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Luke W. Cole

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## Environmental Justice and the Three Great Myths of White Americana

Luke W Cole <sup>o</sup>

In the environmental justice movement we face many hurdles, some of our own making. In this essay, I want to focus on some of those hurdles, which I call the three great myths of white Americana, and how they play out in the environmental justice context. All of us who are advocates for environmental justice will encounter these myths in one form or another, and debunking them is crucial to our quest. Before examining the myths, some context is in order; the first section of this essay discusses what participants at the Symposium on Urban Environmental Issues in the Bay Area had to say about "environmental justice" meaning in the urban context. The following sections then lay out the myths.

### I. Environmental Justice in the Urban Context

"Environmental justice" has been defined in a number of ways.<sup>1</sup> One of the starting points in any discussion of environmental justice, however, is at the problem that we seek to address through environmental justice, which many have called environmental racism.<sup>2</sup> At the West-Northwest Symposium, several speakers gave compelling, first-hand evidence of environmental racism: Francine Carter painted a picture of incompatible land uses forced on the largely African American Bayview-Hunters Point neighborhood of San Francisco, and the disproportionate impact of environmental hazards that is a clear demonstration of environmental racism in that community.<sup>3</sup> Raquel Pinderhughes correctly pointed out that this type of disproportionate impact is a symptom of a broader, systemic societal racism; many forms of oppressions grow from the same seed.<sup>4</sup>

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<sup>o</sup> The author is the General Counsel to the Center on Race, Poverty & the Environment, California Rural Legal Assistance Foundation. This essay was originally presented as the Closing Speech at the Second Annual Hastings West-Northwest Journal of Environmental Law and Policy Symposium, Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective, March 26, 1996, at Hastings College of the Law in San Francisco. I thank Ralph Santiago Abascal for his patient comments on an earlier draft.

1. See, e.g., Robert D. Bullard, *Anatomy of Environmental Racism and the Environmental Justice Movement*, in *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS* 15, 24 (R. Bullard ed. 1993).

2. The term was first coined by the Rev. Benjamin Chavis during the struggle of Warren County, North Carolina residents to block a PCB dump in their low-income, predominantly African American county. Rev. Benjamin Chavis, *Foreword*, in *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS* 3 (R. Bullard ed. 1993).

3. Francine Carter, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996) (hereinafter "Carter remarks").

4. Raquel Pinderhughes, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996).

Many of the speakers also spoke about some of the solutions to environmental racism; ways to reach the "justice" portion of environmental justice. Carl Anthony talked about creating a process and a space for people to come together and take power over their lives. This is one road to environmental justice; it's a way to put community leaders and community residents in the driver's seat in terms of decisions which affect their environments and their lives.<sup>5</sup> Anne Simon made a particularly important observation that a community must participate from the very outset of the process. As Simon points out, it is not environmental justice to open up a decision-making process to "public participation" by an affected community if that decision-making process has already been fashioned and has been going on for many years.<sup>6</sup>

Claude Wilson and Richard Toshiyuki Drury also spoke about people taking power, people having input in the decisions which affect their lives.<sup>7</sup> Drury's story of residents of Richmond, California forcing one of the largest corporations in the United States—Chevron—to the bargaining table, is inspirational.<sup>8</sup> This is what environmental justice is about.<sup>9</sup>

## II. The Myths to Watch Out For

A reader may wonder what the idea of environmental justice expressed at the symposium has to do with the three myths that I am about to discuss.

The three myths operate very powerfully in our society. They are myths which all of us who are advocates for environmental justice (and many other objectives) will encounter in the various communities with which we work, in our own communities and our client communities. To be effective in our work, we need to understand, confront, and move beyond these myths.

The three great myths of white Americana are: 1) The truth will set you free; 2) The government is on our side; and 3) We need a lawyer.<sup>10</sup> I want to go through these, and tie them into some of the remarks that were made at the Symposium. As one reads the myths, one will undoubtedly understand why these are the three great myths of white Americana. These are myths which are particularly powerful and deeply rooted in middle- and upper-middle class white communities, but they are not exclusive to those communities. They are also embraced by working class communities, poverty stricken communities, and communities of color, on different levels.

### A. "The Truth Will Set You Free"

The first great myth is, "the truth will set you free." The idea is that if you are right, you will somehow win. If you just have the right answer, or the right piece of information, or the right study, you will win a particular environmental justice struggle. All of us believe that it is important to be right. And many of us believe that if we are right, we will win. But this, unfortunately, is a myth.

5. Carl Anthony, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996) (hereinafter "Anthony remarks").

6. Anne E. Simon, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996).

7. Claude Wilson, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996) (hereinafter "Wilson remarks"). Richard Drury, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996) (hereinafter "Drury remarks").

8. Drury remarks, *supra* note 7. See also Richard Toshiyuki Drury and Flora Chu, *From White Knight Lawyers to Community Organizing*, 5 RACE, POVERTY & THE ENVIRONMENT 52, 52-54 (Fall 1994/Winter 1995).

9. I should also note that while this essay discusses environmental justice largely in the context of the siting of unwanted facilities, the movement, idea and importance of

environmental justice go far beyond that narrow topic, both in terms of documenting disproportionate impact and in conceptualizing. See, e.g., Clarice Gaylord and Geraldine W. Twitty, *Protecting Endangered Communities*, 21 FORDHAM URB. L.J. 771, 776-77 (1994)(lead and pesticide poisoning); Beverly H. Wright and Robert D. Bullard, *Hazards in the Workplace and Black Health* 4 NAT'L J. Soc. 1, 45-62 (1990)(occupational hazards); George Friedman-Jiménez, *Achieving Environmental Justice: The Role of Occupational Health*, 21 FORDHAM URB. L.J. 605, 606 (occupational hazards); Luke W. Cole, *Empowerment as the Means to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 626 (1992)(lead and pesticide poisoning, noise pollution, rat bites, air pollution). For background on conceptualizing this issue, see, e.g., Dean Suagee, *Turtle's War Party: An Indian Allegory on Environmental Justice*, 9 J. ENV. L. & LITIG. 461, 484 (1994)(protection of places sacred to Native Americans for religious and cultural reasons an environmental justice issue); Deohn Ferris, *Communities of Color and Hazardous Waste Cleanup: Expanding Public Participation in the Federal Superfund Program*, 21 FORDHAM URB. L.J. 671, 678-85 (1994)(discussing technical assistance grants, community working groups, information clearinghouses and other ideas for pushing the environmental justice agenda forward using federal legislation).

10. Although I have appropriated and embellished them, these myths were first identified and taught to me by Patty Pnckett, an anti-pesticide activist in the Los Angeles area, in the late 1980s.

It is a myth because, at the decisionmaking level, environmental justice struggles are not about right and wrong.<sup>11</sup> They are not struggles about what is the best thing to do in a particular situation. They are struggles about power. They are struggles about political and economic power, and the exercise of that power. To win in an environmental justice struggle, one has to build that power. Just being right alone, or just having truth on your side alone, does not win. This plays itself out in a couple of ways.

#### 1. *The Need for All the Answers, Part I*

The first way that this myth plays itself out in environmental justice struggles is that some people and institutions fetishize the gaining of "The Definitive Answer" as an end in itself: "We have to do this study because when we do this study, we will have the answer and then we will win." People fetishize research at the expense of action, sometimes becoming paralyzed because they don't have "all the answers."

#### 2. *The Need for All the Answers, Part II*

The second way that the myth — "the truth will set you free" — plays itself out is that, even when you have the truth, even when you are right and you have The Definitive Study, if that's all you have, you are going to lose. The unfortunate reality is, just being right is not enough.

At the Symposium, we had a graphic example of reality debunking this myth. Francine Carter gave an overview of the incredible disproportionate impact of industrial development, including both of San Francisco's currently operating power plants in San Francisco, on Bayview-Hunter's Point.<sup>12</sup> Claude Wilson, Co-Director of the Southeast Environmental Justice Alliance, gave the epilogue: Despite this disproportionate burden, in March 1996 the California Energy Commission approved San Francisco's third powerplant, also to be located in Bayview-Hunter's Point.<sup>13</sup> So, although community activists were able to marshal favorable studies — not only of the disproportionate placement of unwanted industrial facilities, but also of disproportionately high rates of cancer and asthma — they haven't yet won that fight.

#### 3. *The Need for All the Answers, Part III*

Polluters have also used the myth of the need for truth to avoid taking responsibility for their actions. Industry often uses an absence of hard data ("the truth") to try to delegitimize organizing and oversight efforts: "How can you say our factory is contaminating in your community? You can't prove your children are getting sick because of our emissions. Where is your truth? Until you get that truth we are not going to listen to you." This type of denial plays itself out in the legal system when we have to prove causation of injuries by a specific party before we can be compensated for those injuries. That's a very difficult standard, as one personal injury lawyer noted at the symposium.<sup>14</sup>

This particular denial of reality is taken to its most absurd extreme when a company like Monsanto in East St. Louis, Illinois, denies responsibility for dioxin contamination found within the boundaries of its plant which manufactured, among other things, products which created dioxin. The U.S. Environmental Protection Agency found the dioxin contamination and sued Monsanto to clean it up. Monsanto responded, to the effect of, "it's not our dioxin. Just because we've been manufacturing things that create dioxins at this plant for the last fifty years, this is not our dioxin and you have to prove that it's our dioxin before we'll clean it up." The absence of a definitive answer is used to stymie local organizing efforts and government regulatory initiatives.

#### 4. *The Need for All the Answers, Part IV*

Academia has its own version of this phenomenon. In looking at the problem of the disproportionate impact of environmental hazards on the poor and people of color, some academics have gotten tied up in a series of questions such as "did the industry or did community of color come here first?" This inquiry veers from the irrelevant to the dangerous when the academics, and their supporters in industry, decide that they need to get the definitive answer to that question before doing anything about the disproportionate impact. In my mind, this is akin to standing on the deck of the sinking Titanic and deciding to do a study of who was at fault in hitting the iceberg. The evidence on disproportionate impact is in. We have a problem, so let's solve it.<sup>15</sup>

11. It is important to understand that here I am focusing only on the decisionmaker's view of the struggle, not the community's view. For a community group, the struggle is absolutely about right and wrong, about what is best to do for a community.

12. Carter remarks, *supra* note 3.

13. Wilson remarks, *supra* note 7.

14. William Bernstein, "Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental

Justice Perspective (March 23, 1996).

15. Would the answer to the question "who came first?" change our response to today's problem? One would hope not. Even if communities of color "came to the nuisance" and moved into industrial communities after such communities were established (a situation demonstrably not true in the disproportionate impact of most environmental hazards, such as toxic waste facilities, pesticide poisonings, contaminated groundwater and occupational hazards), for reasons ranging from residential segregation to cheap housing prices, does this mean we should do less today to remedy the disproportionate exposure of these communities to the hazards?

### 5. *So What About the Truth, Anyway?*

So why care about the truth? The truth won't set you free, but the truth is important. In environmental justice struggles, we have truth on our side. But that can't be an end in and of itself. We have to use the truth as a rallying cry, as an organizing tool to bring people together, and as Carl Anthony said, to create a place to let people come together, to take their power.<sup>16</sup> The truth has to be the means, not the end.

### B. "The Government is on Our Side"

The second great myth of white Americana is that the government is on our side. This myth is understandably not shared nearly as much by communities of color who have historically encountered the government through police brutality,<sup>17</sup> endured raids by La Migra,<sup>18</sup> or suffered through the government taking of their Native lands and stripping them of their culture.<sup>19</sup> But even in most white communities, the government is not on our side.

#### 1. *Government Culpability in Today's Situation*

Governments, whether local, state, or federal, respond to power. If we are able to exert power on them, they will be responsive to that extent. Unfortunately, in most environmental justice struggles over the siting of unwanted facilities, the reason the struggle is going on is that one very powerful interest, the polluter, has chosen a not-as-powerful adversary, or target: the community in which it has decided to do its business. The government in that situation is going to respond to that power dynamic and pay fealty to the more powerful actor.

To look only at my own experience, the government has been on the wrong side of the fence — either as an active enemy or a passive obstacle — in every single case of the dozens of communities with which I have worked in the last seven years. We have to recognize that when we look at the distribution of environmental hazards around the country, almost every single one of these facilities, which are disproportionately placed in low income communities and in communities of color, got there with a government permit. The government is responsible for this maldistribution of environmental hazards.

### 2. *When We Think the Government Is Our Friend.*

There are good people who work in government. I have many friends who work at various state, local, and federal agencies. Individual representatives of government are not always the enemy, but even when government officials are well-intentioned, that doesn't mean the government is on our side.

There are four ways in which believing the government is our friend does not move us forward in our struggle.

#### a. *Glacial Pacing.*

The first way I would call "benign sloth." Government agencies are incredibly slow to do anything. We will file a petition. We will get an immediate call from some government worker who is extremely excited about this vastly important issue and is going to get right on it and a whole task force is going to be appointed, and then when the press attention dies down, eighteen months later we haven't received a single a response letter. This is the nature of government. There aren't enough resources to take care of all the problems that are out there. And unless you are trying to get in there, push government and exert your power, government decisionmakers are not necessarily going to respond in the natural lifetime of your community or your organization.

#### b. *The Need for a Body Count*

The second problem with the government as your friend is that it is necessarily reactive. There was an excellent demonstration of this at the symposium when Francine Carter mentioned a study in Bayview-Hunter's Point that showed that breast cancer and cervical cancer rates in African-American women under fifty were twice as high in Bayview-Hunter's Point as they were in any other neighborhood in San Francisco.<sup>20</sup> And Larry Meredith from the San Francisco Health Department said, "[t]his is a tragedy. We need to get better health care out to those people."<sup>21</sup> Ms. Carter turned to him and pointed out that health care took care of the symptom, but the real need was to stop putting the facilities in Bayview-Hunters Point that are causing the symptoms.<sup>22</sup>

16. Remarks of Carl Anthony, *supra* note 5.

17. *See, e.g.,* William Claiborne, *Deputies Used Excessive Force After California Chase, Sheriff Says*, WASH. POST, April 4, 1996, at A12.

18. Slang in Spanish-speaking communities in the United States for the U.S. Immigration and Naturalization Service (INS).

19. Suagee, *supra* note 9, at 485-87, 492-93.

20. Carter remarks, *supra* note 3.

21. Larry Meredith, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996)

22. Carter remarks, *supra* note 3.

**c. Aspirational Myopia**

Mr. Meredith's reaction to the health impacts of pollution in Hunters Point is a symptom of the third way that the government is not necessarily on our side even when it's our friend. In today's political climate there is a kind of aspirational myopia that happens where government officials don't want to do anything that could possibly be controversial, where they could be sticking their neck out at all.

I find this particularly true with the Federal Government, particularly the U.S. Environmental Protection Agency, which, with the Gingrich Congress, is understandably looking over its shoulder and trying not to do anything to offend business interests. The problem with the EPA's "duck-and-cover" response is that EPA has not done anything to warrant the support of communities which might be its allies in this time of need, so as the agency is getting trashed by the Gingrich Congress for EPA's minimal enforcement of laws, few communities are standing up to defend EPA. In fact, environmentalists are also trashing EPA, but for not doing enough. If EPA was actually out there on the front lines, on the barricades, then it might have more allies today. Instead, the EPA has isolated itself as a do-nothing agency and so it's getting hit from both sides.

**d. Raising False Hopes**

Finally, the government is not on our side even when it's our friend when it creates false expectations coming into a situation. This is perhaps the most dangerous "friendship" of government. I've dealt with many, many, client communities who called me up and say, "hey, guess what? They're going to come out and do a study of our community!" Or, "guess what? They want to have a community meeting!" And people in the community are very excited that their particular struggle has gained the attention of a government agency. Let me give one example.

In Buttonwillow, California, a client community of mine, there was what is called a "cluster" of birth defects, with two children born with neural tube defects within a month of each other in the fall of 1992. One birth defect was spina bifida, and the child lives to this day with severe defects. The other defect was anencephaly, in which the child was born without a brain and lived for just 40 minutes. The California Birth Defects Monitoring Program (CBDMP) heard about the cluster and came to the community and said, "we want to do a study." And the community said, "that's fabulous, we've been

looking for somebody to do a study and tell us what's happening here with these birth defects."

Before the CBDMP arrived, I got some of their literature. It turns out that the program had undertaken 142 similar studies between 1981 and 1992.<sup>23</sup> In 43 of those studies, the agency was not able to complete the study, primarily due to lack of resources. So, there was a pool of 99 communities where the program had gone in and gotten results.

<b>Total Investigations:</b>	<b>142</b>
Investigations not concluded:	43
County cut from program due to budget reduction; program unable to initiate or complete investigation:	28
In progress:	14
Not enough data to follow up:	1
<b>Investigations concluded:</b>	<b>99</b>
"No unusual excess" in birth defects:	92
"Unusual excess. Investigation found no environmental cause" for birth defects:	3
"Unusual excess. Investigation showed excess not likely to be caused by contaminated water."	1
"Unusual excess. Contaminated well water as a cause was neither ruled in nor ruled out."	1
"Unusual excess. Investigation did not find environmental cause. There were concomitant sewer gas leaks."	1
"No unusual excess in general population. Insufficient data to test agricultural workers' rates separately."	1

Out of those 99 communities, in 92 it found that there was actually no cluster after all. The program found that there was no statistically significant increase in the number of birth defects.<sup>25</sup> Of the seven communities where an unusual excess was found, in not one of those cases was an answer discovered; CBDMP had been unable to pinpoint a cause in any of them.<sup>26</sup>

So, my client community group and I attended the initial meeting with the Birth Defects Monitoring people. The people from CBDMP<sup>27</sup> arrived and told those present that they wanted to find out what was causing the birth defects in Buttonwillow. There were 50 people in the room from Buttonwillow, saying, "we are so excited that you are going to finally tell us what's going on."

23. California Birth Defects Monitoring Program, Investigations of Suspected Clusters (1992). See Table 1.

24. *Id.*

25. *Id.*

26. *Id.*

27. The actual investigators were from the March of Dimes, under contract to the CBDMP.

I said, "you know, I hate to break it to you, but in the 99 studies where they have actually come to a result, in 99 of them they have not been able to provide any answers for the community." Every single study by this agency in the last ten years had come to inconclusive results. Not one study had reached the results promised by the agency to the community: a cause for the birth defects suffered by the community.

Sure enough, some months later, the CBDMP issued its study on Buttonwillow, which found that there had been two neural tube birth defects, and that the cause was unable to be determined. People in Buttonwillow felt let down and betrayed.

So, there's a kind of false expectation that can be created by the government coming in, even when the government purports to be on your side. The raising of false expectations teaches these communities to distrust government and not to participate in its processes — which then exacerbates the problem of community powerlessness. The community is then blamed for not participating, when the government is actually the cause of that non-participation. Again, remember that the government responds to power. And if we can generate power then we can get the government to do work in our interest. But we can never rely on the idea that the government is on our side.

### C. "We Need a Lawyer"

The third great myth of White Americana is that we need a lawyer. I feel confident stating this in a law review article, based on remarks at a legal conference at a law school to an audience of lawyers and law students: It is a myth that we need lawyers in environmental justice struggles. Unfortunately for those of us that who have chosen the law as our profession, these struggles are not about the law. They are about political and economic power. As Michael Lozeau and Leticia Alcántar said at the symposium, the law *can* be a tool in a particular struggle.<sup>28</sup> The law is a means, and not the end.<sup>29</sup>

Now, why is it a myth that we need a lawyer? There are two primary reasons.

#### 1. *There Is No Law*

First of all, in many situations there is no law to protect your interest. You can come to me and say, "I live next door to this polluting plant. It smells bad. I can't sleep at night. My family and my neigh-

bors seem to be getting sick all the time." However, the plant turns out to be in full compliance with its permits. There may be no legal angle to it. There is no possible lawsuit.

Or you can come to me and say, "you know, the city council just approved this horrendous toxic development next to me." And I reply, "When did they do that?" You tell me, "thirty-one days ago." And I'd say, "I'm sorry, the statute of limitations is thirty days."<sup>30</sup> There simply may not be a law we can use as a tool. So in these situations, one needs something other than a lawyer.

#### 2. *The Law Is There, But Doesn't Work*

But even if there is a law, how do these laws work in court? This is the second problem, and the second reason that "We need a lawyer" is a myth. How do these laws work in court? There was discussion at the symposium about personal injury lawsuits. In an accident context, you can sue for money damages. And unfortunately again this is a reactive situation. You have to have a body count, you actually have to have people who have been seriously harmed. Which is not a good kind of preliminary step to have to take. "You know, I'm sorry you haven't been injured badly enough. Go out and get injured, then we'll bring a lawsuit."

But as was pointed out by several of the panelists, in these cases the community is often revictimized by the lawyers. There are legions of stories from around the country from various toxic spills where lawyers come in, sign up a thousand clients, settle for ten million dollars, give each client a thousand bucks and the lawyer walks away with a cool five million dollars. Further, the clients have signed away their right to ever sue the polluting corporation if, in the future, they get sicker as a result of this exposure. In terms of long-term harm, it's very difficult to even bring a suit to address long term harm. We had the example at the symposium of the Bayview/Hunter's Point situation with elevated levels of breast and cervical cancer.<sup>31</sup> There are 277 toxic facilities in this neighborhood. Where is the causation? Where is the link? We can say, intuitively, that there has to be some connection, but who are we going to go after first? How are we going to prove that it was Facility A and not Facility B across the street — especially

28. Michael Lozeau, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996) (hereinafter "Lozeau remarks"); Leticia Alcántar, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal

Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996) (hereinafter "Alcántar remarks")

29. Cole, *supra* note 9, at 667.

30. See, e.g., CAL. PUB. RES. CODE §21167(c) (codifying 30 day statute of limitations for environmental challenges under the California Environmental Quality Act).

31. Carter remarks, *supra* note 3.

when it was probably both of them? How do we untangle the cumulative and synergistic impact of all of the facilities? If you do an autopsy of a cancer victim, you can be sure that the tumor will not be labeled with the origin of the carcinogen that started the whole process.

Let's not look only at tort law. Let's look at environmental law. Many environmental statutes are procedural statutes. Thus, if the government agency dots its i's and crosses its t's to perfection, even if the result at the end of the process is what many would consider anti-environmental, that result is still legal. The California Environmental Quality Act mandates that government agencies have to mitigate environmental damage to the extent possible. But if they don't really want to at the end of the day, the government agency can adopt what is called a "statement of over-riding considerations," which states that the benefit of the project outweighs its environmental harm.<sup>32</sup> So, even projects that have a demonstrated and admittedly devastating environmental impact can easily be approved.

Or you get cases like the Superfund, which Michael Lozeau noted earlier, where you cannot sue a company that is actively engaged in a superfund cleanup until the cleanup is done, ten or fifteen years down the road. There is no way into that process through that law. As Eileen Gauna so accurately pointed out, none of these environmental laws have the environmental justice perspective built in to them.<sup>33</sup>

Another set of laws which has been used increasingly in the last five or eight years is civil rights law. Civil rights law actually has real promise in the environmental justice field. However, to date there has not been a single successful reported decision under civil rights laws out of the environmental justice movement,<sup>34</sup> though we are still pushing. There are a lot of people in this room who are trying to push the edges of that envelope. But one of things we're encountering is the Reagan and Bush courts.

This may come a surprise, but federal courts are not a great place to try to boldly establish new civil rights in 1996. So that isn't getting us very far either.

So the laws are not really working in courts. How are they working on the streets? How do the laws work for the community? Henry Clark pointed out that having a law suit brought takes a struggle out of the community.<sup>35</sup> Suddenly the struggle is no longer in the hands of the community; it's in the hands of the lawyer who nine out of ten times will not be from that community. The lawyer is in charge; the community is no longer in charge. And so by bringing a lawsuit in the context of an environmental justice struggle, it may disempower rather than empower the community group.<sup>36</sup> Again, as Michael Lozeau<sup>37</sup> and Leticia Alcántar<sup>38</sup> pointed out, however, the law can be a tool. Richard Drury pointed out the law can be a very powerful lever in different situations to effectuate community demands.<sup>39</sup>

I think our roles as lawyers in the movement can be one of tactician. The law can be about building power and securing a place for our clients at the negotiating table. It's about building power. However, we must establish what Henry Clark has called "principled working relationships" based upon the ideas of self-determination of the community and community control.<sup>40</sup> We have to go beyond the myth of needing a lawyer. As lawyers, we need to explain the myth to our community groups, but also know that we may have a role.<sup>41</sup> We just have to understand what that role is: we don't drive the wagon, but we can ride shotgun.

### III. Conclusion

Environmental justice is about power. To build power in the communities most affected by environmental hazards, we need to move beyond myths which obstruct us and occupy our valuable time. This essay has chronicled, and I hoped debunked, three of those myths. Let us continue to find, analyze and discard other debilitating myths as we work for environmental justice.

32. 14 Cal. Code Regs. tit. 14 §15093.

33. Eileen Gauna, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice Perspective (March 23, 1996).

34. In fact, there have been a number of unsuccessful decisions. See Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 *FORDHAM URB. L.J.* 523, 538-541 (1994).

35. Henry Clark, Remarks at the Hastings West-Northwest Journal of Environmental Law and Policy Symposium on Urban Environmental Issues in the Bay Area: Economic, Social and Legal Concerns and Solutions from an Environmental Justice

Perspective (March 23, 1996).

36. Cole, *supra* note 9 at 641-652; Flora Chu and Richard Toshiyuki Drury, *Impact Litigation: A Critique*, 5 *RACE, POVERTY & THE ENVIRONMENT* 62 (1994-1995).

37. Lozeau remarks, *supra* note 28.

38. Alcántar remarks, *supra* note 28.

39. Drury remarks, *supra* note 7.

40. Clark remarks, *supra* note 35.

41. Drury and Chu, *supra* note 8, at 52 ("To achieve the goal of environmental justice, lawyers must not serve as 'white knights' out to save the victim community, but as resources to be integrated into a broader struggle for community empowerment.").



