

7-1-2012

## American Bar Association Section of Environment, Energy, and Resources Symposium: Selected Addresses [comments]

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### Recommended Citation

Eileen Gauna, *American Bar Association Section of Environment, Energy, and Resources Symposium: Selected Addresses [comments]*, 81 Mississippi Law Journal 657 (2012).

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## SELECTED SYMPOSIUM ADDRESSES

EILEEN GAUNA\*

First of all, I want to thank everyone here at *Ole Miss* for inviting me to come speak to you. And I get to say that because I am a brown girl from New Mexico. *Ándale Ole Miss!*

Professor Alex Dunn is very clever. She first asked me to do a panel presentation, and I thought, "Yeah, I can do that. I can go and sit on a panel, put in my two-cents worth, and then sit back and listen and learn a lot." But that was not to be. Alex decided I needed to earn my lunch and gave me bigger marching orders and said, "Oh, by the way, you have to lay the ground work, the foundation, for this whole thing." I said, "Oh, gee, thanks a lot."

But now I have to thank her because it really did get me to reflect upon environmental justice—the whole movement—in a much broader way. Reflection of this nature is important at this particular conference for several reasons. Here we have an ABA conference for the section members combined with law students at Ole Miss. That is an interesting mix, but it puts me in a dilemma because I have two distinct audiences. I solved that dilemma, however, because I said to myself, "Oh heck, I'm just going to talk to the students and the lawyers can just deal." So my remarks are targeted mainly to law students, but hopefully there will be some insight for the lawyers as well.

Secondly, this is a conference on facility siting, expansion, and permitting. Those issues continue to be important issues in environmental justice and it's certainly the genesis of the movement. But the movement has moved way beyond that, and activists have found themselves dealing with a much wider range of issues. For example, environmental justice has gone international, and is now dealing with energy and climate policy, as well as disaster response. That said, a tough nut to crack is the cluster of issues at the basic siting and permitting stage. I'm glad to see that attention is still being paid to these issues.

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In doing a quick bit of math, I realized that the environmental justice movement is now about thirty years old. The roots go back further than that, but the movement *per se* came to national prominence as “environmental justice” at that time. There have been victories and there have been disappointments; there have been changes in strategy and changes in recourse to legal remedy; there has been a scientific advancement of our understanding of these impacts in communities of color and poor communities; and there has been an ever-widening sphere of influence that these issues have over environmental policy. So really, setting this groundwork—the legal and historical framework—is a pretty big task and there isn’t sufficient time to do it justice. I could recite the milestones, but that doesn’t tell the real story either. For a generation of new law students who may want to work in this area, I think doing that would miss the flavor of this remarkable endeavor. So instead, I’m going to tell the story of the environmental justice movement and pepper it with some of the memorable people in it, as well as the landmarks that some of us may be more familiar with. I hope that I can do so in a way that imparts what this journey has been like and why, in particular, the legal developments are so important.

Imagine isolated community groups throughout the United States, each in its own way trying to address a variety of problems. Imagine communities living at the fence line of big industrial complexes, too near large transportation corridors, near mining, oil, and gas extraction activities, near animal factory farms. Imagine communities that are impacted by contaminated land, poisoned aquifers, degraded waterways, deteriorated rangelands, and other types of assaults upon their environments. On one end of the spectrum, you have communities from remote Native American reservations and desert areas, and on the other end of the spectrum, enclaves in congested industrial areas of our inner cities. Respiratory ailments—too common. Unexplained rashes, cancer clusters, birth defects. And then you have quality-of-life issues: unbearable odors, noise, dust—and fewer environmental amenities like parks and open spaces.

At first, each of these individual problems seemed local and isolated, but eventually it became apparent that they were all part

of a national pattern. People with very different backgrounds and different cultures got together, and they began to compare conditions and find commonalities. They thought deeply about how they would work together and move forward together. But crossing cultural, geographic, world-view lines wasn't easy. Here you see the first wave of activists: Dana Alston, Damu Smith, Deeohn Ferris, Vernice Miller, Pam Tau Lee, Tom Goldtooth, Richard Moore, Ruben Solis, Gail Small, Jeanne Gauna, Jose Bravo, and many others. They came together in the early nineties to very intentionally draft, debate, and ultimately adopt the principals of environmental justice. That was at the first National People of Color Environmental Leadership Summit—a gathering that allowed the movement as a whole to take shape.

At the same time, within the larger environmental policy sphere—which was occupied largely by conventional environmental groups, business interests, and governmental agencies—there was this assumption: people of color and the poor really don't care about environmental problems. And if these people have a problem, well it is because they moved to these areas because land was cheap and so it is just “the market.” And if these people made a fuss, then they were put in that category of those NIMBYs, those not-in-my-backyard folk. Within this arena, conventional stakeholders were not used to dealing with these communities, and so not surprisingly—at this early stage—exclusion, and sometimes outright hostility, were not uncommon occurrences.

That was the flavor of this earlier time—when you see the first landmarks of environmental justice begin to emerge, with direct action strategies like the big 1982 demonstrations in Warren County. That is perhaps the earliest and the most prominent example, but there are others. It was a real up-hill battle. Few resources, no real law addressing environmental justice *per se*, a mountain of anecdotal accounts of the conditions that people were experiencing, but little in the way of the kind of hard empirical evidence that regulators and judges like to see. Academics and lawyers began to get involved in this effort: Bob Bullard, Beverly Wright, Paul Mohai, Bunyan Bryant, Charles Lee, Luke Cole. They really laid the important groundwork for the empirical and legal work that was to follow. You had people like

Wilma Subra, who did a lot of on the ground chemical testing. In the legal academy you had people like Professor Richard Lazarus, and others, who began to write about the way that the implementation of environmental law itself helped to perpetuate these inequities, albeit unintentionally.

In those days—I have to say—there was a lot of energy, a lot of hope. There were long meetings followed by late night sessions. In conferences, often crowded in someone's hotel room, there would be groups of people talking about all of the issues and how, with such pitifully few resources, they could move forward in a sensible way. There were frustrating times and really funny times. Richard Moore tells this story—now, I wasn't there personally—but he tells this story about some activists getting intentionally locked out of the elevators at the EPA headquarters. He describes how you had all these out of shape but totally ticked-off people trudging up the stairwell. The way that he tells the story is hilarious, and I'm sure that over the years it's been embellished just a wee bit. But this much I'll tell you, I would not have wanted to be the agency person at the end of that little trek.

Lawyers and academics, us eggheads, were spared no mercy. You just had to check your ego, and often your dignity, at the door. I have a cartoon penned by Carlos Marentes, who is a wonderful caricaturist. We were sitting at a long meeting, and he passes me this sketched picture of me. Well, suffice it to say it's not a very flattering portrait. At another meeting I was sitting by Luke Cole, who spontaneously started scribbling madly, and then he passed to a few of us a really, really irreverent poem. We started giggling, and the people at the head of the table glared at us, and we got into trouble. A couple of times, again to relieve the tediousness of a really long meeting or otherwise provide comic relief, someone would pen an outrageous, fictitious press statement, stating therein what he or she would *really* like to say. Jose Bravo, in particular, was an incorrigible practical joker, and *nobody* was spared from his creative prankstering.

So, as serious as it all was, in a lot of ways it was just a lot of fun. Several of these people, Damu, Dana, Jeanne, and more recently Luke, have tragically passed on, and we miss them. But others remain. They're white haired now, and still soldiering on.

But I digress; back to the thread of my story. Around this time the empirical evidence started rolling in. The first was a landmark study by the United Church of Christ Commission for Racial Justice, *Toxic Waste and Race in the United States*. Professors Paul Mohai and Bunyan Bryant subsequently undertook a comprehensive literature review and compiled a book with the important findings in this area. Findings that, at that time, were in various places, probably on shelves gathering dust. Looking at these studies in the context of a charge of “environmental racism” got the attention of many. In the academic circles, this sparked a round of vigorous debate about methodology, but all of this was good because it led to refinement of the methodology and further study. Those subsequent studies largely tended to confirm the findings of the earlier ones. It became fairly well established that there is a significant racial dimension to environmental disparities, and there is a class dimension as well. Part of what we are also dealing with here is historical discrimination in zoning and land use, and also current siting criteria that then relies upon, in part, the legacy of those practices. We have also come to understand that demographic shifts and conditions that weaken informal social structures are part of this complex mix. And yes, at times, there are decisions, straight up business decisions, that take advantage of people in weaker positions. But more often than not, there are well-meaning industry, agency, and governmental actors that are making decisions without a full appreciation of the potential for these kinds of disparities.

The direct action campaigns, a lot of community organizing, and empirical work led to another landmark: the 1994 signing of an Executive Order on Environmental Justice by then-President Bill Clinton. This order ushered in a suite of regulatory responses at the federal level. To be sure, those regulatory responses have waxed and waned over the subsequent years, but these early efforts have begun to bear fruit recently; I’ll pick up on that thread in a minute.

But first, I want to consider another development that was heating up around that early time. Lawyers got busy and started to sue. The earliest lawsuits, based on the Equal Protection Clause of the U.S. Constitution, were almost always unsuccessful,

largely because of the evidentiary difficulty of proving discriminatory intent. There was a greater measure of success in suits under the environmental statutes. At the EPA, for example, the Environmental Appeals Board began to take seriously the executive order on environmental justice and strongly endorsed the use of an environmental justice analysis in permit proceedings.

But the more high profile legal remedy was Title VI of the Civil Rights Act of 1964. Now, this remedy was particularly important for a couple of reasons. First of all, a civil rights claim resonated with what these communities were experiencing. Instead of debating the technical requirements of the environmental laws, this claim spoke directly to the racial impacts that many believed were engineered—or at least exacerbated—by the methods and criteria being used by state environmental regulators in continuing the practice of issuing, and reissuing, permits to emit pollutants in areas that already had too much pollution. The remedy in this context was for federal agencies to withdraw funds from some of the state permitting agencies and importantly, at that time, there was also the legal ability to institute a lawsuit asking a court to enjoin some of these practices. So it was a potent legal tool, and communities began to put a lot of hope into this Civil Rights law.

The Environmental Protection Agency, one of the major funding agencies, was under a huge amount of pressure from state regulators and the regulated community, who stood to be significantly affected by what state regulators were being asked to do—i.e., stop issuing permits to pollute in highly-impacted communities. It was a volatile time. And so in the late 1990s, EPA convened the Title VI Federal Advisory Committee. I was on that committee, and through this work I came to appreciate what a legally and factually complex area this is. There are no easy answers, one way or another. But just to give you a sense how high the stakes were back then, so great was the controversy that there were congressional riders on appropriation bills precluding the EPA from using appropriated funds to investigate these types of Title VI claims.

Then, in 2001, the Supreme Court in the *Sandoval* decision cut off a private right of action under Title VI for disparate impact

regulations. For communities this was a huge disappointment because it left only EPA administrative investigations as a possibility under Title VI. From the perspective of many communities, EPA has failed them in this regard. It has allowed claims to languish for years, and it has dismissed a lot of those claims. Many believe the EPA has been too quick to dismiss a complaint on grounds that are too nit-picky and technical. Certainly from an environmental justice standpoint, the statistics on these administrative claims are pretty dismal.

But the positive part of the Title VI saga, I think, is that it did get people with very different perspectives at least talking to each other. And the participants, both the participants on the advisory committee itself and EPA personnel, began to visit impacted areas throughout the country and began to appreciate in a very real way just what these communities were facing every day. Unfortunately, people move on from their positions in agencies and in law firms, and I think a lot of the visceral value of this education has been lost over time.

But at this point in the story, circa the century's turn, we have advocates faced with bad case law, and facing a federal administration that wasn't sympathetic to environmental justice and was unwilling to tackle these issues in a big way. Although there were individuals within the agencies that were committed to environmental justice and continued to do what they could do, by and large there appeared to be a standstill at the federal level during this time.

Interestingly, the states then became the innovators. We saw the enactment of a few state laws, like those in California, that deal quite explicitly with environmental justice, as well as state gubernatorial orders on environmental justice. We began to see a range of regulatory initiatives, some state rulemakings explicitly dealing with environmental justice, and helpful case law. In short, throughout the first decade of 2000, a lot of activity at the state level, not so much at the national level, where the issue of environmental justice lost its visibility.

That might be changing. Recently, we've seen some interesting developments. The EPA, in particular, is for the first time attempting to move environmental justice "upstream" in environmental regulation. It's high time. The usual order of



business was to address environmental justice, if at all, at the tail end of regulatory activity, like in a permit proceeding or in an enforcement action—at a point where there are sunk costs and fierce resistance. Now, we are starting to see more attention to these issues at an earlier time, in the standard setting arena, at the rule-making level, and within a new generation of strategic plans. Now we've seen those plans before, during the Clinton administration, but perhaps strategic planning can now get at environmental justice issues in a more sophisticated, innovative, and more effective way than those earlier efforts. For example, I was recently on an EPA work group that was looking at screening tools, in this case it was the "Environmental Justice Smart Enforcement Assessment Tool" (EJSEAT), a method that uses nationally consistent databases to systematically and uniformly identify broader areas of environmental justice concern. At the federal level, you can't screen with ideal resolution, however, because you are not able to use local land use data, it's an important start in addressing environmental justice issues in a more comprehensive way.

There are also attempts to make information about environmental conditions more readily available to impacted communities, and in a more understandable form. Recently, for example, there was a "TRI training conference" for communities to use data from the Toxic Release Inventory to help them better understand the pollutants that are being emitted in their areas.

I believe these small steps, in the aggregate, will help us refine what this technically difficult thing called "an environmental justice analysis" is going to look like. Now, for some of us, this may seem like a very odd concept: identifying communities of concern? We've been to the industrial areas of Chicago, the Wilmington/San Pedro area in California, the petrochemical corridor that runs through part of Louisiana. You know it when you see it. It is pretty obvious that these are environmental justice communities. But to be fair, the reality is that in a lot of instances, it is not so obvious. There are communities in the West and the Southwest that have severe groundwater contamination, and some Native American communities are still experiencing the legacy of very bad uranium

mining practices. These communities don't look like they might have a problem, so it's not as easy as it may seem.

You need good tools that will allow agencies to identify problems with greater precision, so that regulatory action is supportable. You need a legal framework that will provide adequate authority and allow for better regulatory guidance. You need a process to work out these issues in ways that fairly considers the interests of everyone involved. You need to refine and convey information in an understandable and useful form to impacted communities. But most importantly, you need people who are willing to come together in good faith to try to alleviate some of these conditions. You need people who won't get derailed from this task because of the bottom line or because it becomes too politically difficult to do so. Simply put, you need people who are willing to do the right thing in all of the little corners we happen to be working in.

Whether we will really solve this problem still remains to be seen. These conditions are remarkably persistent. We need conviction and vision, and talking about ideals is critically important because it orients us and helps keep us inspired. But you know, there's an awful lot of detailed hard work that needs to be done. This is where a new generation of organizers, empiricists, public health workers, lawyers, and public servants are being handed the torch. Today, we only have to take a look at our program, and we'll see that this symposium is very, very much a part of this effort.

So for the students in the room, my hope is that some of you will decide to work in this area. It is interesting and rewarding, and sometimes it is a lot of fun. I hope that some of the attorneys here, whether you are in government or private firms, will use this symposium to think about ways that will help us move beyond "minimizing the controversy" or "containing the issue" and together figure out how to approach these problems in a way that has a better chance of actually changing conditions on the ground. We need to do that. These communities have been waiting a long time.

Thanks for listening. I hope I have imparted a glimpse of the wonderful humanity that is behind this remarkable endeavor.

Again, whatever little part in this complex drama each of us plays, we need to seize upon that and move forward together.

JEWELL HARPER\*

Good afternoon. It is indeed a pleasure to be here today to talk to you about something I am obviously very committed to, environmental justice. I am here to bring you greetings from EPA Region 4 Regional Administrator Gwendolyn Keyes Fleming. Our RA would love to have been here. This would have been her first opportunity to talk on the topic, solely on the topic, of environmental justice. She's very passionate about that. But she had a family emergency last week that has forced her to stay pretty close and she'll have to do that for a couple more weeks. So, things are going well, but family has to come first in this instance. I'd like to also thank Mr. Stephen McKinney for extending the invitation to our regional administrator Gwen Keyes Fleming. Again, she is very sorry that she can't be here. In her previous career, Gwen always kept community engagement at the top of her priority list. I don't know if you all are aware of the fact that she is the former district attorney for Dekalb County in Georgia, which is just outside of Atlanta. And it's a huge county. She basically, on almost a daily basis, had some form of community engagement as a part of her efforts as district attorney with regard to more than 740,000 people in that county. Then and now, she spends a good deal of her personal time engaging with the community and being interactive in a number of ways. Any opportunity for a conversation with the community on issues of concern to the community are very high on her list, particularly those such as the ones that are taking place at this symposium today.

Under the leadership of administrator Lisa P. Jackson, EPA uses three basic principles as guidelines for undertaking discussions. EPA keeps science as the backbone of all of its decisions and programs, it follows the rule of the law, and it maintains that its actions must be transparent. And obviously, all of those have a role with regard specifically to the issue of

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environmental justice. These guiding principles also shape the implementation of the agency's current seven priorities, those priorities being: taking common sense modest steps that will yield measurable reductions in carbon pollution, updating air pollution standards, cleaning up our communities, assuring the safety of chemicals, protecting America's waters, building strong state and tribal partnerships, expanding the conversation on environmentalism and working for environmental justice. And particularly it's that last principle, that last priority, that I want to focus on.

As part of her administration, regional administrator Keyes Fleming is placing a renewed focus on communities that have been underserved or underrepresented in the past. These include environmental justice communities and sensitive populations, particularly those in pockets of poverty that are located throughout the southeastern United States. We recognize the active environmental justice communities in region 4 that have been overburdened by environmental hazards that have driven away economic growth and brought fear about disparate health impacts to these citizens. Now is the time to give these communities a seat at the table, to retool and strengthen the health of these communities in order to decrease associated healthcare costs and to increase opportunities for sustainable tax base. In her first six months on the job, regional administrator Fleming has identified several avenues of engagement for the region with communities. First, she's gotten out on the ground to engage stakeholders at all levels through congressional visits, state commissioner meetings, local commissioner and executive meetings, tribal meetings, environmental justice community listening sessions, regulated community listening sessions, and discussions with academia. These represent a snapshot of her commitment to expanding the conversation on environmental justice. Second, she wants to engage in these 360-degree discussions to ensure environmental justice principles are effectively communicated to all of EPA's external partners. Environmental justice is defined, and I'm repeating something that an earlier speaker said, is defined as the fair treatment and meaningful environment, and I repeat, fair treatment and meaningful involvement, of all people, regardless of race, color,

national origin, or income as the administration develops, implements, and enforces federal laws, regulations, and policies. What does this mean to EPA in region 4? It means that region 4 will ensure that we have a meaningful relationship and honest conversations with states and environmental justice communities. We will accomplish this through prioritization of our efforts, transparency of our actions, proactive engagement of all stakeholders, enforcement, and integrating environmental justice across all of our programs. Third, by incorporating regional administrator Fleming's elements, we in the region will broaden the conversation on environmentalism and bring environmental justice communities to the table as partners. Most importantly, EPA will work with these communities to ensure that our children can benefit from an environment that is the same or better than what we have. To do so is to promote sustainability. Native American communities have a saying that I like to repeat, which is that "We do not inherit the earth from our fathers. We borrow it from our children." That so succinctly states what sustainability is and, in addition, it's what we all want. We want our children to be able to breathe clean air, drink clean water, and to play, work, worship, study, and live in a safe environment.

I'd like to spend a couple of minutes outlining EPA's national environmental justice plan. Expanding the conversation on environmentalism and working for environmental justice is a priority that's been included in EPA's strategic plan for the years 2011 through 2015. And in accomplishing that effort, EPA has developed a plan, EJ 2014, an overarching strategy for EPA to integrate environmental justice into its programs, policies, and activities. To accomplish the goals outlined in EJ 2014, EPA developed nine draft implementation plans which will guide the agency's actions in the areas of rule making, permitting, compliance and enforcement, community-based action, administration-wide action, science, law, information, and resources. To just briefly touch on each of these, the first one is incorporating environmental justice into rule making to better protect human health and the environment for overburdened populations. The second is considering environmental justice in permitting to enable overburdened populations to have full, meaningful access, to permitting processes—i.e., a seat at the

table. Thirdly, advancing environmental justice through compliance and enforcement through case targeting, program planning, and meaningful remedies. Fourth, supporting community-based action programs by building useful, productive partnerships that promote healthy, sustainable, green communities. Also, fostering agency-wide action to diminish disproportionate burdens by federal action and to foster positive public health and economic health for environmental justice communities and indigenous peoples. The last four of that group of nine are all tools that are being developed in four different categories. The first one uses science, and the idea is to use data and analytical tools to develop and conduct research in a way that invites all communities to be engaged in understanding and communicating workable solutions to our combined effort to eliminate environmental injustice with regard to health disparities in minority and low-income communities. The second one of the tool group is law, and that involves providing legal support to EPA policy makers in the process of advancing environmental justice objectives. The third of that group involves information, which you heard about earlier today, which is designed to develop a number of things. One of which is a national environmental justice screening tool that will be used across the board, and this will be done within the next three years. One thing I forgot to mention with regard to the science—the data analysis, etcetera, and the research—that is to be conducted within the next five years. So these are more immediate in terms of actual items that we want to focus on with regard to EJ. And last, resources, the tools to develop resources, to develop effective financial and technical assistance to communities working to improve with regard to health disparities.

So what else is needed? EPA needs you. And I mean you, and the ubiquitous you as well. We need to have comment on the *EJ Plan 2014* and that opportunity still exists. Comment is still being taken, you can access the plan at [regulations.gov](http://regulations.gov) and comment will be taken through April 29, 2011—i.e., through the 29th of this month at [regulations.gov](http://regulations.gov). I recommend, please, you comment, if you have commented, comment some more. If you know people, encourage them to comment because the more input we have the better a job we can do. Secondarily, EPA needs feedback from

communities, from you, from everyone, from citizenry on how effective our EJ programs are and what we can do to improve.

I want to close with a quote that was given to me by regional administer Fleming and it's basically one which embodies the principles that she adheres to with regard to environmental justice. Dr. Martin Luther King, Jr., postured this concept of equality in describing his own dreams, and I quote: "A dream of equality, of opportunity, of privilege and property widely distributed. A dream of a land where men will not take necessities from the many to give luxuries to the few." That's how environmental justice plays a role in everyone's daily lives. Everyone wants opportunity, the opportunity to make the community they live in, to make certain that it has the same benefits and luxuries of the community that's fifteen miles across town, the opportunity to show that a low-income minority community does not equate to a low priority community. That's why we have to educate, educate, educate in order to elevate. Finally, I'd like to say please know that EPA Region 4 Regional Administrator Gwendolyn Keyes Fleming is an advocate and a sincere champion for environmental justice. She, and therefore we—the rest of us in the region—are definitely here for you and for everyone else in the country when it comes to environmental justice matters. Thank you very much.





DARIA E. NEAL\*

Thank you, Steven, for your introduction, and thank you ABA for asking me to come here today. I am so happy that I was able to participate in this wonderful symposium on environmental justice. Almost all of the speakers today are environmental law experts and probably most of the lawyers in attendance are environmental law practitioners, but few civil rights attorneys. I'm happy to be here to represent the civil rights enforcement role in achieving environmental justice.

From the time I've been at Department of Justice, which has been a very long six months, I've come to realize the extent to which the work that we do implicates environmental justice issues, and the role enforcement of Title VI of the Civil Rights Act of 1964 is not often well-understood. Today is a great opportunity for me to highlight what the Civil Rights Division is doing and what broad role we can play.

Before continuing, I want to recognize Nicholas Targ, Benjamin Wilson, and Quentin Pair who are the co-chairs of the ABA Subcommittee on Environmental Justice and Diversity. The subcommittee was started over six years ago, about when I first met that trio of amazing men who, in many ways, are responsible for the advancements that I've made in working on environmental justice issues.

As was mentioned, I do have ties to Mississippi. In my previous position at the Lawyers' Committee for Civil Rights Under Law, much of my work focused on the Mississippi Gulf Coast, post-Hurricane Katrina, and working with the Turkey Creek community and the North Gulfport community. We coordinated the National Commission on Environmental Justice on the Gulf Coast. Bishop Black, who spoke earlier, was one of the commissioners. Charlotte Keyes, who you also heard today, spoke before the commission.

Having this discussion here at Ole Miss, a place that is so rooted in our history of civil rights, makes this a very special

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program. I think this institution is symbolic of the challenges that we have as a country in addressing issues of racial discrimination and the impact of segregation; the environmental justice movement is born out of that same history. I'm pleased to see the recognition of environmental justice within this institution and to have the students here learn more about environmental justice concerns. One thing that we do know is that over 75% of hazardous waste facilities are located in minority and low-income communities and that people of color and indigenous communities, as well as low-income communities, bear a disproportionate burden of environmental hazards. So often we think of addressing environmental justice in very theoretical terms, and what the law can and cannot do, and really miss what it means to real people day in and day out.

We've heard about the Gulfport, Turkey Creek community being founded by freed slaves after Reconstruction. It is still there today, despite numerous hurricanes and environmental threats. That community is trying to preserve its history and has worked adamantly to preserve surrounding wetlands. One would not think of wetlands preservation as a civil rights issue, but here is a historic community that was established over a century ago and encapsulates the civil rights struggles of this country; a community that could potentially be wiped away in the next big hurricane if we don't ensure that the basic natural flood protectors that wetlands provide are preserved. So you have environmental activism with the goal of protecting a community that is very much rooted in our civil rights history.

Forgive me as I digress, but we have a group of students here today and I want to speak to them for a minute. I teach an environmental justice seminar at Howard Law in Washington, D.C. So often we have students that are interested in a broad range of issues. They're not just planning to be community advocates, but are planning on working for corporations, or becoming politicians, and are trying to understand what environmental justice means to them and their professional goals. What I and my co-professors, Quentin Pair and Benjamin Wilson, often talk to students about is approaching your work with an environmental justice lens; with an understanding that communities have a voice and that their voice should be valued.

And I think that outlook is critical no matter what role you play in your career, whether you are the activist, a corporate attorney, or an academic. Understanding the history of communities and the impacts that our actions can have and taking that understanding into your representation is really critical to addressing environmental justice needs throughout the country.

Currently, I'm working in the Civil Rights Division of the Department of Justice. The wonderful thing right now about working in the Civil Rights Division is the mandate that we have to address environmental injustice and the commitment that the President of the United States and the Attorney General have made to environmental justice. I want to highlight a couple of recent activities that demonstrate this commitment that you may not hear about. We talked earlier today about the Inter-agency Working Group on Environmental Justice that was formed as a result of Executive Order 12898. The Inter-Agency Working Group has been reinvigorated. In September 2011, there was a White House meeting of the principles of all of the federal agencies. And not just those agencies that are named in the Executive Order, but others that are not, most notably the Department of Homeland Security. The agencies came together to discuss what federal agencies can do to develop environmental justice strategies to ensure that their programs and policies do not have a discriminatory environmental impact on communities of color and low-income communities. This was a really important meeting because it wasn't just about having a conversation about environmental justice, but it really spurred action. Three months later there was a White House forum on environmental justice where approximately 100 stakeholders were invited to talk directly to representatives of the federal government. This was an opportunity to engage the federal government; for stakeholders and community activists to really engage the federal government, hear what different agencies were doing to address environmental justice concerns, and to make community issues known. It is not just EPA that is on the forefront of addressing environmental justice, but Department of Homeland Security. We know the environmental and health impacts of natural and man-made disasters are greater on lower-income communities. So the fact that you have an agency that wasn't even in existence at the time

that the Executive Order was drafted, willing to commit itself to the mission of the Executive Order and to the inter-agency working group, is quite notable.

Within the Department of Justice, the Civil Rights Division, as well as the Environment and Natural Resources Division, have recognized that you can't just address environmental justice in a vacuum, that it requires not only collaboration with community organizers and the private bar but also across agencies and within agencies. And so within the Department of Justice, the Environment and Civil Rights Divisions have begun having conversations about how our work might be able to come together. Some of the first steps that we've taken have included travelling together down to Atlanta and engaging in a listening session. The assistant attorney generals of both divisions travelled to Atlanta and met with the EPA Region 4 administrator, the U. S. attorney, and regional advocates. Our group visited the English Avenue/Vine Street community. We listened to residents' concerns which, most notably, focused on the issue of sewage overflow. We could see the ditches where sewage flows during a rain event and could see the houses with mold growing on them. I don't know if any other assistant attorney general has ever done that—so I can't say that they were the first—but I can say that the commitment to environmental justice is not just talk. The fact that the AAGs were able to observe the environmental impacts on this African American, low-income community really is going to inform how they look at their work going forward. So we are not operating just in a vacuum or in some theoretical sense. They will remember what they saw in Georgia.

Within the Civil Rights Division, I focus mainly on enforcement of Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally funded programs. The challenge with Title VI enforcement is that each funding agency is responsible for enforcement in their funded programs. When there is a complaint of discrimination in a program or activity receiving federal funds, the complaint goes to the funding agency. More often than not, what would be considered an environmental justice complaint would not come directly to the Civil Rights Division. It would likely go to the Environmental Protection Agency, or Department of Transportation, or the Department for Housing

and Urban Development; but the unique role that the division can play is that we are able to provide assistance to the various agencies when it comes to their Title VI programs. In that role, we have actually been working very closely with the Environmental Protection Agency to implement best practices for their Title VI programs. I think many of you may know about some of the very challenging issues that EPA has been dealing with over the years with their Title VI program; we see it as our role to provide the tools needed to improve not just that agency but any agency that really needs to strengthen its Title VI program. The impact of the Supreme Court decision in *Alexander v. Sandoval*, which eliminated a private cause of action to enforce agencies' disparate impact regulations of Title VI, was devastating to environmental justice advocates. Now agencies are at the forefront in ensuring that the programs that they are funding are not having a discriminatory impact. Many agencies just don't have the resources to address the number of complaints that they receive. Our office is able to, at the very least, provide technical assistance to agencies. In fact, many agencies have actually reached out to us to address some issues within their Title VI program.

The Civil Rights Division has worked with the Department of Homeland Security to address the impact of emergencies on lower income communities and limited English proficient individuals. Title VI prohibits discrimination on the basis of race, national origin, and color and the Supreme Court held in *Lau v. Nichols* that protection against national origin discrimination includes protection of limited English proficient individuals. When you have a disaster like the BP oil spill, you need to be able to communicate with people in order to help them.

The division also actively communicates with advocates. I've had several meetings with advocacy groups on a variety of environmental justice issues, whether it's related to transportation equity or addressing a backlog of Title VI complaints. Before I joined the Justice Department, I was on the other side of the table sitting there with Eileen Gauna and others speaking to federal agencies on a range of environmental justice issues. I think the Department is making great strides in being accessible to communities, learning about the most pressing issues, and trying to figure out how we might be able to help

within our limited role. The Environment Division has also been very much engaged and is reaching out to communities in ways that they have not done so before. The hope is that these efforts to address environmental injustices are sustainable. The Environmental Justice Interagency Working Group is working with that mission in mind. The Civil Rights Division, as well as the Environment Division, are moving forward in that direction and are working with other divisions within the Department of Justice. Our Community Relations Service, which is primarily focused on being a peacemaker in working with communities that are dealing with a variety of issues involving racial tensions with police departments and local officials, is incorporating environmental justice in their work.

So what can you do as private practitioners and as law students? Law firms are in a very unique position to be able to provide pro-bono services to communities that may not be able to afford legal representation. Whether it is assisting with the comments on a proposed permit, challenging the expansion of a landfill, or explaining the administrative process to a community group, law firms and law students can play a very important role in trying to spread information about environmental protection, civil rights, and the public participation process. So please consider pro-bono opportunities.

I am truly optimistic about what I see happening within the Department of Justice on environmental justice. The work that's being proposed is with a long-term vision, to not recreate the wheel by building on the great strides made during the 1990's. We don't want the progress we make to be reversed by any particular administration. There will always be an administration that is friendly or not friendly to environmental justice issues. But when we look at what underlies the main concerns of communities (fair treatment, equal treatment, and environmental protection that actually protects communities), and if we approach our work with that in mind, it should not matter who's in office; the work will be able to sustain itself.

Thank you again for inviting me to come speak today and, again, I really appreciate the opportunity to be here.

MALCOLM D. JACKSON\*

Well, hello. Good morning everyone. I am very excited to be here participating in this symposium and discussing this important topic. I think this is something that is very relevant, for me, from the perspective of I actually grew up in some of these EJ communities. And the other piece of it, just being here at Ole Miss, as you've heard I graduated from Jackson State University. That's where I got my undergraduate degree. But I used to come up here from time to time and I haven't been on this campus in over thirty years. It's improved quite a bit. This building wasn't here, of course, and I see so many improvements here and I'm just happy to see all the improvements here and be back in Mississippi. I don't get to come back very often, now, being in Washington, but it's just good to be back here.

What I thought I'd do is, I want to quickly talk about the Environmental Protection Agency at a high level. And then I want to talk about what my role is and you've heard some my panel members talk about information and you'll see in a few moments how that ties into what I do. And then I'll talk about my organization and what we do. And this organization, I have to tell you, I just feel very privileged to be able to lead it here at EPA.

To begin with, EPA is led by administrator Lisa Jackson, who is an amazing person. She brings a tremendous amount of experience and passion to her role. It's the mission of EPA to protect human health and the environment in which we live. Now you might ask, what does that mean? Well, we ensure that the air that you breathe is clean, that the water that you drink meets certain quality standards, and the land you live on is free of pollutants. The agency accomplishes this by setting environmental rules and regulations which corporations and organizations and individuals must comply with. A company complies by providing environmental data to a state environmental agency, which reports its information to EPA. Here in Mississippi, your state

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environmental agency is the Mississippi Department of Environmental Quality, which is led by Ms. Trudy Fisher and we're fortunate to have her here today participating in this event.

I am the assistant administrator for the Office of Environmental Information and the agency's chief information officer. In this role, I manage the toxic release inventory program and I serve as the information technology leader for the agency. My organization, the Office of Environmental Information, or OEI, supports the agency by integrating high-quality environmental information to make it useful for decision making, analysis, and measuring success. OEI's mission crosses all of the agency's offices and programs. We're responsible for bringing data into the agency from a variety of sources, ensuring data quality, access, integrity, and making strategic information technology investments. To successfully fulfill our mission, OEI must manage a variety of environmental information databases and information resources as well manage the information technology hardware and software that enables us to conduct our daily operations. Thanks to the technology advances of the past decade, we've made enormous strides toward delivering seamless reporting data and providing improved access to the agency's many valuable information resources.

One key point we're focusing on here today is the advance in information availability. At EPA, we're leading the federal government by increasing the availability, usability, and relevance of environmental information. We're improving the two-way flow of information to increase overall information transparency. We're committed to providing widespread access to information and increasing public participation, and we're equally intent on removing information barriers from overburdened communities.

Raising awareness about potential environmental hazards is an essential component of environmental justice. Environmental justice is a cornerstone for the agency. EPA defines environmental justice as the fair treatment and meaningful involvement of all people with respect to development, implementation, and enforcement of environmental laws, regulations, and policies. This will be achieved when everyone enjoys the same degree of protection from environmental and health hazards, and equal

access to decision-making processes to have a healthy environment in which to live, learn, and work.

EPA understands that communities need effective tools and information to help them better understand the contextual connections between environmental efforts and health risks. To this point, EPA is in the forefront of providing such information through resource tools and making them useful and meaningful for overburdened communities. I'd like to tell you a little about the tools we've created in support of environmental justice concerns. One of the EPA's largest successes has been its premiere community right-to-know program, called the Toxics Release Inventory—or TRI for short—which just happens to be run out of my office. TRI provides communities with information about toxic chemical releases and waste management activities in order to support informed decision making in all levels of government, non-government, industry, and the public. TRI data is submitted by regulated facilities each year and is added to a database that contains detailed information on disposal or other releases of over 650 chemicals from thousands of U.S. facilities. In recent years, I'm proud to say that we've greatly increased our ability to provide the public with accelerated access to the TRI data. And we've substantially improved the quality and accuracy of the data by employing a wide assortment of electronic online information tools.

Also, EPA has created a number of electronic tools that provide a variety of ways to access and analyze information about national and local trends in toxic chemicals, and disposal or releases to the environment. In particular, I'd like to call to your attention a tool called "My Environment." My Environment is a particularly good starting point to learn about the environmental conditions of communities simply by inputting a zip code or a city name. This tool helps people learn about the quality of the water and the possible presence of toxic air pollutants and how different companies might be impacting their local communities. EPA is always looking for innovative ways to make information more readily available to the general public. One example of this is our most recently released TRI tool called myRTK, short for "My Right to Know." This new tool is designed to be used on mobile devices and is becoming very popular among environmental justice grass

roots organizations due to its ease of use and mapping capabilities. Now, imagine if you're riding along on a sunny day here in Mississippi with your window down, and you suddenly become aware of a smell coming from an industrial plant along the highway. You might want to know what kind of manufacturing process would result in such a bad smell or what kind of chemicals are being disposed of. Now, all you have to do is pull out the myRTK tool and you consult your mobile phone and find out more about it.

To consider particular environmental justice concerns, EPA provides a wide range of analytical and mapping tools to help overburdened communities understand environmental health impacts in their neighborhoods. EJ View is one such tool that allows communities to view environmental, demographic, and health data in their area. Various aspects of EPA's business such as emergency response and environmental reviews mandated under the National Environment Policy Act, or NEPA, are informed by the EJ reports generated by EJ View. Another major asset is EPA's envirofacts database, which supports EPA's stakeholders to query about EPA's regulated facility. Envirofacts supplies answers to questions about environmental compliance and to what extent does an industry comply with environmental regulations and permitting designed to protect neighboring communities who might otherwise be subjected to unregulated levels of pollution in its land, air, and water. And we're always looking into ways to increase our transparency and usefulness of information. In addition to all the agency's electronic information analysis tracking and mapping tools, we've come to recognize the importance of integrating various datasets to cut across typical federal, state, and local government areas of responsibility. Recently, we partnered with the enforcement office at EPA to develop a TRI comparative analysis tool, which allows users to compare TRI information with data from our air, water, and waste programs. And we're working to better engage the public on regulatory activities that may impact their communities. EPA, as an organization, sponsors regulations.gov and is leading the way for the entire federal government to be more transparent using this tool for rule-making activities. Through the use of video, webinars, and other social media tools, we're offering the

opportunity to understand the intent of the proposed regulation and invite input and comment before the regulation is finalized. Specifically, at EPA, we look at this as a way of expanding the conversation on environmentalism, which is a priority of our administrator, Lisa Jackson.

Moving into the future, we're currently looking into ways to better integrate our various EPA managed environmental databases and other information resources. An especially promising means of accessing some information is through an assortment of enhanced online mapping tools. We're investigating opportunities for partnering with other federal agencies to increase linkages with datasets and integrate data from a variety of sources together to ensure that communities can access and use all available information resources that impact the health and environment in which they live. And EPA is committed to developing a common mapping platform and a nationally consistent screening and targeting tool in order to enhance the agency's environmental justice, analysis, and decision making. Just this week, as I mentioned, I was in L.A. meeting with a leader at a mapping software company, looking for ways in which we can come up with common standards at a national level. This effort will make it easier for communities to better understand how EPA screens for potential environmental justice areas of concern. As one of the priority elements of EPA's *Plan EJ 2012*, this is an agency-wide plan focused on addressing environmental justice. Now, when it's implemented, it will further enhance our ability to provide accessible information and foster transparency.

I encourage you to look at these tools and discover what's in your own neighborhood. And use these tools the next time you research geographically-based environmental conditions. In closing, I want to thank you so much for this opportunity to speak to you today about the variety of EPA's information resource tools that promote and enhance environmental justice.

