

## COMMUNITY INITIATIVES

### MACHO LAW BRAINS, PUBLIC CITIZENS, AND GRASSROOTS ACTIVISTS: THREE MODELS OF ENVIRONMENTAL ADVOCACY

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#### I. INTRODUCTION: THE NEED FOR ENVIRONMENTAL JUSTICE ADVOCACY

Environmental hazards are inequitably distributed in the United States, with poor people and people of color bearing a greater share of environmental danger than wealthy people and white people.<sup>1</sup> In part, this environmental injustice occurs because communities hosting environmental hazards have been excluded from decision-making processes concerning those hazards. Several federal and state environmental laws address this inequity through public participation provisions designed to solicit and involve the public in environmental decision making. Some of these laws are particularly useful for blocking potentially dangerous local land uses. This article will briefly examine some of these laws. This article will also discuss three approaches to environmental advocacy — the professional, the participatory, and the power models — and their relative usefulness in resolving inequitable distribution of environmental hazards.

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<sup>1</sup> See Benjamin Goldman, Not Just Prosperity: Achieving Sustainability with Environmental Justice 9 (1993) (reviewing 64 empirical studies of possible disparities in the distribution of environmental impacts and noting that all but one found that people of color and low income face greater environmental impacts); see also Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 Ecology L.Q. 619, 622-27 nn.7-18 (1992) (discussing studies showing that air and noise pollution, lead and pesticide poisoning, occupational hazards, toxic waste dumps, garbage dumps, and rat bites have a disproportionate impact on poor people and people of color in the U.S.) [hereinafter *Empowerment*].

The three models of environmental advocacy offer contrasting approaches to "lawyering for environmental justice."<sup>2</sup> As the environmental justice movement continues to grow, the attention paid to legal remedies will increase. This attention could generate exciting opportunities for the movement or prove to be the movement's undoing.<sup>3</sup> Because the stakes are high for environmental justice activists, I offer a descriptive and prescriptive analysis of different approaches to the classic environmental justice dispute: the siting of an unwanted facility.

Why use environmental laws to address what appears to be a civil rights problem? A series of recent law review articles has examined the efficacy of using Constitutional equal protection claims to redress the disproportionate burden borne by people of color and found that such claims have provided little protection to communities of color.<sup>4</sup> The few reported cases involving equal protection claims for discrimination in environmental decision making support this view.<sup>5</sup> Thus, communities burdened by envi-

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<sup>2</sup> I have previously called such practice "environmental poverty law." See generally *Empowerment*, *supra* note 1.

<sup>3</sup> See generally Pat Bryant & The Gulf Coast Tenants Organization, *The Movement and the Legal Community*, Race, Poverty & Env't, Fall 1994-Winter 1995, at 2; Francis Calputura, *Why the Law?*, Race, Poverty & Env't, Fall 1994-Winter 1995, at 63; Luke W. Cole, *Lawyers, the Law and Environmental Justice: Dangers for the Movement*, Race, Poverty & Env't, Fall 1994-Winter 1995, at 3.

<sup>4</sup> See, e.g., Regina Austin & Michael Schill, *Black, Brown, Poor & Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 Kan. J.L. & Pub. Pol'y 69, 73 (1991); Anthony Chase, *Assessing and Addressing Problems Posed by Environmental Racism*, 45 Rutgers L. Rev. 335, 353-58 (1993); Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 Fordham Urb. L.J. 523, 538-39 (1994); Luke W. Cole, *Remedies for Environmental Racism: A View from the Field*, 90 Mich. L. Rev. 1991, 1993 (1992) [hereinafter *Remedies for Racism*]; Robert W. Collin, *Environmental Equity: A Law and Planning Approach to Environmental Racism*, 11 Va. Envtl. L.J. 495, 519-20 (1992); Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 Nw. U. L. Rev. 787, 828 (1993); Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, 41 Kan. L. Rev. 271, 290 (1992); Naikang Tsao, *Ameliorating Environmental Racism: A Citizen's Guide to Combatting the Discriminatory Siting of Toxic Waste Dumps*, 67 N.Y.U. L. Rev. 366, 411-12 (1992); Rachel Godsil, Note, *Remedying Environmental Racism*, 90 Mich. L. Rev. 394, 420 (1991).

<sup>5</sup> See, e.g., R.I.S.E. Inc. v. Kay, 768 F. Supp. 1145 (E.D. Va. 1991); East Bibb Twiggs Neighborhood Ass'n v. Macon-Bibb County Planning & Zoning Comm'n, 706 F. Supp. 880 (M.D. Ga. 1989), *aff'd*, 896 F.2d 1264 (11th Cir. 1989); Bean v. Southwestern Waste Mgmt. Corp., 482 F. Supp. 673 (S.D. Tex. 1979), *aff'd*, 782 F.2d 1038 (5th Cir. 1986). All were unsuccessful challenges to the siting of garbage dumps in African-American neighborhoods. Ralph Abascal concludes that in hindsight, these cases were brought under the wrong laws. Other civil rights approaches incorporating Title VI or Title VIII may prove more efficient. See Ralph Santiago Abascal, *Tools for Environmental Injustice in the Hood: Title VIII of the Civil Rights Act of 1968*, 29 Clearinghouse Rev. (forthcoming 1995).

ronmental hazards have sought other approaches, including the use of environmental laws.<sup>6</sup> This article contends that strategic use of public participation provisions in environmental laws can help relieve the environmental burden of environmental dangers on low-income communities and communities of color, while bringing those communities together to realize and exercise their collective power.

This essay will briefly sketch three models of environmental advocacy: the professional model, the participatory model, and the power model. I also use the colloquial descriptions "macho law brain,"<sup>7</sup> "public citizen," and "grassroots activist" to describe the stereotypical adherent to each respective model. These models are necessarily caricatures, resembling "real life" only in a broad sense. These models do not necessarily describe particular situations, but serve as teaching tools for examining different styles of environmental advocacy.

Using a generic administrative process for granting land use permits, the article will describe each model and its efficacy for poor people and people of color engaged in environmental struggles. I conclude that the power model of environmental advocacy will achieve the best results for communities, and that community groups and advocates should use a complementary approach including both the power and the participatory models.

## II. PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING: IT'S THE LAW

Recognizing that U.S. residents have a strong interest in their environment, over the last twenty years, Congress and state legislatures have included public participation provisions in a number of environmental laws.<sup>8</sup> These provisions generally have several features in common: opportunities for public input during the envi-

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<sup>6</sup> While this piece will not explore civil rights strategies, environmental justice advocates should recognize that the movement for environmental justice owes the Civil Rights Movement for its history, inspiration and tactics. See Austin & Schill, *supra* note 4, at 75.

<sup>7</sup> This is a term coined by Bay area lawyers Susan Senger Bowyer and Brian Bloom. The term describes members of the legal community who rely entirely on litigation to resolve disputes.

<sup>8</sup> See, e.g., Toxic Substances Control Act, 15 U.S.C. §§ 2619-2620 (1994); Coastal Zone Management Act, 16 U.S.C. §§ 1457, 1458(b) (1994); Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1254(c), 1257(e), 1267(f), 1270 (1994); Clean Water Act, 33 U.S.C. §§ 1365, 1344(o), 1342(j) (1994); National Environmental Policy Act, 42 U.S.C. §§ 4332(C), 4368 (1994); Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9617, 9659 (1994); Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11044, 11046 (1994).

ronmental decision making process; a requirement that agencies respond to that public input; and sections allowing lawsuits by the public (known as "citizen suits") to enforce the law. Some laws include provisions for technical assistance grants to local groups in order to help them assume a more active role in the process.<sup>9</sup>

All environmental laws with public participation provisions can play useful roles in environmental justice campaigns. However, state laws based on the National Environmental Policy Act (NEPA)<sup>10</sup> are probably the most useful to communities struggling against proposed noxious land uses.<sup>11</sup> NEPA requires an environmental impact review for federal actions with a significant impact on the environment.<sup>12</sup> Currently, fourteen states, the District of Columbia, and Puerto Rico have "mini-NEPA" statutes,<sup>13</sup> while another five states require environmental analysis for specific types

<sup>9</sup> See, e.g., Coastal Zone Management Act, 16 U.S.C. § 1458(f) (1994); National Environmental Policy Act, 42 U.S.C. § 4368 (1994); Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9617(e) (1994).

<sup>10</sup> 42 U.S.C. §§ 4321-4370.

<sup>11</sup> The discussion here and in notes 13 through 15 is informed by Reich, *supra* note 4, at 305-13. See Nicholas A. Robinson, *SEQRA's Siblings: Precedents from Little NEPAs in the Sister States*, 46 Alb. L. Rev. 1155 (1982) (discussing state mini-NEPA laws).

<sup>12</sup> 42 U.S.C. § 4332(2)(C); see 40 C.F.R. §§ 1501-1508 (1994). The Clinton administration has expressly directed federal agencies to use environmental justice criteria in applying NEPA. In the Memorandum accompanying his recent Executive Order on Environmental Justice, President Clinton directed that:

Each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act of 1969.

Each Federal agency shall provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of meetings, crucial documents, and notices.

Memorandum on Environmental Justice, 30 Weekly Comp. Pres. Doc. 279, 280 (Feb. 11, 1994). While this Memorandum is not legally enforceable, it should be used in environmental justice advocacy.

<sup>13</sup> See Reich, *supra* note 4 (citing several mini-NEPA statutes); see, e.g., Cal. Pub. Res. Code §§ 21000-177 (West 1986 & Supp. 1995); Conn. Gen. Stat. Ann. §§ 22a-1a to 22a-1h (West 1985 & Supp. 1992); D.C. Code Ann. §§ 6-981 to 6-990 (Supp. 1995); Haw. Rev. Stat. §§ 343-1 to 343-8 (1990 & Supp. 1994); Ind. Code Ann. §§ 13-1-10-1 to 13-1-10-8 (Burns 1990); Md. Code Ann. Envir. §§ 1-301 to 1-305 (1989 & Supp. 1994); Mass. Gen. Laws Ann. ch. 30, §§ 61-62H (West 1992 & Supp. 1995); Minn. Stat. Ann. §§ 116D.01 to .07 (West 1987 & Supp. 1992); Mont. Code Ann. §§ 75-1-101 to -1-324 (1994); N.Y. Envtl. Conserv. Law §§ 8-0101 to 8-0117 (McKinney 1984 & Supp. 1992); N.C. Gen. Stat. §§ 113A-1 to 113A-13 (1994); P.R. Laws Ann. tit. 12, §§ 1121-42 (1978 & Supp. 1990); S.D. Codified Laws Ann. §§ 34A-9-1 to -9-13 (1992 & Supp. 1995); Va. Code Ann. §§ 10.1-1208 to -1212 (Michie 1993); Wash. Rev. Code Ann. §§ 43.21C.010 to 43.21C.914 (West 1983 & Supp. 1995); Wis. Stat. Ann. § 1.11 (West 1986 & Supp. 1994).

of projects.<sup>14</sup> In several other states, the judiciary<sup>15</sup> or the executive branch<sup>16</sup> has imposed a duty to undertake environmental review. For example, the mini-NEPA statutes either explicitly cover actions by both state and local agencies or have been judicially construed to do so.<sup>17</sup> In many cases, environmental impact reviews provide the most useful opportunity for public participation.<sup>18</sup>

Although this article focuses on siting, the public participation principles discussed below are broadly applicable to other government decisions. Furthermore, the campaigns described here are usually aimed at *blocking* the siting of a project,<sup>19</sup> but could just as easily be used to *ensure* the siting of a desired facility, such as a low-income housing complex.

### III. INTO ACTION: HOW TO USE THE LAW IN LOCAL SITING DISPUTES

In the future, community groups will increasingly call on progressive attorneys for help with environmental justice claims, often to block the siting of a potentially dangerous facility. This section gives an overview of a typical permitting process for such a project and then reviews three models of environmental advocacy and their application to the permitting process. The permitting process

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<sup>14</sup> See Ariz. Rev. Stat. Ann. §§ 40-360 to -360.13 (West 1985 & Supp. 1994) (power plant siting); Del. Code Ann. tit. 7, §§ 6601-20, 7001-13 (1991) (wetlands activity); Fla. Stat. Ann. §§ 403.801 to .817 (West 1986 & Supp. 1992) (new environmental standards consistent with federal equivalents); Ga. Code Ann. §32-10-60 to -64 (Michie 1992) (actions of state tollway authority); N.J. Stat. Ann. §§ 13:9A-1 to -10, 13:9B-1 to -30, 13:19-1 to -21 (West 1991 & Supp. 1995) (wetlands and coastal area activity).

<sup>15</sup> In Louisiana and Pennsylvania, courts have required environmental analysis from state agencies based on Constitutional provisions requiring government maintenance of environmental quality. See *Save Ourselves, Inc. v. Louisiana Env'tl. Control Comm'n*, 452 So.2d 1152, 1156-57 (La. 1984) (construing La. Const. art. IX, §1); *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Commw. Ct. 1973), *aff'd*, 361 A.2d 263, 273 (Pa. 1976) (construing Pa. Const. art. I, §27).

<sup>16</sup> Michigan, New Jersey, Texas, and Utah have promulgated executive orders establishing environmental review procedures. See Robinson, *supra* note 11, at 1158 n.18.

<sup>17</sup> Reich, *supra* note 4, at 306 n.203.

<sup>18</sup> See *infra* notes 26-28 and accompanying text.

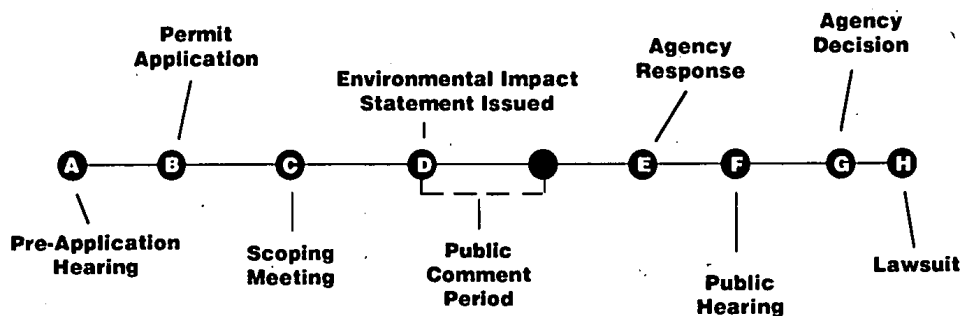
<sup>19</sup> A note on taxonomy: I call the focus of client concerns "facilities" or "projects" throughout this piece to make the article more generic and applicable to many different situations. In actual practice, environmental justice advocates and their clients are well advised to use the full, descriptive names of a project at every juncture. Names such as "massive toxic waste incinerator," "the City's first tire-burning facility," "the polluting industrial company," and "the leaking garbage dump" are more effective than "the proposed project." Language is an important tool in the fight for environmental justice; one person's "sanitary landfill" is another's "garbage dump."

described below is based upon provisions in the mini-NEPA statutes mentioned above.

### A. The General Process<sup>20</sup>

The mini-NEPA administrative process used in local land use decisions generally resembles the timeline below. I have based this timeline on the California Environmental Quality Act,<sup>21</sup> simplifying the process for purposes of this discussion. Figure I highlights the significant events in the permitting process, including the opportunities for public input during that process. The timeline informs the following discussion regarding the models of environmental advocacy.

**FIGURE I**  
**A Sample Public Participation Process**



The following paragraph describes the permitting process in a nutshell. Before a company applies for a local land-use permit, it sends a letter of intent to the local agency. The agency then holds a *pre-application hearing*. The purpose of this hearing is to explain the project and the permitting process. Next, the company files a formal *application* with the agency. At this point, the agency evaluates potential environmental effects of the project. If the project will have a potentially significant effect on the environment, state law directs the agency to prepare an *environmental impact report*

<sup>20</sup> Discussion of the administrative process relates to local land-use decisions, and it is assumed that the agency preparing the environmental impact report (EIR) and reviewing the project is a local governmental body. Also, the discussion presumes that the project will have a potentially significant effect on the environment, therefore requiring an EIR.

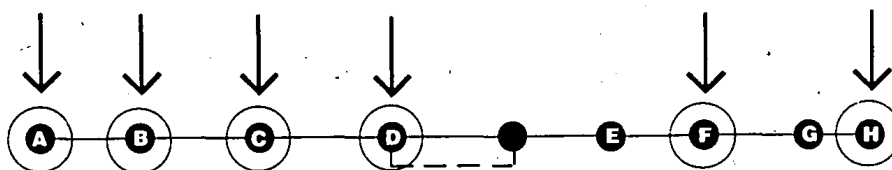
<sup>21</sup> See Cal. Pub. Res. Code § 21000 (West 1986 & Supp. 1995). Some state mini-NEPA processes will differ from California's regulatory scheme, but the overall intents and effects are similar.

(EIR). The local agency holds a meeting to determine the scope of the EIR. This *scoping meeting* is open to the public, but is often attended exclusively by officials from other government agencies. The agency then prepares an EIR (or contracts with a consultant to produce such a report) detailing the potential effects of the project. This EIR is circulated for *public comment* to anyone requesting it. Thereafter, the local agency prepares a *response to public comments*. Local agencies will often hold *public hearings* on the EIR. Finally, the local agency will decide whether to permit the project, theoretically basing its decision on the EIR and public comment.<sup>22</sup> If a proponent or opponent of the project is unhappy with that decision, he or she can then file a lawsuit.

### B. The Professional Model<sup>23</sup>

The professional model is grounded in the idea that the attorney is an expert and will best represent a group's interests during the permitting process. Because of his or her training and skills, the attorney plays a central role in the permitting process, representing the client group in all fora. Figure II illustrates the various points at which the attorney can intervene on behalf of his or her client group.

**FIGURE II**  
**The Professional Model:**  
**Traditional Representation**



The attorney may first advance the client group's interests and opinions at the pre-application meeting. This stage allows the attorney to gather more information about the project. The attorney can then analyze the permit itself in preparation for scoping meetings. For those experienced in the field, scoping meetings are

<sup>22</sup> I say "theoretically" because in actual practice such decisions are usually influenced by political and economic grounds that have little to do with the evidence offered during the environmental review process. See, e.g., *infra* note 43 and accompanying text.

<sup>23</sup> This model is also based on the California Public Resources Code and related statutes. See Cal. Pub. Res. Code § 21000.

a routine exercise where relatively obvious potential environmental impacts are raised so that they can be addressed in the EIR.

When an EIR is issued, the professional swings into action. As an expert, or working with experts, the attorney carefully parses the environmental review documents and provides expert written testimony ("comment") for the client group. The agency, in turn, must respond to filed comments. The comment — often the basis for later lawsuits on the project — is essential because all issues raised in a later lawsuit must have been raised previously in the EIR process.

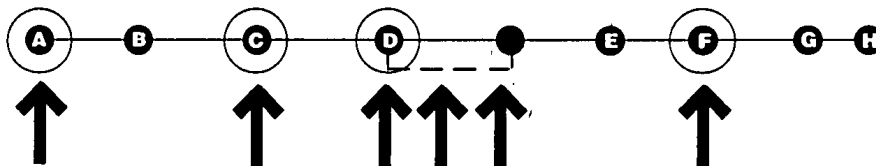
The public hearing creates another forum for the use of experts. Typically, many of the same experts that evaluated the EIR will testify on behalf of the client group at the hearing.

Finally, if the decisionmakers decide against the client group, the attorney can sue to block the project. Adherents to the professional model enjoy this phase of the process the most, and often look for "test cases" in order to influence the law. A quick glance through any environmental law casebook will reveal the names of the nation's most prominent and leading environmental groups, many of which use the professional model of advocacy.

### C. *The Participatory Model*<sup>24</sup>

While the professional model essentially revolves around the attorney, the participatory model aims to maximize community involvement in the administrative permitting process. This model seeks to present client voices at every opportunity afforded by the process. Figure III outlines the points in the process designed for public input.

**FIGURE III**  
**The Participatory Model:**  
**Opportunities for Client Input**



<sup>24</sup> This model is also based on the California Public Resources Code and related statutes. See Cal. Pub. Res. Code § 21000.

As in the professional model, the pre-application hearing presents the first opportunity for client participation. The hearing is an educational opportunity for everyone involved. Clients can hear about the project and can often ask questions of agency officials. Officials often gauge the time they will need to spend overseeing the permit process according to the turnout at the pre-application hearing. In my experience, officials are far more likely to review an application carefully, and document its potential impacts adequately, if they know the community is actively involved in the permitting process. Bureaucrats in state and local environmental agencies respond to pressure, and when deciding between the desires of a community and those of a company, they will usually favor the interest putting the most pressure on them. The pre-application hearing also gives the company a chance to evaluate potential opposition to the facility. If there is overwhelming opposition, a company may reconsider or modify the project.

The scoping meeting is the next opportunity for public involvement. At the meeting, local agency officials receive information from the public and other agencies about the scope of the review. For example, an EIR for a parking garage in a downtown area will generally consider different impacts (traffic, air pollution, congestion, etc.) than one for an irrigation canal through a wilderness area (wildlife, water quality, etc.). The scoping meeting is another opportunity for client input and for environmental justice advocates to help a community group recognize the value of its own expertise. After all, the people who will actually experience the impact are home-grown experts — no one knows better how truck traffic down a main street will affect a community than neighbors who live on that street.<sup>25</sup> The scoping meeting is one place to recognize and exercise that community knowledge.

Public comment on the EIR itself is perhaps the most important public input and offers the greatest opportunity for client involvement in the environmental review process. The EIR enables a community group to educate itself while building broad opposition to (or support for) the proposed project. The EIR is usually a dense, technical document and is largely incomprehensible to the public and sometimes even to lawyers. This is especially true of EIR sections discussing human health impacts. Lawyers and other

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<sup>25</sup> There is a need for many skills in environmental justice advocacy, not just those of the lawyer. Alice Brown, *Environmental Justice and Civil Rights, Race, Poverty & Env't*, Fall 1994-Winter 1995, at 39, 41.

technical consultants may be needed in order to translate the document into plain English.<sup>26</sup>

Use of the EIR in a study-group fashion is one way to maximize public education and organization value. In such a situation, members take different chapters of the EIR and analyze them, learning as much as possible about a particular topic (e.g., air pollution, traffic impacts, waste management projections) and comparing that knowledge to the information found in the EIR. Often, a community's knowledge and experience will clash with the "knowledge" found in the EIR. When a community group engages in such a study-group, the group often points out serious flaws in the project, indicates alternatives, and helps educate decisionmakers and the public. Well-educated community groups are often able to demand changes in the proposed project, additional mitigation measures, different environmental tests, or independent studies of potential environmental impacts.<sup>27</sup>

In other situations, a community group may not be sufficiently prominent or organized to run a full campaign around an EIR. Nonetheless, the EIR can still be a useful organizational tool. The community may hold neighborhood house meetings during which community leaders discuss the campaign against (or for) a particular project. If one member of the community group (or the group's technical consultant or lawyer) explains the findings of the EIR, then the group can discuss their hopes, concerns, and fears about the project. The process of articulating individual concerns encourages group members to recognize their common concerns and allows those present to move from isolated individual fear toward empowered community action.<sup>28</sup> Those present at the meeting can then write letters of comment on the EIR, setting out their thoughts on the project.

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<sup>26</sup> In situations where one's client population does not speak English, the material must be translated a second time. For an example of organizing and advocacy around translation issues, see *Empowerment*, *supra* note 1, at 674-79; Luke W. Cole, *The Struggle of Kettleman City: Lessons for the Movement*, 5 Md. J. Contemp. Legal Issues 67, 75-79 (1994). For extensive legal theory and argument on the necessity for translation to include a non-English-speaking public in public participation processes, see Memorandum of Points and Authorities, *El Pueblo para el Aire y Agua Limpio v. County of Kings*, No. 366045 (Cal. Super. Ct. Sacramento County Apr. 13, 1992).

<sup>27</sup> See, e.g., Peggy M. Shepard, *Issues of Community Empowerment*, 21 Fordham Urb. L.J. 739, 741 (1994) (discussing a West Harlem group that demanded changes such as independent engineering, stack emissions testing, and monitoring of stack emissions).

<sup>28</sup> One example of such a campaign is described in *Empowerment*, *supra* note 1, at 674-79.

The last opportunity for client input is the public hearing. The public hearing serves an educational function — the community and its experts educate both decisionmakers and other audience members about the flaws in a project. Attendance sends an important message to the decisionmakers: the bigger the turnout, the greater the consequences the decisionmakers can expect to suffer if they vote against the will of the group. Finally, public hearings serve as organizing tools for client groups, and provide relatively easy ways to bring people together to learn about a project.<sup>29</sup>

The community has little opportunity for input after the public hearing. The decisionmakers render a decision, and those dissatisfied with it have only the courts for recourse. At this point, a community group must use a lawyer if it wishes to proceed. However, as in the professional model, if a community group actively participated at every opportunity, it has likely built a good administrative record, thus enhancing the chances for a successful lawsuit.<sup>30</sup>

The participatory model essentially accepts the system and encourages participation in it. An adherent might believe that environmental decision making would be fairer if people had more access to the system. Citizen victories in siting battles reinforce a sense that the system works and a belief that the voices of the people can be heard. This belief in the system contrasts with the skepticism felt by advocates of the power model.

#### D. The Power Model

Adherents of the power model believe that the system is stacked and that no amount of participation *by itself* will change the relations of power that give rise to environmental degradation.<sup>31</sup> Advocates of the power model are convinced that more access to

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<sup>29</sup> See, e.g., Enrique Valdivia & Ashley Bracken, *Texans Challenge High Voltage Lines, Race, Poverty & Env't*, Fall 1994-Winter 1995, at 34.

<sup>30</sup> *Empowerment*, *supra* note 1, at 677.

<sup>31</sup> Long-time subscribers to the power model have sympathizers among mainstream analysts of environmental decisionmaking. Lawrence Susskind, director of the MIT-Harvard Public Disputes Program, takes a critical view of public participation processes. He writes:

At a local zoning hearing, generally invitations are sent only to those parties explicitly identified as abutters. Other people are permitted to attend, but their involvement depends on their actually seeing the meeting notice. Also, meetings are tightly managed through the use of elaborate rules and procedures. These control the flow of information by dictating sign-up procedures and setting rigid time limits for speaking, and do not encourage problem-solving. Ultimately, while one might be afforded a chance to speak, the final zoning decision is unlikely to be affected by one's remarks. Closure, or agreement, is reached by elected or appointed officials behind closed doors.

the system means nothing without power within that system. If it is used at all, the public participation process is viewed as a vehicle for organizing communities and a means to community empowerment. By bringing people together to realize and exercise their collective strength, practitioners of the power model target the root of community problems — powerlessness.<sup>32</sup>

Three central ideas define the power model. First, it eschews the public participation process as co-optive.<sup>33</sup> Second, it focuses on the actual leverage point in the process — the decision by officials. Third, it emphasizes strategies to influence the decisionmakers. These strategies offer a significant opportunity for environmental justice advocates.

**FIGURE IV**  
**The Power Model:**  
**Focus on the Decision**

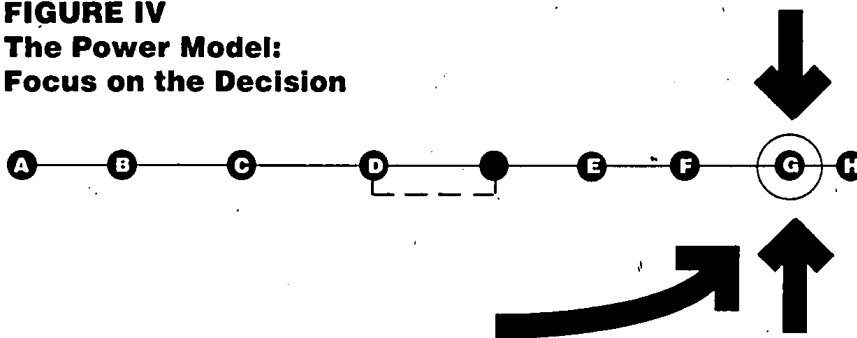


Figure IV makes clear the power model strategy: all attention is focused on the actual decision, even to the exclusion of participation in the rest of the process. However, this does not mean that the client group is only active *at the time of the decision*. Rather, the group must be active in trying to influence the decision from the first moment it learns that the process is underway.

Lawrence E. Susskind, *Overview of Developments in Public Participation*, in *Public Participation in Environmental Decisionmaking 3* (Elissa Lichtenstein & William T. Dunn eds., 1994).

<sup>32</sup> For other strategies lawyers may use to help empower low-income communities, see William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 Ohio N.U. L. Rev. 455 (1994).

<sup>33</sup> See, e.g., Deoohn Ferris, *Communities of Color and Hazardous Waste Cleanup: Expanding Participation in the Federal Superfund Program*, 21 Fordham Urb. L.J. 671, 675 (1994) (arguing that public participation mechanisms in environmental laws are "largely intended as community relations efforts" rather than opportunities for serious input); see also Ellison Folk, *Public Participation in the Superfund Process*, 18 Ecology L.Q. 173, 184 (1991).

### 1. A Step-by-Step Process

The power model relies on a step-by-step analysis of the power dynamics of the decision. Key questions to be asked and answered include:

1) *Who are the actual decisionmakers?* An elected city council or board of supervisors usually makes the ultimate decision, even though a local appointed body, such as a planning commission or zoning board, may make an initial decision on a project.

2) *Where do the individual decisionmakers stand on the project?* Client groups can ascertain the various viewpoints through meetings with the elected official or her staff or through research into press archives at a local newspaper or TV station.

3) *How can the group shift or neutralize its opponents in the decision-making body?* This may take a variety of forms, depending on the timing as well as the energy, resources, and the creativity of the group. Community groups in California have made neighborhood struggles city-wide issues by appearing at candidate forums during election years and asking pointed questions.<sup>34</sup> Other groups have worked with local decisionmakers to pass ordinances against various forms of pollution.<sup>35</sup> In smaller communities, group members have campaigned for and won seats on the decision making body.<sup>36</sup> Participation in the political process is not necessary, however, in order to pressure an elected official. Groups have distributed "WANTED" posters with the official's name, face, and "crimes" listed;<sup>37</sup> groups have picketed or held sit-ins at an official's office; groups have joined local elected officials at their churches to pray

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<sup>34</sup> Concerned Citizens of South Central Los Angeles used this tactic effectively to defeat a plan to build a garbage incinerator in its neighborhood. Group members attended every candidate forum held during the city council race, regardless of the district. At the forums, citizens asked the candidates questions regarding their stance on the incinerator issue. When city council members from other districts argued that the incinerator would not be built in their districts, group members pointed out that air pollution from the incinerator does not recognize the district boundaries. See, e.g., Cynthia Hamilton, *Women, Home, and Community: The Struggle in an Urban Environment*, Race, Poverty & Env't, Apr. 1990, at 3, 11.

<sup>35</sup> B. Suzi Ruhl, *For the People*, Race, Poverty & Env't, Fall 1994-Winter 1995, at 50, 51 (discussing a draft of a Georgia drinking water statute written by the Legal Environmental Assistance Foundation).

<sup>36</sup> This strategy was successfully used by CRLA client groups *El Pueblo para el Aire y Agua Limpio* of Kettleman City, California, and *Residentes Preocupados por Aire Limpio* of Del Rey, California. In these cases, groups targeted the community water board. Because turnout for water board elections had historically been low, the groups easily elected their own members to the boards by organizing voting drives.

<sup>37</sup> See Lindsay Van Geider, *Saving the Homeplace: How Kentucky's Most Powerful Environmental Group Gets What It Wants*, 94 Audubon 62 (1992).

for the official;<sup>38</sup> and some groups have launched boycotts of businesses owned by elected officials. Other groups have organized "toxic tours" of heavily-polluted neighborhoods to educate the media, decisionmakers, and out-of-town supporters.<sup>39</sup> Many groups have formed partnerships with other local institutions such as churches, medical centers, and schools to broaden the group's appeal and reach.<sup>40</sup> The possibilities are limited only by the imagination of the community group and its advocates.

4) *How can the group solidify its position with supporters on the decision-making body?* Ensuring that the supporters of the client group adhere to their position is just as important as targeting the client group's opponents. Client groups can influence decisionmakers in positive ways by creating positive press through events such as "plant a tree for councilmember X," or presenting "community leadership" awards. Other ideas may include volunteering in a decisionmaker's office, working on their campaigns, or holding fundraising events for them.

5) *Who are the group's potential allies, both in the community and regionally?* Coalitions and networks are crucial ingredients in the environmental justice movement. The successful merger of diverse constituencies into broad-based local campaigns or regional networks can be instrumental in winning the fight at hand and leaving a viable structure for future battles.<sup>41</sup>

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<sup>38</sup> Latino organizers in Texas pioneered this tactic to pressure racist white Southern decisionmakers. In a typical scenario, hundreds of Latinos would turn up at an all-white church to "pray for" the white elected official or judge who was a member of the congregation. The theory behind such an action was to use the racism of the official and the congregation to force the action the protesters wanted: the congregation could not deny the peaceful worshippers the chance to join their service and pray, but their discomfort with the presence of the Latinos was communicated forcefully to the official. Alfredo de Avila, a longtime trainer with the Center for Third World Organizing, developed this tactic in his years organizing in South Texas.

<sup>39</sup> For years, groups such as the West Coast Toxics Coalition in Richmond, California and the Gulf Coast Tenants Organization in New Orleans, Louisiana have run "toxic tours." Other groups have also used the tactic. See, e.g. Shepard, *supra* note 27, at 753 (describing the West Harlem Environmental Action toxic tours of environmental hotspots in New York City communities of color); Wendy R. Brown-Scott, *The Human Side of Environmental Racism: A Visit to Columbia, MS, Race, Poverty & Env't*, Fall 1994-Winter 1995, at 46, 47 (describing a toxic tour of an African-American neighborhood in Columbia, Mississippi).

<sup>40</sup> Shepard, *supra* note 27, at 753.

<sup>41</sup> *Id.*; Quigley, *supra* note 32, at 456.

## 2. *The Process in Practice*

The power model recognizes that taking part in the permitting process is often futile for residents of low-income communities and communities of color who cannot muster the political power within the system to compete with well-connected and financed companies. Some environmental review processes do not even acknowledge these communities, let alone study them for potential impact.<sup>42</sup> Many groups have taken part in the permitting process for a proposed facility, and earnestly presented damning evidence about a company, project, or technology that all experts agree is bad, only to see the permit approved by their elected representatives.<sup>43</sup> Such communities learn the hard way that the public participation process is not designed to hear and address their concerns, but instead to manage, diffuse, and ultimately co-opt community opposition to projects.

The power model is more concerned with building viable community organizations than with winning any particular permitting battle. The model recognizes that communities must take owner-

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<sup>42</sup> While designed to identify significant environmental impacts, the environmental review process is only as good as the government agency conducting it. Across the country, agencies have failed to consider certain impacts or communities as a result of incompetence or design. Sharon Carr Harrington, *Fighting Toxics on the Bayou, Race, Poverty & Env't*, Fall 1994-Winter 1995, at 48, 49. Carr Harrington notes the inaccuracy of the Environmental Impact Statement for a Louisiana Energy Services uranium enrichment facility located between two historically African-American communities near Homer, Louisiana:

The draft EIS failed to consider any impact of the facility on Forest Grove and Center Springs — the communities closest to the proposed site. In fact, neither of the communities appear on any of the numerous maps included in the 400-page document although more distant, predominantly white communities of similar size are noted.

*Id.* The same observation was made in *Residents of Sanborn Court v. California Department of Toxic Substances Control*, No. 95CS01074 (Sacramento Super. Ct. May 5, 1995). In this case, the state of California prepared environmental review documents for a toxic waste treatment facility just one block from a complex housing Latino farmworkers and more than seventy children:

Remarkably, the Initial Study failed to mention that there was a substantial concentration of people living very close to the proposed toxic facility. The site map included in the Initial Study showed the neighborhood surrounding the toxic plant, and conveniently stopped across the street from the Sanborn Court residential complex.

*Id.*

<sup>43</sup> As Samara Swanston notes, "Selection among regulatory alternatives is . . . highly susceptible to political pressure, regardless of human health risk or cost. As a result, decisions that are presented as rational, equitable, and scientifically based are often tainted by political biases." Samara F. Swanston, *Race, Gender, Age, and Disproportionate Impact: What Can We Do About the Failure to Protect the Most Vulnerable?*, 21 *Fordham Urb. L.J.* 577, 586 (1994).

ship of the struggle "and ultimately their own communities."<sup>44</sup> Redlining, racism, unemployment, and crime are long-term problems for low-income communities that long outlive fights over particular facilities. Ideally, environmental justice strategies that build local power will have an impact on these long-term problems. Many community organizations created during the heat of local environmental fights have become creative, contributing community forces for social and economic justice.<sup>45</sup>

Because of its focus on building power, rather than using the system, the power model provides a less clear role for the attorney than the participatory model. However, the experience of the Center on Race, Poverty, and the Environment indicates that a lawyer can still provide valuable services to a client group within the parameters of the power model. First, the attorney may know of or have previously represented groups in other communities that have organized successful campaigns against similar projects. The attorney can direct his or her clients to these groups for assistance, or develop tactics based on the strategies used by those other groups. Second, the lawyer may be more familiar with the local power structure, and thus better able to identify how best to leverage decisionmakers.<sup>46</sup> Finally, the attorney can counsel his or her clients about the legality of specific protests, demonstrations, and civil disobedience actions.<sup>47</sup>

The power model has one significant downside. If it fails and the decisionmakers approve the project, the community group may be precluded from pursuing a lawsuit. Most administrative processes require a potential litigant to exhaust his or her administrative remedies before filing suit. If a community group has ignored the administrative process, the group will almost certainly be barred

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<sup>44</sup> David H. Harris, Jr., *Farm Land, Hog Operations and Environmental Justice*, Race, Poverty & Env't, Fall 1994-Winter 1995, at 31, 33.

<sup>45</sup> For example, Concerned Citizens of Los Angeles, formed to fight a garbage incinerator, now develops low-income housing. Marlene Cimon, *Major Low-Income Housing Drive Launched*, L.A. Times, Feb. 28, 1991, at B1. *Madres del Este de Los Angeles-Santa Isabel* grew out of the struggle against a prison in East Los Angeles and now runs job training and conservation programs. See generally Mary Ann Perez, *Graffiti Project Turns into a Screen Test*, L.A. Times, Sept. 25, 1994. West Harlem Environmental Action, which sprung up around a sewage treatment plant controversy, plans to produce a cable television show and run an environmental education program for inner-city youth. Shepard, *supra* note 27, at 754.

<sup>46</sup> Richard Toshiyuki Drury & Flora Chu, *From White Knight Lawyers to Community Organizers*, Race, Poverty & Env't, Fall 1994-Winter 1995, at 52 (identifying techniques a lawyer can use to help a client group solve its own problems).

<sup>47</sup> See generally *Id.*

from suing to overturn that process. If a group *is* allowed to sue, it has not taken part in building a strong administrative record with which to challenge the decision, making success less likely.

#### IV. JUDGING THE MODELS

One's response to the three models depends on whether one is a macho law brain or a community organizer. The environmental justice movement is just that, a movement. Therefore, environmental justice advocates must determine whether a particular strategy helps to further the goals of the movement. This inquiry relates both to the movement on a national level and, more importantly, to a local community group's "movement" regarding a particular problem. The relative benefits to the environmental justice movement can be determined by asking three questions of each model: Will it educate?; Will it build the movement?; and Will it address the root of the problem or merely a symptom?<sup>48</sup>

##### A. *The Professional Model Scrutinized: Are Macho Law Brains Good for a Movement?*

The professional model concentrates power, decision making, and activity in the attorney. A community group plays little, if any, role besides lending its name to legal proceedings in order to provide standing for the suit. Oftentimes, legal environmental groups have no outside clients at all, but sue on behalf of their own membership.<sup>49</sup>

##### 1. *Educating the Decisionmakers*

The attorney's argument and expert testimony educates the decisionmakers about the technical defects of the project. But, when the hearing room is empty of all but lawyers, the decisionmakers infer that the community concern about the project is not significant.

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<sup>48</sup> Cf. *Empowerment*, *supra* note 1, at 668-69; Michael Kazin, *The Peace Movement: Signs of Life . . . And Intelligence?*, *Socialist Rev.*, Sept.-Oct. 1987, at 113, 115 (discussing these three questions in the context of nuclear non-proliferation).

<sup>49</sup> A key question is whether cases are chosen by communities or by lawyers. Matthew Chachere, *What's Intent Got to Do With It?*, *Race, Poverty & Env't*, Fall 1994-Winter 1995, at 42. The efforts of the Center for Constitutional Rights "grew directly from our involvement with grassroots struggles, where the constituencies we have traditionally worked with began to identify environmental hazards foisted on their communities in the context of the struggles around racial, economic and political equality." *Id.*

How are the clients educated? The clients have no role in the professional model, and thus gain no insight into either the process or substance of their own claim. Since the attorney does all the work, the clients are not educated as to the dangers of a particular proposal, or the alternatives to it. Also, they learn nothing about the permitting process, which may become even more daunting to them because "only the lawyer can do it." Perhaps the most important and most damaging effect of the professional model is the group's realization that it has no role to play in resolving its own problems.

## 2. *Building Whose Movement?*

The professional model may be very effective at building the "movement" of the particular legal organization. Slick direct mail appeals decrying the conditions in East L.A. or East St. Louis may fill the coffers of some big name environmental group. Unfortunately, the professional model is entirely ineffective at building the environmental justice movement at the local level. By taking all the power out of the community and putting it in the hands of the lawyer, the professional model leaves no responsibility to the local movement. In fact, use of the professional model has made many communities skeptical about working with the legal system at all.<sup>50</sup> Taking events that would have been good organizing tools — like public hearings — and putting them in the hands of the lawyer actively *discourages* movement building.<sup>51</sup> To the extent that it impedes a strong local group from developing and joining regional networks, the professional model has a detrimental effect on the national environmental justice movement.<sup>52</sup>

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<sup>50</sup> For a variety of reasons, including race, class, and a community's prior experience, lawyers are often treated with distrust and skepticism upon first entering a community. As one CRLA community worker recounts about his first interaction with CRLA lawyers, "two lawyers went to my home in Salinas, in pin-stripe suits. My first thought was FBI. 'What did I do wrong?'" Heather Abel, *The Legal Education of a Community Worker: An Interview with Hector de la Rosa*, *Race, Poverty & Env't*, Fall 1994-Winter 1995, at 37, 38.

<sup>51</sup> See generally *Remedies for Racism*, *supra* note 4, at 1191, 1196 (suggesting that grass-roots activism is essential to combat environmental injustice); Gerald P. Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 *Geo. L.J.* 1603, 1610 (1989) (examining lawyer-client relationships and the practice of law in section 1983 litigation).

<sup>52</sup> See generally Michael Bennett and Cruz Reynoso, *California Rural Legal Assistance (CRLA): Survival of a Poverty Law Practice*, 1 *Chicano L. Rev.* 1 (1972) (emphasizing the role of local support in the growth and survival of a community legal aid center).

### 3. *Lawyers as Band-Aids*

Like applying a Band-Aid to skin cancer, this style of advocacy does not change the status quo — the symptom may be covered up, but the malady lingers on. Communities are typically chosen for noxious land uses because they are politically and economically powerless.<sup>53</sup> Thus, the noxious land use is merely a symptom of the larger problem of powerlessness. If an attorney steps in without involving the community and defeats the noxious land use through inspired legal argument, only the symptom is removed. By teaching communities that they have no role in solving the problems which affect them, the professional model *reinforces* powerlessness and is thus antithetical to environmental justice. Richard Toshiyuki Drury and Flora Chu succinctly expressed the bottom line for the environmental justice movement: “lawyers must serve not as white knights out to save the victim community.”<sup>54</sup>

#### B. *The Participatory Model: Is Involvement in the Process the Answer?*

The participatory or public citizen model differs from the professional model in that its ambition is to get the community heard in the decision making process. The participatory model reforms many of the disempowering aspects of the professional model by giving community groups the power to take part in the processes which affect their community.

##### 1. *Educating Residents and Decisionmakers*

The participatory model puts a premium on educating community residents about a proposed land use. If run successfully, the participatory model creates dozens of community experts who have researched the project and who can talk with authority about its negative impacts and alternatives to it. Such involvement also leaves the community residents with an understanding of the permit process and an awareness of the concrete steps they can take to participate in that process. Depending on the results of the permit-

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<sup>53</sup> Gerald Torres, *Environmental Burdens and Democratic Justice*, 21 *Fordham Urb. L.J.* 450 (1994). Torres notes that the harms low-income communities experience “are rooted more in the lack of political force and economic resources than a dearth of legal enforcement . . . . Therefore, while lawsuits can alleviate the most egregious instances of environmental race discrimination, many disparities that result from environmental decisions and policies can only be addressed through political means.” *Id.* at 450-51. See also *Empowerment*, *supra* note 1, at 641-60.

<sup>54</sup> Drury & Chu, *supra* note 46, at 52.

ting process, community residents may learn that their participation can either bring about positive results or fail to influence the outcome of the decision.<sup>55</sup> This latter lesson is discussed below in the power model.

When the participatory model succeeds, decisionmakers are also educated. When they attend a hearing in a room full of people, they learn that people care deeply about a particular issue and that they vote against the will of the people at their own peril. This awareness of the community's active involvement may weigh on the decisionmakers' minds, resulting in a more favorable outcome for the community.

## 2. *Building the Movement by Working Within The System*

Participation in the permitting process exposes people to information about the proposed project and its proponents. This exposure ultimately helps bring in new activists. By bringing together and educating local residents, the participatory model begins to address the root problem of political and economic powerlessness. However, the process may not actually build the movement if the model merely mobilizes a number of individual community residents, but does not create and maintain a community group.

## 3. *Is Accountability Enough?*

Deeohn Ferris identifies another way that public participation in the permitting process gets at the root of the problem: it guarantees that agencies are "held accountable to all those whose health

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<sup>55</sup> Often a decision will come down to competing versions of "the truth": a proposed facility is either (1) a job-creating community benefit; or (2) a community-poisoning environmental disaster, depending on who is telling the story. Actually, it may be both. As James Freeman and Rachel Godsil note:

One of the central arguments underlying a contested siting decision is whose perception of risk is more accurate and legitimate. Statistically calculated environmental risk assessments are, according to the conventional wisdom, scientific and precise determinations of the amount and probability of harm caused by a present or planned facility. According to this same conventional wisdom, private citizens' perceptions of risk are indeterminate, and are constituted from subjective attitudes and feelings.

James S. Freeman and Rachel D. Godsil, *The Question of Risk: Incorporating Community Perceptions into Environmental Risk Assessments*, 21 Fordham Urb. L.J. 547, 548 (1994). Thus, legitimate community concerns about a proposed facility are often dismissed by decisionmakers as "unscientific." *Id.* Freeman and Godsil's article is a powerful critique of the conventional wisdom, and it provides an interesting proposal for reforming questions of risk. See also Donald T. Hornstein, *Reclaiming Environmental Law: A Normative Critique of Comparative Risk Analysis*, 92 Colum. L. Rev. 562 (1992).

[they] are obligated by law to protect.”<sup>56</sup> If the result is greater accountability by decisionmakers, then the effort is addressing the root problem.

However, some environmental justice activists consider the political and economic system itself to be the problem. In this view, a greater role in the system fosters a belief that the system works. Some environmental justice advocates argue that such a belief magnifies and further entrenches the central problem.

### *C. The Power Model: Building Local Power to Cut to the Root of Injustice*

The power model recognizes that agency decisions regularly result from political pressure.<sup>57</sup> This model strives to create an active, powerful community presence that can wield political influence. It also seeks to promote an active, rather than reactive, force.

#### *1. The Power of Education and the Education of Power*

The power model teaches its adherents to distrust the system, while also teaching them how to use that system. The power model focuses on educating community residents to take power for themselves. This power over their own lives, or self-determination, is a central part of environmental justice. Peggy Shepard, a founder of West Harlem Environmental Action, asserts that “[s]elf-determination is a crucial aspect of improving the quality of life in many communities of color.”<sup>58</sup> In its ideal form, the power model teaches communities to take control of their own environments.

#### *2. Defining the Movement*

The power model is largely predicated on building a local movement. Without such local activity, little power will be generated. Litigation, participation in the permitting process, and other tactics may play a part in building the movement. However, before each tactic is tried or discarded, it is carefully weighed for its movement-building potential. Francis Calpotura urges advocates mobilizing ordinary citizens to:

[K]eep [their] eyes on the key question: How wide is [their] base of organized, conscious, and militant organizations with

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<sup>56</sup> Ferris, *supra* note 33, at 675.

<sup>57</sup> Freeman & Godsil, *supra* note 55, at 555.

<sup>58</sup> Shepard, *supra* note 27, at 740.

deep roots in the community, and how ready are they to wage the battle on many fronts? And finally, are the current [environmental justice] strategies helping to build that base or not?<sup>59</sup>

Thus, while the final outcome of the other models is often litigation, the power model recognizes that "litigation is usually not the answer, but is a means to an end, and a catalyst at best."<sup>60</sup> The power model turns to tactics, such as pressuring local decisionmakers, in order to build the movement.

### 3. *The Roots of Power*

Of the three styles of advocacy, the power model comes the closest to addressing the roots of environmental injustice — powerlessness. It does so by focusing on community needs and strengths, rather than reacting to the victim status of a community slated to receive an unwanted facility. The process is prospective and active. In the power model, a community can determine what *it* wants, rather than what the company wants. Such a determination might, for example, lead to the construction of a health clinic, regardless of whether or not the unwanted land use is built.<sup>61</sup> West Harlem's Peggy Shepard notes "[a]n empowered community has the resources, motivation, information, and political savvy not only to reject and oppose, but also to formulate, initiate, and implement its own plans, and to monitor the administration and operation of such initiatives."<sup>62</sup>

## V. COMPETING OR COMPLEMENTARY STRATEGIES?

Most environmental justice activists should agree that the professional model is a waste of time from the perspective of the com-

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<sup>59</sup> Calpotura, *supra* note 3, at 64.

<sup>60</sup> Harris, *supra* note 44, at 32. Even some long-time environmental justice lawyers opine that their work, and that of others, has probably had little effect. Chachere, *supra* note 49, at 42. Chachere notes, "[d]espite all of the current fascination with this subject . . . the legal community has probably accomplished little in providing assistance to poor communities and communities of color who bear the brunt of this society's environmental degradation." *Id.* at 49. Nevertheless, Chachere also believes that litigation can be movement-building, providing that the litigation supports ongoing community activity. *Id.* at 43.

<sup>61</sup> Shepard, *supra* note 27, at 748-49 (analyzing the continued need for a health assessment and clinic, even though the construction of a bus depot was halted); Drury & Chu, *supra* note 46, at 54 (funding for a health clinic received in exchange for refinery expansion).

<sup>62</sup> Shepard, *supra* note 27, at 751-52.

munity.<sup>63</sup> Thus, the choice of advocacy styles is limited to either the participatory or the power model.

While some might see the power model as the antithesis of the participatory model, the two models are actually complementary. A strong community group and a creative lawyer can use both models to achieve a desired outcome in the permitting process. Gaining information about a project through the participatory model gives organizers in the power model more leverage with decisionmakers. Pressuring decisionmakers through the power model makes decisionmakers more receptive to hearing alternatives put forward by those utilizing the participatory model.

The lawyer's role in choosing a path should not be underemphasized. Often a client group will look to the advocate for advice about which course to pursue. Also, the lawyer can be instrumental in filing comments on a particular project, which may preserve a specific issue for future litigation.<sup>64</sup> In my experience, environmental justice advocates must embrace *both* models in community-based environmental advocacy in order to maximize their effectiveness. Other activists in the movement also support this view.<sup>65</sup> As Peggy Shepard notes:

While it is important to work at the community level to develop viable programs, it is also crucial to build at the community level an advocacy base to bring issues, concerns, needs, and ideas of communities of color to the policy making and decision making process. This strategy allows communities to impact public policy at the front end rather than being in a reactive mode.<sup>66</sup>

## VI. CONCLUSION

Public participation provisions in state and federal environmental laws give advocates one tool in the fight for environmental justice. However, these provisions are only effective in achieving environmental justice if lawyers adopt the participatory or power model of environmental advocacy. The traditional, lawyer-dominated professional model disempowers communities and perpetuates environmental injustice. Particularly in the siting context, public participation laws provide a process for educating and

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<sup>63</sup> See Drury & Chu, *supra* note 46, at 52 (suggesting that lawyers are most effective when assisting with community organization).

<sup>64</sup> See *supra* part III.B-C.

<sup>65</sup> See, e.g., Ferris, *supra* note 33, at 674-76.

<sup>66</sup> Shepard, *supra* note 27, at 750.

involving clients in the review of a particular project. The participatory and the power models of client advocacy complement each other and help low-income communities take part in and influence the decisions affecting their lives.