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PUBLIC HAZARD, PERSONAL PERIL: THE IMPACT OF NON-  
GOVERNMENTAL ORGANIZATIONS IN THE  
ENVIRONMENTAL JUSTICE MOVEMENT

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## I. INTRODUCTION

Many of us who came of age in the 1960s may wonder if the promise of economic and social equality, which seemed eminent, quelled our passion for social justice. The great movements of the 20<sup>th</sup> century—the Labor Movement,<sup>1</sup> Civil Rights Movement,<sup>2</sup> the second wave of the Women’s Movement<sup>3</sup> and the Anti-Vietnam Movement<sup>4</sup>—demonstrated how collective action could change how people live.<sup>5</sup> These movements were the catalysts for changes in public policy and law.<sup>6</sup> Since the quiet death of social movements, no earnest and sustained national effort to change the lives of the poor and downtrodden, the unemployed or the uninsured exists. The new face of political activism is either narrowly constructed and localized, or broadly constructed and diffuse.<sup>7</sup> Examples of the former are the protests of students in California and Washington against state initiatives to eliminate affirmative action.<sup>8</sup> An example of the latter is the anti-globalization movement.<sup>9</sup> Action for social justice is not dead, but it has

<sup>1</sup> See generally Steven Brill, *The Teamsters* (1978) (discussing the power held by Teamsters); Richard D. Kahlenberg, *Tough Liberal: Albert Shanker and the Battles Over Schools, Unions, Race, and Democracy* (2007); Cynthia Taylor, A. Philip Randolph: *The Religious Journey of an African American Labor Leader* (2006).

<sup>2</sup> See generally Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (2d ed. 1998). Tarrow asserts that social movements can establish connections that citizens can utilize long after the movement is over. *Id.* at 8.

<sup>3</sup> See generally Mario Diani, *Social Movements: An Introduction* (2d ed. 2006); Tarrow, *supra* note 2.

<sup>4</sup> See generally Paul Burstein & William Freudenburg, *Changing Public Policy: The Impact of Public Opinion, Antiwar Demonstrations, and War Costs on Senate Voting on Vietnam War Motions*, 84 Am. J. Soc. 99 (1978).

<sup>5</sup> See Carol Swain, *Black Faces, Black Interests: The Representation of African Americans in Congress* (1993) (suggesting that political parties are crucial variables in the fulfillment of Black interests); Tarrow, *supra* note 2, at 2; Kenneth T. Andrews, *The Impacts of Social Movements on the Political Process: The Civil Rights Movement and Black Electoral Politics in Mississippi*, 62 Am. Soc. R. 800, 815–16 (1997) (offering compelling evidence that movements have an effect on the ability to mobilize the voting public and increase the number of Black representatives). See generally Doug McAdam, *Political Processes and the Development of Black Insurgency, 1930–70* (2d ed. 1982).

<sup>6</sup> See Tarrow, *supra* note 2, at 2.

<sup>7</sup> I am using “diffuse” here to mean expansion—an expansion of issues on which a movement is built. In social movement literature, it is sometimes used to explain the “spin-offs” of other movements from a major movement. One example of a diffuse movement is the “Occupy” movement. The “Occupy Movement”, once started on Wall Street as a sit-in protest, is now a movement with overall goals of social, economic and environmental justice. See *About*, Occupy.com, <http://www.occupy.com/about> (last visited Mar. 17, 2015).

<sup>8</sup> See Rebecca Trounson, *UCLA Students Protest Race and Gender Policies*, L.A. Times (Nov. 3, 2006), <http://articles.latimes.com/2006/nov/03/local/me-ucla3>; Ashley Walls, *‘Black Lives Matter’ UW Walkout Draws Hundreds*, Seattle Globalist (Feb. 25, 2015), <http://www.seattleglobalist.com/2015/02/25/uw-walkout-black-lives-matter/34256>.

<sup>9</sup> Jeffrey M. Ayers, *Framing Collection Action Against Neo-Liberalism: The Case of the “Anti-Globalization” Movement*, 10 J. World-Sys. Res. 11, 11 (2004).

transformed by shifting political incentives and values.<sup>10</sup> The problem with current social movement activity is that the goal is often too broad to be addressed by institutions or too narrow to gain widespread attention and appeal.

The Environmental Justice Movement (EJM) is a conglomerate of smaller community movements that are concerned about toxins that affect the health of their communities.<sup>11</sup> Large non-governmental organizations (NGOs) that address environmental justice globally or nationally do not necessarily give advice, resources or structure to the community struggles that occur in urban landscapes.<sup>12</sup> Grassroots leaders of the smaller movements could gain more traction if they partnered with non-governmental organizations. NGOs may be based in one nation with international branches or restricted to one or more nation-states.<sup>13</sup> New alliances are forming between community-based organizations and organizations with national and global resources and expertise.<sup>14</sup> These alliances are not necessarily ideal for all grassroots organizers, because some do not want to relinquish ownership of their causes.<sup>15</sup> However, established environmental organizations may offer the necessary tools to smaller groups to mount environmental justice campaigns.<sup>16</sup>

The Sierra Club is one of the most prominent environmental NGOs to ally with nine environmental justice groups across the United States.<sup>17</sup> While the sites named by the Sierra Club do not comprise the universe of environmental justice activity, they may, in the future, expand to more crucial sites as the environmental justice movement itself is transformed by current interests in sustainability and a human rights-based approach to environmental issues. The Sierra Club has partnerships in Arizona, Central Appalachia, Memphis, Tennessee, Louisiana, Minnesota, Puerto Rico, Texas and

<sup>10</sup> See generally *id.*

<sup>11</sup> See *Environmental Justice: Basic Information*, EPA, <http://www.epa.gov/environmentaljustice/basics/ejbackground.html> (last updated May 24, 2012).

<sup>12</sup> See, e.g., *About EJM*, Env'tl. Justice Found., <http://www.ejfoundation.org/about>.

<sup>13</sup> Sujay Ghosh, *NGOs as Political Institutions*, 44 *J. Asian & Afr. Stud.* 475, 480 (2009).

<sup>14</sup> See *id.*

<sup>15</sup> See generally Neil Sutherland, Christopher Land & Stephen Bohm, *Anti-Leaders(hip) in Social Movement Organizations*, 21 *Org.* 759 (2014).

<sup>16</sup> Established NGOs typically have a website, (Sierra Club, Greenpeace, Center for Health, Environment and Justice), along with experience and a national or international public profile that facilitates agenda-setting and represents the interests of the smaller organizations. See, e.g., Sierra Club, <http://www.sierraclub.org> (last visited March 18, 2015).

<sup>17</sup> See *id.* (claiming to be the largest grassroots organization in the nation).

Washington, D.C.<sup>18</sup> They do not have partnerships in a some of the longstanding and serious cases in environmental justice, such as Houston, Texas, Anniston, Alabama and Richmond, California, just to name a few.

This article argues that the local emphasis of what I call micro-movements that form the larger Environmental Justice Movement could gain more traction from relationships with Non-Governmental Organizations. Such partnerships are emerging on a national level;<sup>19</sup> however, since the localized movements communicate with, but are not partners with, national organizations such as the National Black Environmental Network,<sup>20</sup> it is unclear how such partnerships add value to the activities of local groups. Moreover, some partnerships are forged for the organization of a specific event such as a conference or working group study<sup>21</sup>

Part II of this article discusses an overview of the history of the Environmental Justice Movement and legal remedies available for environmental justice claims. Part III addresses the partnerships between non-governmental organizations and grassroots movements focusing specifically on one community's struggle with Velsicol Chemical Corporation. Finally, Part VI discusses the obstacles grassroots movement leaders face in trying to change policy and protect their community and how NGOs can be helpful to these efforts.

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<sup>18</sup> See *Environmental Justice and Community Partnerships*, Sierra Club, <http://vault.sierraclub.org/ej/> (last visited Mar. 18, 2015).

<sup>19</sup> See e.g., Manny Amadi, *The Future is Bright for Corporate - NGO Partnerships Despite Challenges*, *The Guardian* (Sept. 13, 2013), <http://www.theguardian.com/sustainable-business/future-bright-corporate-ngo-partnerships-challenges>.

<sup>20</sup> *What We Do*, Nat'l Black Env'tl. Justice Network, <http://www.nbejn.org/what.html#> (last visited Mar. 30, 2015); *Who We Are*, Nat'l Black Env'tl. Justice Network, <http://www.nbejn.org/who.html#> (last visited Mar. 30, 2015).

<sup>21</sup> An example of the coordinating function of environmental meetings are the three Environmental Justice Summits. Only the last two had sponsors. The first Summit, held in 1991, was coordinated without the assistance of various networks. The 2002 Summit was coordinated by the Director of the Deep South Center for Environmental Justice, Dr. Beverly Wright. The Deep South Center is housed at Xavier University in New Orleans. Other sponsors were the Environmental Protection Agency, the National Black Environmental Justice Agency, and various other regional organizations. The third Environmental Justice Summit was held in North Carolina in 2014, and was sponsored by the aforementioned organizations as well as the North Carolina Environmental Justice Network. See Press Release, Deep S. Ctr. for Env'tl. Justice, *Environmental Justice Summit Draws Over 1,200 Delegates* (Jun. 13, 2009), available at <http://www.dscej.org/index.php/joomla-overview/122-environmental-justice-summit-draws-over-1200-delegates>; *The 2014 EJ Summit*, N.C. Env'tl. Justice Network, <https://ncejn.wordpress.com/ej-summit/> (last visited Mar. 30, 2015).

## II. THE ENVIRONMENTAL JUSTICE MOVEMENT AND LEGAL REMEDIES

Today, The Environmental Justice Movement is a movement in abeyance. Local activists continue to fight in their communities,<sup>22</sup> but the national momentum the movement achieved in the late 1980s and early 1990s has waned. There have been successes at the local level,<sup>23</sup> and the movement has used successful local environmental justice campaigns in communities like Chester, Pennsylvania and Houston, Texas to draw attention to the threat of toxins.<sup>24</sup> The reality that environmental justice issues affect a broad cross-section of citizens speaks to its potential political and policy-making power. Race and gender equity, global exploitation of lands and toxic poisoning,<sup>25</sup> urban sprawl<sup>26</sup> and chronic illnesses among children<sup>27</sup> are all environmental justice issues that affect many across the United States.

### A. A Brief History of the Environmental Justice Movement

The inception of the Environmental Justice Movement's has perhaps shaped the character of the movement today. There are two different perspectives on its origins. For some, the first recollection of the movement is the Love Canal incident of the late 1970s. Love Canal is a neighborhood in the City of Niagara Falls, New York. Several chemical plants had been using a landfill located along the Niagara river for a number of years. The Love Canal neighborhood is made up of single-family homes and low-income apartments. The chemical plants dumped nearly 42 million pounds of toxic chemicals at the landfill, and the chemicals later surfaced in the yards of the residents.<sup>28</sup>

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<sup>22</sup> See e.g., Bryan K. Bullock, *Reviving the Fight Against Environmental Racism*, Black Agenda Report (Mar. 11, 2015), <http://www.blackagenda.com/node/4362>.

<sup>23</sup> See Robert Bullard, *Confronting Environmental Racism: Voices from the Grassroots* 7–8 (1999).

<sup>24</sup> Luke W. Cole & Sheila R. Foster, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* 34, 125 (2001); Mike Ewall, *Environmental Racism in Chester* (June 23, 1999) available at [http://www.ejnet.org/chester/ewall\\_article.html](http://www.ejnet.org/chester/ewall_article.html).

<sup>25</sup> Bullard, *supra* note 23, at 7.

<sup>26</sup> See *Measuring Sprawl 2014*, Smart Growth Am. (Apr. 2014), available at <http://www.smartgrowthamerica.org/measuring-sprawl>.

<sup>27</sup> See generally Tracey J. Woodruff, et al., *Trends in Environmental Related Childhood Illnesses*, 113 *Pediatrics* 1133, 1133 (2004) (discussing childhood diseases that seem to be worsened or caused by exposure to environmental agents).

<sup>28</sup> See Beverly Paigen, *Controversy at Love Canal*, 12 *Hastings Ctr. Report* 29 (June 1982); Eckardt C. Beck, *The Love Canal Tragedy*, *EPA Journal* (Jan. 1979), available at <http://www2.epa.gov/aboutepa/love-canal-tragedy>; Ctr. for Health & Envtl. Justice, *History: Chronology, Key Dates and Events at Love Canal*, Boston Univ. Sch. of Pub. Health, <http://www.bu.edu/lovecanal/canal/date.html>.

Lois Gibbs, a resident of the community, became the leader of a grass-roots movement to clean up Love Canal and protect the children from the toxic waste seeping from the playground the neighborhood elementary school.<sup>29</sup> In 1978 and 1980, President Jimmy Carter declared Love Canal an environmental emergency area,<sup>30</sup> which led to the evacuation of 950 families from the neighborhood.<sup>31</sup> In 1988, after actions to clean up and contain the contamination in the area, the Environmental Protection Agency declared certain sections of Love Canal habitable for residents and other parts suitable for commercial use.<sup>32</sup> Now called “Black Creek Village,” the Love Canal neighborhood is home to more than 260 families.<sup>33</sup>

Some scholarly sources and websites categorize the movement to clean up Love Canal as part of the environmental movement,<sup>34</sup> distinguishing it from the Environmental Justice Movement. Although the Love Canal incident was a case of toxic exposure, the community and the activists were mostly Whites.<sup>35</sup> However, Love Canal does qualify as an environmental justice issue, even though Lois Gibbs did not originally frame it as such.<sup>36</sup> At the time, she framed her cause as the fight of a typical all-American middle-class neighborhood to get government to move residents away from a contaminated community.<sup>37</sup> Now that the language and conceptual framework of environmental justice is in place, Gibbs has changed her tune and uses that language to frame the Love Canal struggle as an environmental justice issue.<sup>38</sup> The problem with placing Love Canal within that movement is that scholars define environmental justice in part by the environmental inequality suffered by minority communities.<sup>39</sup> When one exam-

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<sup>29</sup> Ctr. for Health & Env'tl. Justice, *supra* note 28.

<sup>30</sup> See Paigen, *supra* note 28, at 29; Beck, *supra* note 28; Ctr. for Health & Env'tl. Justice, *supra* note 28.

<sup>31</sup> *Site Description: Love Canal, New York*, EPA, <http://www.epa.gov/Region2/superfund/npl/0201290c.pdf> (last updated Feb. 7, 2012).

<sup>32</sup> *Id.*

<sup>33</sup> Carolyn Thompson, *Lawsuits: Love Canal Still Oozes 35 Years Later*, USA Today (Nov. 2, 2013), <http://www.usatoday.com/story/money/business/2013/11/02/suits-claim-love-canal-still-oozing-35-years-later/3384259/>.

<sup>34</sup> See Alexander Nazaryan, *Love Hurts*, Newsweek (Oct. 17, 2013), <http://www.newsweek.com/2013/10/18/love-hurts-243690.html>. See also Ctr. for Health & Env'tl. Justice, *supra* note 28.

<sup>35</sup> Elizabeth D. Blum, *Love Canal Revisited: Race, Class, and Gender in Environmental Activism*, Univ. Press of Kan., <http://www.kansaspress.ku.edu/blulov.html> (last visited Mar. 30, 2015).

<sup>36</sup> *Environmental Justice: Basic Information*, EPA, <http://epa.gov/environmentaljustice/basics/index.html>.

<sup>37</sup> Gord Perks, *The Housewife Who Went to Washington*, 26 *Alternatives J.* 24, 24 (2000).

<sup>38</sup> Gibbs is the founder and Executive Director of the Center for Health, Environment and Justice. The site explicitly identifies environmental justice as one of their primary missions. See *Mission*, Ctr. for Health, Env't & Justice, <http://chej.org/about/mission/>.

<sup>39</sup> Cole & Foster, *supra* note 24, at 10; *Environmental Justice: Basic Information*, *supra* note 36.



ines the Love Canal movement in these terms, it simply cannot mark the beginning of the environmental justice movement.

Robert Bullard places the beginning of a national Environmental Justice Movement in Warren County, North Carolina in 1982. Drivers for the Ward Transformer Company, one of the largest transformer repair companies in the United States, were looking for an inexpensive way to dispose of toxic waste; they decided to spray more than 200 miles of North Carolina roadsides with oil containing polychlorinated biphenyls (PCB's).<sup>40</sup> This toxic chemical is not only a carcinogen, but it also causes birth defects and liver and skin disorders.<sup>41</sup> A few months after the discovery of the dumping, state officials recommended that the tainted soil be buried in a landfill in Warren County.<sup>42</sup>

Warren County is home to about 17,265 residents, approximately fifty-four percent of which are African American.<sup>43</sup> Nearly one fifth of those black residents have less than a ninth grade education, and nearly as many failed to graduate from high school. More than half of the black residents' educations stop at high school. The same is true for the white residents.<sup>44</sup>

In response to the decision to locate the landfill in Warren County, residents formed an organization, Warren County Citizens Concerned about PCB's, and began to fight the decision to ship the contaminated soil to their community.<sup>45</sup> What followed was a series of demonstrations and the police arrested more than 350 people.<sup>46</sup> For thirteen days, protestors conducted sit-ins and blocked trucks from entering and leaving the landfill site.<sup>47</sup> Black residents struggled, unsuccessfully, to prevent the toxic dumping of

<sup>40</sup> Bullard, *supra* note 23, at 29–30; Cole & Foster, *supra* note 24, at 19.

<sup>41</sup> *Polychlorinated Biphenyls: Health Effects of PCBs*, EPA, <http://www.epa.gov/wastes/hazard/tsd/pcbs/pubs/effects.htm>.

<sup>42</sup> *Carolians Angry Over PCB Landfill*, N.Y. Times (Aug. 11, 1982), <http://www.nytimes.com/1982/08/11/us/carolians-angry-over-pcb-landfill.html>.

<sup>43</sup> *Selected Social Characteristics in the United States*, U.S. Census, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_SF4\\_DP02&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_SF4_DP02&prodType=table) (last visited Mar. 17, 2015); *U.S. Census Quick Facts: Warren County, North Carolina*, U.S. Census, <http://quickfacts.census.gov/qfd/states/37/37185.htm> (last visited Mar. 20, 2015).

<sup>44</sup> *Selected Social Characteristics in the United States*, *supra* note 43.

<sup>45</sup> Exchange Project, Real People-Real Stories, Seeking Environmental Justice 3 (2006), available at <http://www.exchangeproject.unc.edu/documents/pdf/real-people/Afton%20long%20story%2007-0426%20for%20web.pdf>.

<sup>46</sup> *Congressman and 120 Arrested at PCB Protest*, N.Y. Times (Sept. 28, 1982), <http://www.nytimes.com/1982/09/28/us/around-the-nation-congressman-and-120-arrested-at-pcb-protest.html>.

<sup>47</sup> *Id.*; see also *History: Warren County, North Carolina: The Beginning of the Environmental Justice Movement*, Env'tl. Justice in N.C., [http://sites.duke.edu/docst110s\\_01\\_s2011\\_sb211/what-is-environmental-justice/history/](http://sites.duke.edu/docst110s_01_s2011_sb211/what-is-environmental-justice/history/) (last visited Mar. 30, 2015).

yards of contaminated soil in Warren County.<sup>48</sup> However, according to Bullard, the residents attracted the attention of national civil rights leaders and black elected officials among other elites.<sup>49</sup> For Bullard, this marked the beginning of an organized collective action effort in the Environmental Justice Movement.

Luke Cole classifies the Love Canal struggle as the beginning of the Anti-Toxics Movement, and the Warren County struggle as the foundation, not necessarily the beginning, of the Environmental Justice Movement.<sup>50</sup> It is evident that the movement has its roots in the labor and civil rights movements as well as the environmental movement.<sup>51</sup> In trying to determine when the language and attending ideological formation emerged, the Warren County landfill materializes as the focal point of this struggle.

Since the Warren County incident, there have been many other environmental justice battles around the country. Citizens of Chester, Pennsylvania, a mostly black community, formed Chester Residents Concerned about Quality of Life (CRCQL) to combat toxins from various waste disposal, waste treatment and incinerators in their community.<sup>52</sup> Meanwhile, residents of Kennedy Heights, a black community in Houston, Texas, won their environmental justice lawsuit against the Chevron Corporation for failing to disclose the presence of three oil pits underneath the housing development.<sup>53</sup> They argued that these pits, dug and filled in the 1920's, were the source of higher than normal levels of cancer, brain tumors, lupus and birth defects among community members.<sup>54</sup>

Another well-known environmental justice case is the fight between the people of a Louisiana parish and Shintech over the location of a chemical plant in their community.<sup>55</sup> Shintech, a subsidiary of Shin-etsu Chemical of Japan, manufactures polyvinyl chloride (PVC).<sup>56</sup> The process of manufac-

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<sup>48</sup> *History: Warren County, North Carolina: The Beginning of the Environmental Justice Movement*, *supra* note 47.

<sup>49</sup> Bullard, *supra* note 23, at 40.

<sup>50</sup> Cole & Foster, *supra* note 24, at 19, 22.

<sup>51</sup> See Eddy F. Carder, *The American Environmental Justice Movement*, Internet Encyclopedia of Philosophy, <http://www.iep.utm.edu/enviro-j/> (last visited Mar. 18, 2015).

<sup>52</sup> Sheila Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and Transformative Politics of the Environmental Justice Movement*, 86 Calif. L. Rev. 775, 811 (1998).

<sup>53</sup> See Case Study: Houston v. Chevron, Env'tl. Justice Workshop 1, 4 (June, 2013), available at <http://sites.duke.edu/ejworkshop/files/2013/06/Houston-v-Chevron-Case-Study-final.pdf>.

<sup>54</sup> *Id.* at 1-3.

<sup>55</sup> See Jim Yardley, *Proposed Plant Raises Ire in Louisiana; Test Case: Does Plastics Plant Planned Near Black Neighborhood Violate Clinton's Edict Against "Environmental Racism"?*, Atlanta J. & Const., Sept. 1, 1997, at 08A.

<sup>56</sup> *About Us*, Shintech, <http://www.shintechinc.com/aboutus.html> (last visited Mar. 18, 2015).

turing PVC causes the plant to emit toxic air contaminants and carcinogens.<sup>57</sup> Environmental justice advocates refer to Convent, Louisiana as “cancer alley;” it is a strip of land between the cities of Baton Rouge and New Orleans home to numerous chemical plants that emit carcinogenic substances.<sup>58</sup> The people in these communities believe that they contract cancer at higher rates than those who live further away from these plants; but these claims are difficult to prove because of lack of records and the difficulty of measuring the difference of cancer rates in small populations.<sup>59</sup>

St. James Citizens for Jobs and the Environment in Convent, Louisiana, an activist group, joined forces with the Tulane University Law Clinic<sup>60</sup> and filed a lawsuit to prevent the Shintech plant from locating in Convent.<sup>61</sup> Nevertheless, the plant located in Plaquemine, Louisiana, just up the road from Convent.<sup>62</sup> The St. James group continues to fight for safer standards for chemical and industrial plants and more services for the residents and employees of these plants.<sup>63</sup> However, the efforts of the St. James group and other organizations are an uphill battle, even while presidential administrations that are sympathetic to their cause are in office.<sup>64</sup> The fight is even tougher in times of more conservative presidential administrations that do not prioritize issues of environmental justice.<sup>65</sup>

## B. Legal Remedies to Environmental Justice Claims

In 1994, President Clinton issued Executive Order No.12898, Federal Actions to Address Environmental Justice in Minority Populations and

<sup>57</sup> See Yardley, *supra* note 55, at 08A.

<sup>58</sup> See Dorceta E. Taylor, *Cancer Alley, Louisiana*, Pollution Issues, <http://www.pollutionissues.com/BrCo/Cancer-Alley-Louisiana.html> (last visited Mar. 18, 2015).

<sup>59</sup> Christopher H. Foreman, Jr., *The Clash of Purposes: Environmental Justice and Risk Assessment*, Brookings, <http://www.brookings.edu/research/articles/1998/03/20environment-foreman> (last visited March 30, 2015); see also *Cancer Clusters*, Ctrs. for Disease Control, <http://www.cdc.gov/nceh/clusters> (last updated Dec. 18, 2013).

<sup>60</sup> Jordan Palmeri, *The Louisiana Environment*, Tulane Env'tl. Law Clinic, <http://www.tulane.edu/~bfl eury/envirobio/enviroweb/LawClinic/LawClinic.html> (last updated Jan. 7, 2000).

<sup>61</sup> *Environmental Justice Case Study: Shintech PVC Plant in Convent, LA*, <http://www.umich.edu/~snre492/shin.html> (last visited Mar. 30, 2015).

<sup>62</sup> *Id.*

<sup>63</sup> See e.g. Matt Scallan, *Excitement and Environmental Concerns in St. James Parish Over Planned \$3.4 Billion Nucor Plant*, Times-Picayune (Sept. 15, 2010, 10:16 PM) [http://www.nola.com/business/index.ssf/2010/09/excitement\\_and\\_environmental\\_c.html](http://www.nola.com/business/index.ssf/2010/09/excitement_and_environmental_c.html)

<sup>64</sup> Jonathan H. Adler, *The Conservative Record on Environmental Policy*, 39 *New Atlantis* 133, 137 (2013).

<sup>65</sup> *Id.* at 134–35.

Low-Income Populations.<sup>66</sup> The order requires Federal agencies to establish procedures to address issues of environmental justice. This was a significant moment for the Environmental Justice Movement because the president recognized environmental justice as an issue warranting state involvement. The order also requires agencies to establish policies that include public participation and provide avenues for airing disputes.<sup>67</sup>

In the courtroom, litigants argued for the application of the Equal Protection Clause of the Fourteenth Amendment in past cases involving environmental justice.<sup>68</sup> However, in *Washington v. Davis*, the Supreme Court held that plaintiffs must establish discriminatory intent in order to prevail on equal protection grounds.<sup>69</sup> Title VI of the Civil Rights Act of 1964, particularly sections 601 and 602, eliminates the need (at least formally) to establish discriminatory intent, and has become the current basis for contesting environmental inequity.<sup>70</sup> Section 601 prohibits discrimination under any program or activity receiving federal financial assistance. Section 602 requires agencies to develop and carry out regulations that effectively sustain the directive in Section 601.<sup>71</sup> The EPA has adopted a disparate impact standard in its Title VI regulations that specifically addresses discriminatory effects, unless these discriminatory effects are justified and an alternative, which would *not* have disparate impact, is unavailable.<sup>72</sup>

However, courts have stuck to a “discriminatory intent” standard in most environmental justice cases and basically ignored the concept of discriminatory effects.<sup>73</sup> For example, when black residents of Pollocksville, North Carolina challenged the location of a wastewater treatment plant on land settled by freed slaves in 1870, the U.S. Court of Appeals for the Fourth Circuit ruled that the town and the Department of Agriculture “provided substantial legitimate nondiscriminatory reasons for its site decision.”<sup>74</sup> They also ruled that alternatives were given due consideration, and none

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<sup>66</sup> Exec. Order No. 12,898, 32 C.F.R. 651.17 (1994).

<sup>67</sup> *Id.*

<sup>68</sup> Brian Faerstein, *Resurrecting Equal Protection Challenges to Environmental Inequity: A Deliberatively Indifferent Optimistic Approach*, 7 U. Pa. J. Const. L. 561, 563–64 (2004).

<sup>69</sup> *Washington v. Davis*, 426 U.S. 229, 239 (1976).

<sup>70</sup> U.S. Comm’n on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice* 29 (2003).

<sup>71</sup> Civil Rights Act of 1964, Pub. L. No. 88-352, § 601, 78 Stat. 241, 252.

<sup>72</sup> Civil Rights Act of 1964, § 2000d.

<sup>73</sup> *Process for Revising EPA’s Interim Guidance for Investigating Title VI*, EPA, <http://www.epa.gov/oc/r/reviguid2.htm> (last visited February 4, 2015).

<sup>74</sup> *Goshen Road Envtl. Action Team v. U.S. Dep’t of Agric.*, No. 98-2102, 1999 U.S. App. LEXIS 6135, \*7 (4th Cir. Apr. 6, 1999).

were found.<sup>75</sup> This elucidates the requirement that an intent to discriminate must accompany disparate impact.

The United States Army and the Defense Logistics Agency might claim that while the outcomes have not been ideal, as a matter of security for the nation their choices were limited.

There are other legal challenges for environmental justice cases. For example, any damage to a community may span a number of years. Assessing how, when and where manufacturers buried toxic wastes, and the process by which they might have contaminated the community, is difficult. Further, there are other sources of contaminants in the community that offer an alternative source for the health problems perceived by the community. Finally, risk assessments for toxic substances as well as health assessments usually find no evidence of the claims made by community members.<sup>76</sup>

These challenges have always present, but the burdens now placed upon environmental justice claims are complex and procedural.<sup>77</sup> Furthermore, the EJM generally considers the legal path to remedies to be fraught with difficulties and unable to solve the root problem of inequity in the distribution of toxins.<sup>78</sup> If legal remedies are littered with obstacles and sometimes slow, one way to gain more traction is to broaden the appeal of smaller community struggles by identifying with larger non-governmental organizations with the same goals. Environmental organizations such as The Sierra Club, and organizations with a focus on animal rights, such as Greenpeace, could be a bridge for highly localized movements to garner the resources that are needed to resolve their grievances.

### III. NON-GOVERNMENTAL ORGANIZATIONS AND ENVIRONMENTAL JUSTICE

In the early days of the movement, scholars and journalists referred to the movement as the Environmental Racism Movement.<sup>79</sup> The movement now has several tentacles including sustainability, food production and access and global standards for environmental health.<sup>80</sup>

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<sup>75</sup> *Id.* at 8–9.

<sup>76</sup> See generally Steve Kroll-Smith & H. Hugh Floyd, *Bodies in Protest: Environmental Illness and the Struggle Over Medical Knowledge* (1997).

<sup>77</sup> *Id.*

<sup>78</sup> See Simin Davoudi & Elizabeth Brooks, Global Urban Research Unit at Newcastle Univ., *Environmental Justice and the City: Full Report*, 15–17 (2012).

<sup>79</sup> See J.R. Sterba, *Environmental Justice without Environmental Racism*, 14 *Global Bioethics* 20, 26–27 (2001).

<sup>80</sup> See Div. for Sustainable Dev., U.N. Dep't of Econ. & Soc. Affairs, *Prototype Global Sustainable Development Report 20–22* (2014), available at <http://sustainabledevelopment.un.org/globalsdreport/>.

The threat of greenhouse gases made it to the international political agenda at the Earth Summit meeting in Rio de Janeiro in 1992; this is a good example of how NGOs influenced environmental advocacy.<sup>81</sup> NGOs have targeted Nike, third-world debt and World Bank policies for reform.<sup>82</sup> According to the Union of International Associations, a nonprofit clearing-house for information on NGOs, these organizations numbered 20,063 in 1989, and now number 43,958.<sup>83</sup>

NGOs concerned with environmental preservation, such as the Sierra Club, the Audubon Society, and Greenpeace, were slow to participate in the Environmental Justice Movement.<sup>84</sup> A possible explanation for this slow participation is that the Environmental Justice Movement emphasizes the unequal distribution of toxins among minority groups.<sup>85</sup> Because activists and scholars once routinely referred to the EJM as the Environmental Racism Movement, coalition building with groups concerned with the preservation of green spaces may have been awkward<sup>86</sup> Not all minority groups share memories of the oppression and pain of Jim Crow and the Civil Rights Movement. The Environmental Justice Movement includes Latinos/Latinas and First Nations People in the United States. This article argues that approaching local problems from a global perspective, with allies from every organization with the environment as their main agenda, the Environmental Justice Movement could remove the shackles of the discriminatory intent standard in cases involving the exposure to toxins and the disparate impact” standard. The heart of the environmental justice movement is in urban spaces,<sup>87</sup> and the movement must build momentum in the face of urban trends, as well as navigate complicated city governments and multiple political actors. The good news is that the construction of “community”

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<sup>81</sup> There were 2,400 representatives from NGOs at the Earth Summit. *The Earth Summit*, U.N. Conference on Env't & Dev., <http://www.un.org/geninfo/bp/enviro.html>, (last visited Feb. 4, 2015).

<sup>82</sup> *Citizens Groups: The Non-Governmental Order*, *The Economist*, Dec. 9, 1999, at 20.

<sup>83</sup> *Historical Overview of Number of International Organizations by Type*, Union of Int'l Ass'ns. (2013), [http://www.uia.org/sites/uia.org/files/misc\\_pdfs/stats/Historical\\_overview\\_of\\_number\\_of\\_international\\_organizations\\_by\\_type\\_1909-2013.pdf](http://www.uia.org/sites/uia.org/files/misc_pdfs/stats/Historical_overview_of_number_of_international_organizations_by_type_1909-2013.pdf).

<sup>84</sup> *A Brief History of Environmental Justice*, Janus Inst. for Justice (Apr. 21, 2013), <http://www.janusjustice.org/ej-blog/a-brief-history-of-environmental-justice> (explaining that environmental justice emerged as a concept in the early 1980s and main stream environmental organizations did not get involved until the 1990s).

<sup>85</sup> See J. Tom Boer, et al., *Is There Environmental Racism? The Demographics of Hazardous Waste in Los Angeles County*, 78 *Soc. Sci. Q.* 793, 793–95 (1997); Pamela Davidson & Douglas L. Anderton, *Demographics of Dumping II: A National Environmental Equity Survey and the Distribution of Hazardous Materials Handlers*, 37 *Demography* 461 (2000) (explaining that RCRA-governed facilities are more likely to be sited in working-class neighborhoods with lower percentages of minority residents but also that RCRA facilities are close to neighborhoods with a higher percentage of minority residents).

<sup>86</sup> See Boer, et al., *supra* note 85; Davidson & Anderton, *supra* note 106 at 461.

<sup>87</sup> See Bullard, *supra* note 23, at 7.

is dynamic, and presents opportunities for building support that may not have existed only a few years ago.<sup>88</sup>

Opportunities to build support present themselves as citizens shift from a nation-centered political perspective to a local-global one, epitomized in the slogan “Think globally, act locally.”<sup>89</sup> This new perspective is issue-centered and has the potential to bring people together without the need for geographic proximity.<sup>90</sup> Via online networks, communities can discover commonalities in struggles to preserve green spaces and fight toxins.<sup>91</sup> Another way communities can connect is through NGOs that have expanded their political reach in the past ten years.<sup>92</sup> The World Bank defines NGOs as “private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development.”<sup>93</sup>

One early case of partnership between an environmental justice community and a NGO took place in Memphis, Tennessee. This case, which pitted the Concerned Citizens of Crump against the Velsicol Corporation, demonstrates how small community movements can ensure that their story is told in the surrounding larger communities.

#### A. The Velsicol Chemical Corporation Case

In 1986 the Velsicol Chemical Corporation constructed a plant in Memphis, Tennessee to produce pesticides, flame-retardants, paints and adhesives.<sup>94</sup> The plant manufactured heptachlor and chlordane for export, two chemical pesticides that were banned in the United States in 1988, until 1997.<sup>95</sup> Velsicol also manufactured a product called Tris; a carcinogenic

<sup>88</sup> See, e.g., Jeffrey Juris, *A New Way of Doing Politics? Global Justice Movements and the Cultural Logic of Networking*, 38 Soc. & Anthropology Res. 127 (2007) (discussing the mode of political engagement among global justice grassroots activists in Barcelona and the networks in which they travel, specifically their network based technological infrastructure and organizational forms).

<sup>89</sup> Major Garrett, *Think Globally, Act Locally*, Nat'l Journal (Feb. 4, 2014), <http://www.nationaljournal.com/all-powers/think-globally-act-locally-20140506>.

<sup>90</sup> See e.g., Juris, *supra* note 88.

<sup>91</sup> See e.g., Juris, *supra* note 88.

<sup>92</sup> See *About Us*, Netroots Nation, <http://www.netrootsnation.org/about/> (last visited Feb. 23, 2015).

<sup>93</sup> *Non-Governmental Organizations Guide*, Duke Univ. Libraries (Dec. 1, 2014), <http://docs.lib.duke.edu/u/igo/guides/ngo>.

<sup>94</sup> Chickasaw Grp. of the Tenn. Chapter, Sierra Club, *Industrial Storm Water Pollution in Cypress Creek (2003)*, available at [http://vault.sierraclub.org/watersentinels/tennessee/cypress\\_creek.pdf](http://vault.sierraclub.org/watersentinels/tennessee/cypress_creek.pdf).

<sup>95</sup> *The Crump Community, Memphis, Concerned Citizens versus Industry*, Community J., Fall 2001, at 16–19, available at [http://www.communitysolution.org/pdfs/archive/2001\\_10\\_.PDF](http://www.communitysolution.org/pdfs/archive/2001_10_.PDF); Tom Charlier, *Velsicol Plant, the Epicenter for Wide-ranging Environmental Problems, Facing Demolition*, The

fire retardant banned from use in production of children's sleepwear in 1977.<sup>96</sup> The products and by-products of these pesticides release dioxin, a known carcinogen, along with other toxins, into the air through the incinerator.<sup>97</sup> The people of the Douglass community, the area surrounding Velsicol, were concerned about the incinerator at Velsicol, and called for it to close.<sup>98</sup> There are numerous chemical plants in the 38108 zip code, which means that there are several sources of pollutants. Figure 1 depicts the points of hazardous waste sites in the area. Residents can provide anecdotal evidence of illnesses suffered by neighbors living near the plant.

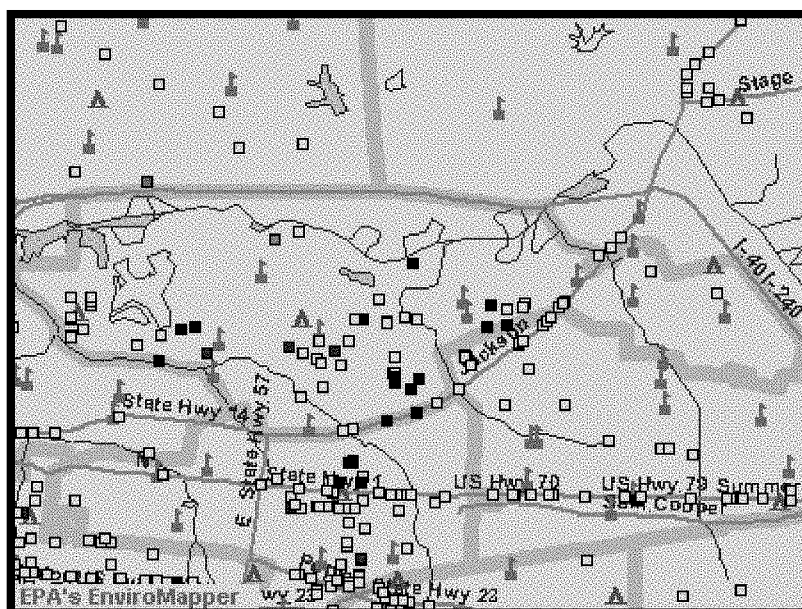


Figure 1. Hazardous Waste Sites Near Memphis Velsicol Corporation, North Memphis Crump Community<sup>99</sup>

Commercial Appeal (July 13, 2013, 9:54 PM), <http://www.commercialappeal.com/news/local-news/velsicol-plant-the-epicenter-for-wide-ranging>; Program on Breast Cancer & Envtl. Risk Factors, *Pesticides and Breast Cancer Risk: Heptachlor*, Cornell Univ., <http://envirocancer.cornell.edu/factsheet/Pesticide/fs12.heptachlor.cfm> (last visited Apr. 1, 2015).

<sup>96</sup> Laurel Druley, *Still Dumping After All These Years*, MotherJones (Nov. 11, 1997, 4:00 AM), <http://www.motherjones.com/politics/1997/11/still-dumping-after-all-these-years>.

<sup>97</sup> *The Crump Community, Memphis, Concerned Citizens versus Industry*, *supra* note 95.

<sup>98</sup> *The Crump Community, Memphis, Concerned Citizens versus Industry*, *supra* note 95.

<sup>99</sup> *EnviroMapper for Envirofacts*, EPA, <http://www.epa.gov/emefdata/em4ef.home> (last visited Feb. 23, 2015) (originally containing a list of locations in Figure 1, retrieved in January 2002, however the EnviroMapper tool that was available from 2000 to 2005 is no longer available on the Environmental Protection Agency website).



However, considering how many chemical plants are in the area, it proves difficult to draw a causal link from the Velsicol plant activities to the illnesses present among residents.<sup>100</sup>

Balinda Moore was the grassroots leader of the Concerned Citizens Crump Neighborhood Association.<sup>101</sup> A large woman, Moore returned to her family home after living and working in Los Angeles, California for over twenty years. When she returned, she noticed that as she drove from church on Sundays and stopped at a railroad crossing in the community, noxious fumes would waft into the car, making her nauseous and ill. Moore soon discovered that near this railroad crossing was a field filled with what she thought were empty metal drums was a toxic waste dumpsite. Most of the toxins stored in the drums were from Velsicol. The field soon became a Superfund site, and residents discovered that the barrels were leaking into the ground and sometimes emitting the fumes that affected all of the residents. These barrels awakened Moore to the problems of toxic waste and pollution that surrounded her community in 1992.

Moore said she became an environmental justice activist because of her belief in the spiritual connection between God, humankind, and nature. Her ministry and spiritual beliefs compelled her to strive for the preservation and restoration of the land on which she grew up. She fondly recalls how she and her siblings would go down to the Wolf River, not far from her home, and look through the clear water at the fish below. They would pick muscadine grapes from the vines growing near the river and her mother would make jelly from them. She said she is certain no muscadine vines can survive on the banks of the Wolf River today. She blames Velsicol. When she began advocating for the closure of the Velsicol incinerator, the corporation sponsored public meetings to answer questions from the community. A Canadian public relations firm conducted some of the meetings. Too often public meetings are used as a form of social control rather than an attempt to hear grievances from citizens and offer substantive responses.

Moore spoke about the legitimacy of Velsicol sponsored public meetings. She did not believe that the professionals hired to manage the meetings gave people adequate opportunities to speak. She also thought that Velsicol was not forthcoming with the community. Moore recalled a public meeting during which she reflects on and recognizes the workings of intersectional oppression:

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<sup>100</sup> See Keith W. Lapeze, *Recovery for Increased Risk of Disease in Louisiana*, 58 La. L. Rev. 249, 252–53 (1997) (discussing the difficulty in proving causation in toxic exposure cases).

<sup>101</sup> Interview with Balinda Moore, President, Concerned Citizens of Crump Neighborhood Ass'n, in Memphis, Tenn. (Jan. 17, 2002).

I've been in this movement, and when I say movement I mean dedicated since 1992. I've been in so many meetings here you just sit there hear lie after lie, and at first I was saying "Who is going to speak?" Then I realized it was up to me. I'm taking my part that I have as a citizen of this world in the spirit and in the natural. I had to tell them the other night when they fussed at me for asking questions. I told them this is America and at one meeting I said, I too, am American. I may be big, black, broad-lipped and broad-hipped but I'm an American. I don't have to come to you in a manufactured way with a presentation-style question. I can come to you raw from my gut the way it hurts. I'm not putting on any fronts. It is time out for window dressing and doing things to be polite. You just have to be real.

Moore was well spoken; she waged a heroic campaign against Velsicol. She succeeded in securing a formal coalition partnership between her organization and the Sierra Club's Environmental Justice Program. She saw the advantages offered by her affiliation with the Sierra Club and credits the local Sierra Club environmental justice organizer, Rita Harris, with teaching her a great deal about how to handle the media and community members. Interestingly, another Sierra Club coalitional partner is the Memphis-Shelby County Office of Planning and Development.<sup>102</sup> This agency does not traditionally side with environmental justice activists, but their association with the Sierra Club gives grassroots coalition members, such as Moore and her organization, an important link with the political decision makers and city bureaucrats.

In 2001, Velsicol applied for a renewal license to operate the incinerator for the next ten years. Moore, with help with Rita Harris, organizer of the Sierra Club's Environmental Justice, fought to close the incinerator down. On January 31, Velsicol held a meeting they promoted as a public hearing on the application for the incinerator.<sup>103</sup> Velsicol held the meeting at the Douglass Community Center, a stone's throw from Balinda Moore's home. The "hearing" was no more than a room with Velsicol officials manning a table of informational material and propaganda about the company. The large room also included an information table manned by the Douglass, Bungalow, and Crump Neighborhood Associations. Velsicol did not provide a table for the Concerned Citizens of Crump. The tables of the neighborhood associations had various brochures and a newsletter touting Velsicol as a "good neighbor" and highlighting various projects financed by the company for schools and organizations in the community. When I inquired

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<sup>102</sup> See *Environmental Justice and Community Partnerships*, Sierra Club, <http://vault.sierraclub.org/ej/programs/tn.aspx> (last visited Mar. 18, 2015); *Community Partners*, Memphis-Shelby Cnty. Office of Sustainability, [www.sustainableselby.com/community-partners](http://www.sustainableselby.com/community-partners) (last visited Mar. 18, 2015).

<sup>103</sup> The hearing was not widely publicized. The author learned about the hearing from Balinda Moore, the leader of the Concerned Citizens of Crump.

about whether or not Velsicol would indeed “hear” the voices of dissent in the community, the officials present responded that they were there to answer any questions and listen to any concerns individuals may have—but they offered no public forum for this process.

Velsicol would not allow Moore to set up in the main informational room. She set up her organization’s materials in a room at the opposite end of the center. Velsicol representatives assigned to direct people to the informational room steered visitors away from the room occupied by Moore and members of the Sierra Club. There were over a hundred people present, and Moore made her concerns known. In the tradition of civil rights activist Fannie Lou Hamer, Moore began with a pointed statement in a commanding voice, and belts out a song:

Moore: “Talking isn’t going to do it—some of these legislators needs to get off their rumpy-dump. Everybody keeps saying ‘it’s not my job’ but it’s got to become somebody’s job.”

[Starts singing—call and response.]

Moore: There’s air pollution!

People: Certainly, Lord.

Moore: You have a solution?

People: Certainly, Lord.

Moore: We want our rights.

People: Certainly, Lord.

Moore: Here tonight.

People: Certainly, Lord.

Moore: Who owns the air?

People: Certainly, Lord.

Moore: We really care!

People: Certainly, Lord.

All: Certainly, Certainly, Certainly, Lord!

Moore: Tired of incinerators?

People: Certainly, Lord.

Moore: Tired of clean-air haters?

People: Certainly, Lord.

Moore: Have a solution?

People: Certainly, Lord.

Moore: To the pollution?

People: Certainly, Lord.

Moore: Tear it down!

People: Certainly, Lord.

Moore: Take it out of our town!

People: Certainly, Lord.

All: Certainly, Certainly, Certainly, Certainly, LORD!

In addition to providing testimony from residents of health problems, the Sierra Club brought students from the nearby private liberal arts college, Rhodes College, members of the Peace and Justice Center and others to don

tee shirts designed for the occasion. Protestors also carried signs and placards. These tactics proved to be quite effective. All four local stations covered the public hearing, and all four ran stories featuring Balinda Moore on the five-o'clock teaser story before the 7 pm hearing, along with interviews featuring her during and after the public meeting. In the teaser stories, Moore was careful to speak in sound bites that would resonate with viewers. In one interview she said, "Velsicol is the Enron of our community." This statement paints a clear picture of how Moore and her followers perceive Velsicol, and communicates that picture to listeners. Moore implied that similar to how Enron covered up fiscal improprieties, Velsicol was covering up environmental ones. In another television news interview she said, "People have to remember that air travels. Right now it's in our community, but it's coming to your community." This comment communicates that the claim made by Moore is not just about her community—it is about all communities.

Moore planned her strategies carefully and did not mind alliances with the young, white, and privileged students of Rhodes, the Sierra Club or the Vollintine-Evergreen Community Association, a community development corporation that has concerns about Velsicol as well as the pollution of Cypress Creek, a once-beautiful waterway that they wished to restore and reclaim. Although the television stations were attentive to Moore's cause, the main newspaper, *The Commercial Appeal*, has never wrote a story featuring Moore or her work in the Velsicol controversy. *The Memphis Flyer*, the alternative paper, never mentioned Moore when writing about Velsicol.

In May of 1999, an EPA audit discovered that Velsicol was operating one of its tanks with an open vent and failing to conduct weekly checkups of the incinerator during one week in January and one week in April. The state held public hearings for input on granting the incinerator license to Velsicol, giving Moore and her followers more opportunities to attempt to gather public support and prevent the incinerator from operating. Moore brought the media to her home and to any venue she chose—framing her issue in ways that reach beyond the concerns of just her community. Moore's cause appeared universal when viewers saw the support of people of all races and socioeconomic classes. Moore is a minister of a small church and operates a food bank out of her home. These activities that address the other needs of her community contributed to her credibility in the fight against Velsicol. Moore's purposeful, focused struggle against a manufacturer of pesticides, known to be toxic even when used for the appropriate purposes, was a valiant one.

In order to be successful, activists in the environmental justice movement should launch strategies similar to those Balinda Moore used. They must

form coalitions across race and class and target specific polluters. This need for coalition building leads us to the sticky issue of control and cooptation. Leaders in the Environmental Justice Movement need to have ownership of the movement. Central to any political activism is political agency—the ability to have an impact on public policy.<sup>104</sup> Investing too heavily in the image of a grassroots movement increases the risk of losing the battle. If the movement becomes dependent on a centralized circle of leaders, activists risk losing political agency. These movements are ignited by a story—a story that touches human beings. The story that gives life to the grievances of the group must be told again and again, because the message of the movement is embedded in the story.<sup>105</sup> It is the message that drives the movement.

Moore was elated when Velsicol considered closing the incinerator in 2001.<sup>106</sup> Instead, the incinerator met the new EPA standard,<sup>107</sup> and Velsicol continued to manufacture pesticides and flame-retardants until 2013.<sup>108</sup> When Velsicol shut down the incinerator and left Memphis, they left behind tainted soil throughout the community.<sup>109</sup> Although Moore and her organization were not successful in taking Velsicol to task during the heat of the struggle, the spirit of resistance remains. Rita Harris, the Chickasaw Sierra Club environmental coordinator, continued attending meetings regarding Velsicol.<sup>110</sup> Victories for environmental justice organizations may not always be immediate and direct. However, there is reason to believe that these movements live on and spawn other movements. As Reverend Martin Luther King, Jr. once said, “The arc of the moral universe is long, but it

<sup>104</sup> See Emma F. Thomas & Winnifred R. Louis, *Doing Democracy: The Social Psychological Mobilization and Consequences of Collective Action*, 7 Soc. Issues & Pol’y Rev. 173, 179, 185 (2013).

<sup>105</sup> See Frank Gilliam, *The “Welfare Queen” Experiment*, Nieman Reports (June 15, 1999), <http://niemanreports.org/articles/the-welfare-queen-experiment/>.

<sup>106</sup> Interview with Balinda Moore, *supra* note 101.

<sup>107</sup> Bianca Phillips, *Burning Issues: Velsicol Passes EPA Test, but Questions Remain*, Memphis Flyer (Nov. 12, 2004), <http://www.memphisflyer.com/memphis/burning-issues/Content?oid=1115462>.

<sup>108</sup> See Thomas Bailey Jr., *Velsicol Chemical Idles North Memphis Plant*, The Commercial Appeal (Jan. 9, 2012), <http://www.commercialappeal.com/business/velsicol-chemical-lays-35-memphis>; Bianca Phillips, *Velsicol Seeks Permit for Site Clean-Up*, Memphis Flyer (Aug. 28, 2014), <http://www.memphisflyer.com/memphis/velsicol-seeks-permit-for-site-clean-up/Content?oid=3729318>.

<sup>109</sup> See Tom Charlier, *Velsicol Plant, the Epicenter for Wide-Ranging Environmental Problems, Facing Demolition*, McClatchy-Tribune Bus. News, July 14, 2013, at 1.

<sup>110</sup> See Bianca Phillips, *Toxic Shock: Sierra Club Report Names the 10 Worst Polluters in Shelby County*, Memphis Flyer (Oct. 14, 2010), <http://www.memphisflyer.com/memphis/toxic-shock/Content?oid=2376954>.

bends toward justice.”<sup>111</sup> Balinda Moore, the charismatic and fiery leader of Concerned Citizens of Crump died on August 28, 2004.<sup>112</sup>

#### IV. THE ELUSIVENESS OF AGENCY

The effects of the space occupied by many environmental justice activists, the space where race, class, and gender meet, create a need for the expertise, resources, and credibility non-governmental organizations can provide. Specifically, NGOs can offer ideas for effective strategies in the field to organize followers and acquire sympathizers. A national or international NGO has a wealth of experiences in varying conditions and circumstances, which hones innovative and adaptive skills.<sup>113</sup> They can pass these skills on to their grassroots partners, as well as strategic tools for developing and expanding grassroots organizations.

Most activists in these urban communities are women of color.<sup>114</sup> The organizations are typically located in poor, urban environments and they have few resources.<sup>115</sup> The social status of these women limits their public credibility. One reason for this limit is the political elites frame poor and working-class African American women. The Reagan-Bush years introduced the American electorate to a new political dialogue—the coding of racial issues that served to give racial conservatives the moral and political

<sup>111</sup> Martin Luther King, Jr., Sermon at the Ebenezer Baptist Church: “Why I Am Opposed to the War in Vietnam” (Apr. 30, 1967) (transcript available at <http://www.informationclearinghouse.info/article16183.htm>).

<sup>112</sup> *Balinda Ann Johnson Moore*, Ancestry, (Sept. 17, 2010, 9:19 AM), <http://boards.ancestry.com/topics.ethnic.afam.tn/267/mb.ashx>; Balinda Moore, *Postscript: Letters to the Editor: Pollution Solution*, Memphis Flyer (May 2, 2003), <http://www.memphisflyer.com/memphis/postscript/Content?oid=1111386>.

<sup>113</sup> Sujay Ghosh, *NGOs as Political Institutions*, 44 *J. Asian & African Studies* 475, 479–81 (2009).

<sup>114</sup> See Errol Schweizer, *Environmental Justice: An Interview with Robert Bullard*, Earth First! J., July 1999, at 1, available at <http://www.ejnet.org/ej/bullard.html>. Robert Bullard is considered the “father” of environmental justice because he wrote a seminal work on the subject, “Dumping in Dixie.” In this interview he confirms that the movement operates from the “bottom up” and depends on networking for an exchange of ideas. Asked to define Environmental Justice, Bullard responds: “For the most part, a lot of the small grassroots groups operate from a bottom up model. They don’t have boards of directors and large budgets and large staffs but they do operate with the idea that everyone has a role and we are all equal in this together. The environmental justice groups are more egalitarian, most of them are led by women, and it’s more democratic. Not to say it’s[sic] perfect but it does bring out the idea that power rests in all of us and when we operate as a collective, that’s when we are most powerful and we move forward as a unit, as a body and not necessarily with a hierarchy. But I think a lot of it is when you can have an issue that can mobilize, organize and create the catalyst that gets thousands of people at a meeting, saying this is what we want and we’re not gonna back up till we get it.”

<sup>115</sup> Stefanie Chambers, *Minority Empowerment and Environmental Justice*, 43 *Urban Affairs Rev.* 28, 28, 48 (2007).

advantage in public debate.<sup>116</sup> Republicans replaced the language of civil rights with terms such as “special interests,” “taxes and big government,” “quotas,” “reverse discrimination,” and “welfare”—terms weighted with racial implications.<sup>117</sup> Politicians talked about, and people responded to “welfare queens” and others who would not work and lived off the hard-earned wages of working Americans.<sup>118</sup>

The Republicans were largely successful in framing the debate about race, poverty, and inequality in ways that captured the minds and hearts of those people who were feeling left out of a rapidly changing economy.<sup>119</sup> A conservative perspective now dominates media, and liberal arguments are not as popular.<sup>120</sup> When women of color seek redress for harm done to their communities from toxics, they find that one of the basic tools of social movements, getting your “story” told, is missing from their toolbox. Black women are almost absent in the political arena as office-holders; therefore, activism is a rational way to engage with politics. The same factors that make it difficult for black women to hold office makes it difficult for them to lead movements. Table 1<sup>121</sup> reflects the number of black women in elective office in the United States at the federal and state levels:

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<sup>116</sup> See Michael X. Delli Carpini, *The Making of a Consensual Majority: Political Discourse and Electoral Politics in the 1980s*, in *An American Half-Century: Postwar Culture and Politics in the USA* 232, 237 (Michael Klein, ed., 1994), available at [http://repository.upenn.edu/cgi/viewcontent.cgi?article=1012&context=asc\\_papers](http://repository.upenn.edu/cgi/viewcontent.cgi?article=1012&context=asc_papers).

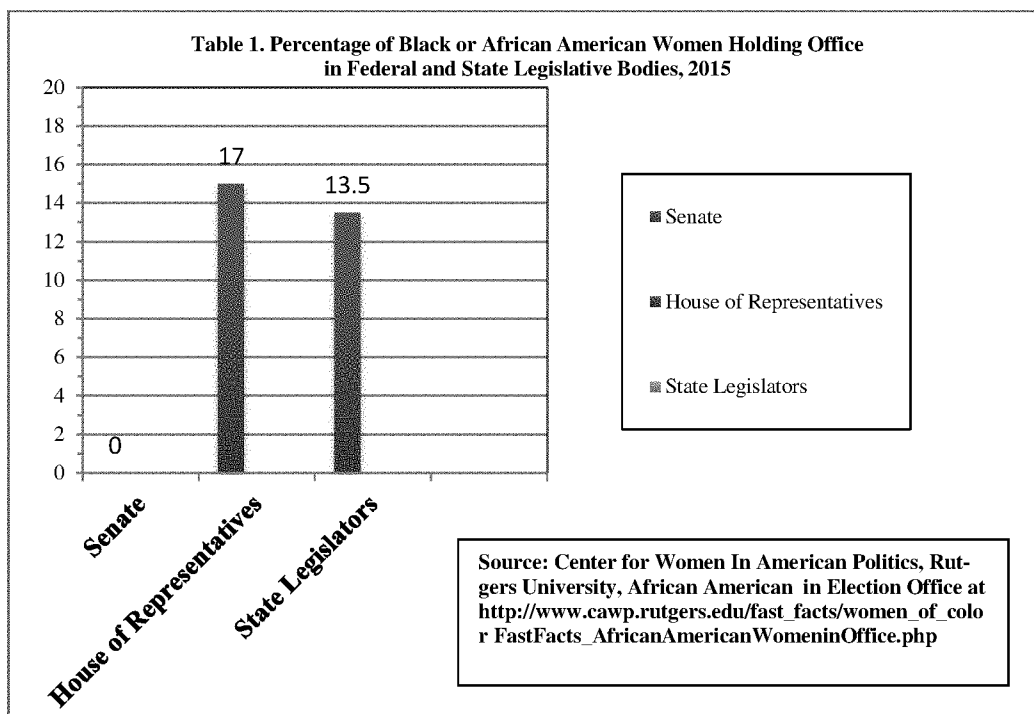
<sup>117</sup> See, e.g., *id.* at 235–36.

<sup>118</sup> See Ange-Marie Hancock, *The Politics of Disgust: the Public Identity of the Welfare Queen* 91 (2004); Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* 4 (2001). See generally Ange-Marie Hancock, *When Multiplication Doesn't Equal Quick Addition: Examining Intersectionality as a Research Paradigm*, 5 *Persp. on Pol.* 63 (2007) (discusses research on race and gender across subtopics of political science to examine intersectionality).

<sup>119</sup> Mendelberg, *supra* note 118, at 4.

<sup>120</sup> See Michael Parenti, *The Myth of a Liberal Media*, *The Humanist*, Jan.-Feb. 1995, at 7.

<sup>121</sup> *African American Women in Executive Office*, Rutgers, [http://www.cawp.rutgers.edu/fast\\_facts/women\\_of\\_color/FastFacts\\_AfricanAmericanWomeninOffice.php](http://www.cawp.rutgers.edu/fast_facts/women_of_color/FastFacts_AfricanAmericanWomeninOffice.php) (last visited Apr. 21, 2015).



The dominant American culture perceives black women as aggressive in both public and private life.<sup>122</sup> On the one hand, the characterization of black women as aggressive suggests high levels of self-confidence and agency. On the other hand, it may suggest social pathology or learned impertinence. This perception of high levels of confidence and agency is in contrast with other realities of black women's lives—overrepresentation in the ranks of single parenthood,<sup>123</sup> high levels of underemployment<sup>124</sup> and

<sup>122</sup> See Ella Louise Bell, *Myths, Stereotypes, and Realities of Black Women: A Personal Reflection*, 40 *J. of Applied Behavioral Sci.* 146, 148, 152–53 (2004); Erica Chito Childs, *Looking Behind the Stereotypes of the "Angry Black Woman": An Exploration of Black Women's Responses to Interracial Relationships*, 19 *Gend. & Soc'y* 544, 546–47, 552–54 (2005); Sonja M. Brown Givens & Jennifer L Monahan, *Priming Mammies, Jezebels, and Other Controlling Images: An Examination of the Influence of Mediated Stereotypes on Perceptions of an African American Woman*, 7 *Media Psychology* 87, 104 (2005).

<sup>123</sup> Ivory A. Toldson, *Single Parents Aren't the Problem*, *The Root* (July 3, 2014, 12:01 AM), [http://www.theroot.com/articles/culture/2013/07/singleparent\\_households\\_and\\_black\\_children\\_education\\_not\\_affected\\_as\\_much\\_as\\_you\\_think.html](http://www.theroot.com/articles/culture/2013/07/singleparent_households_and_black_children_education_not_affected_as_much_as_you_think.html).



political invisibility. This reality, expressed in essays, commentaries, literature, popular novels, magazines, and talk shows, raises questions about how we address political and social issues that affect black women.

On one hand, these women are the most credible witnesses of all to the results of toxic poisoning in their communities. On the other hand, they do not have the resources to marshal their own studies of toxic contamination. Their organizations are not well known and recognized by the larger community, therefore they have a hard time getting news media to attend events. Success is never complete in a social movement. In the Environmental Justice Movement, toxins have long-term and sometimes unpredictable effects. A long-term commitment to attend to those citizens who are harmed is necessary. Citizens may find solutions in the combined effort and purpose of localized movements and larger and resource-rich NGOs.

#### V. CONCLUSION

At the Second Environmental Justice Summit, there was a dinner to honor eight women activists.<sup>124</sup> Six were African American women and other two were Latina and Asian American. All honorees were women of color. The Summit attendees, most representatives of small community groups such as the Concerned Citizens of Crump, wanted to honor these women as “Crowning Women” of the Environmental Justice Movement. The evening was inspiring as the hosts recognized each woman, recounting their struggles and their successes.

In the twenty years since the Warren County, North Carolina case, the scholarship on environmental justice has burgeoned. Alongside of environmental justice are areas of study on sustainability, “food deserts”, and two forms of environmental inequities.

There are positive reasons for grassroots activists to engage with NGOs, but the primary directive of the NGO may dwarf the issue of toxins and the long-range health effects. This is a risk for grassroots activists, most of who live in the communities they serve. They are motivated by concern for their families and for the families of their neighbors. Some of the activists

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<sup>124</sup> Taylor Gordon, *Unemployment Rates Decline for Every Demographic Except Black Women*, Atlanta Blackstar (Sept. 7, 2014), <http://atlantablackstar.com/2014/09/07/unemployment-rates-decline-every-demographic-except-black-women/>.

<sup>125</sup> Deep S. Ctr. for Env'tl. Justice, *Crowning Women: Women's Dinner Honoring Women in the Environmental Justice Movement* (Oct. 25, 2002); *About Us: Honoring Women of Color in the Environmental Justice Movement "Crowning Women" Awards Dinner*, Deep S. Ctr. for Env'tl. Justice (Jun. 13, 2009), <http://www.dscej.org/index.php/joomla-overview/115-crowning-women-awards-dinner>.

interviewed for this article are third-generation residents of their communities. The story of Velsicol, The Concerned Citizens of Crump and Balinda Moore is a case that contains similar elements of many of other cases. The activists lived in a black community with a collective memory and experiences growing up and attending schools and churches together. As in the case of Warren County and Shintech in Convent, Louisiana, the history of slavery, Jim Crow, and racialized poverty, the Velsicol case reveals the complex legal and political obstacles faced by such groups. These groups have an important message and if heard through the proper channels, their efforts could enervate the Environmental Justice Movement, improve the health of the people in their communities, and demonstrate for other citizens the rewards of protest politics in a healthy democracy.

