figure out how they can contribute to the movement in this moment and educate us on how we can be more effective allies to environmental justice communities.<sup>8</sup>

Speakers at the symposium included: **Mustafa Santiago Ali** of the Hip Hop Caucus; **Ms. Margaret Gordon**, co-director of the West Oakland Environmental Indicators Project; **Rey León**, mayor of Huron, and founder and

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6. Excerpted from NADIA AHMAD, REBECCA BRATSPIES, EILEEN GAUNA, ROGER LIN, CATHERINE A. O’NEILL, CLIFFORD RECHTSCHAFFEN, & CLIFF VILLA, *ENVIRONMENTAL JUSTICE: LAW, POLICY & REGULATION* (3d ed., forthcoming 2020).

7. Professor Alan Ramo is an Emeritus Dean and Professor of Golden Gate University School of Law in San Francisco, where he directed its environmental law program and for many years its Environmental Law and Justice Clinic. Ramo was the legal director for Communities for a Better Environment before joining the Golden Gate faculty and founding the school’s environmental justice clinic. See Golden Gate University, *Faculty Alan Ramo* (last visited Jan. 30, 2020), <http://www.ggu.edu/shared-content/faculty/bio/alan-ramo.gsp>.

8. Berkeley Law: University of California, *Ground-Truthing Injustice SEEJ Environmental Leadership Summit* (last visited Jan. 30, 2020), <https://www.law.berkeley.edu/event/ground-truthing-injustice-seej-environmental-leadership-summit/>.

executive director of the San Joaquin Valley Latino Environmental Advancement and Policy Project; **Irene Vasquez** of the Southern Sierra Miwuk Tribe and master of natural resources science candidate at Humboldt State University; **Ruby Acevedo**, attorney at Public Advocates; **Tyrone Hayes**, professor of integrative biology at the University of California, Berkeley; **Mike Wilson**, national director of occupational and environmental health at the BlueGreen Alliance; **Miya Yoshitani**, executive director of the Asian Pacific Environmental Network; **Yana Garcia**, assistant secretary for environmental justice and tribal affairs at the California Environmental Protection Agency; **Angela Park**, founder of Mission Critical; **Eddie Ahn**, executive director at Brightline Defense; **Subin DeVar**, director of the Community Renewable Energy Program at Sustainable Economies Law Center; **Melissa Lin Perrella**, senior director of the Environmental Justice, Healthy People & Thriving Communities Program at Natural Resources Defense Council; **Shalini Swaroop**, general counsel at Marin Clean Energy; **Mad Stano**, program director at the California Environmental Justice Alliance; **Angela Johnson Meszaros**, managing attorney of Community-Based Initiatives at Earthjustice; **Camille Pannu**, director of the Aoki Water Justice Clinic at University of California, Davis School of Law; and **Geneva Thompson**, associate general counsel for the Yurok Tribe. These voices represented ongoing environmental justice campaigns across the country. Discussion topics ranged from worker safety at the nearby Chevron Richmond Refinery to the roadblocks to a zero emissions future. One speaker even made a direct call to action to support the efforts of the Southern Sierra Miwuk Tribe to gain federal recognition.

Almost thirty years ago in this very journal, Luke Cole raised “Three Questions for Effective Advocacy,” taking a cue from activists for social change.<sup>9</sup> The questions are: *Will the strategy educate people? Will it build the movement? Does the strategy address the cause rather than the symptoms of a problem?*<sup>10</sup>

Following Professor Helen Kang’s lead in applying these three questions, I believe this symposium was effective advocacy.<sup>11</sup> The student organizers worked diligently to ensure that the conference met the Principles of Environmental Justice, and they succeeded. Not only did the conference provide a platform to accomplish what its organizers had sought to “ground-truth,” but it also provided a forum for environmental justice advocacy itself.

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9. Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619, 668 (1992).

10. *See id.*

11. I owe the idea for this foreword to Professor Helen Kang, who also applied these three questions to litigation in a 2009 article. Helen H. Kang, *Pursuing Environmental Justice: Obstacles and Opportunities - Lessons from the Field*, 31 *WASH. U. J. L. & POL’Y* 121, 140 (2009).

Symposium attendees and participants educated one another, discussed various campaigns, and shared tactics and opportunities for environmental justice activism. The audience included residents of Richmond (a refinery town only twenty minutes down the road from Berkeley Law) and other advocates who had worked tirelessly on some of the campaigns being discussed. Several speakers alluded to the campaign to place facility-wide pollution limits on refineries in the Bay Area, and I saw the familiar faces of residents, government officials, and advocates who had dedicated their efforts to that campaign. This symposium also had broader meaning for the law school community and is not the first time that students have successfully advocated with similar events. The photograph below represents the growing calls by student activists for a greater focus on environmental justice in environmental curricula across university campuses.



Last, but certainly not least, the symposium also provided a platform for participants to speak for themselves, which is what this Special Edition also does by providing transcripts of the panels. By fostering group dialogue alongside Angela Park's discussion of equity, diversity, and inclusion, the symposium shone a spotlight on the racial and socioeconomic root causes of the environmental injustices that advocates sought to address.

There is still a tremendous amount of work to be done in the environmental justice movement, but I am encouraged by the efforts of SEEJ, the faculty that supported them, and this special issue of *Ecology Law Quarterly* to keep furthering the dialogue and storytelling that is integral to the environmental justice movement.