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Legal Services, Public Participation, and Environmental Justice

by Luke W. Cole

I. Introduction

Environmental hazards are inequitably distributed in the United States, with poor people and people of color bearing a greater share of environmental danger than wealthier people and white people.¹ This environmental injustice is partly because communities hosting environmental hazards have been excluded from decision making about those hazards. Public-participation provisions in federal and state environmental laws, which are designed to solicit and include the public in environmental decision making, provide one way to address this inequitable process and result. Some of these laws are particularly useful for blocking the siting

of potentially dangerous local land uses. This article will briefly examine some of these laws and then discuss two complementary approaches to public participation—the participatory and power models—with the goal of addressing the inequitable distribution of environmental hazards.

Why use environmental laws to address what appears to be a civil rights problem? Although a series of recent law review articles has examined the efficacy of using constitutional equal protection claims to redress environmental injustices, with few exceptions, these articles have not discussed remedies that could be used by poor people, as poor people.² Generally,

¹ For a detailed bibliography supporting this contention, see BENJAMIN A. GOLDMAN, NOT JUST PROSPERITY 8 (1994) (reviewing 64 empirical studies of possible disparities in the distribution of environmental impact and noting that all but one found that people of color and of low incomes face greater environmental impact). 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) (citing studies showing that air pollution, lead poisoning, 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 United States).

² 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 (1991); Rachel Godsil, *Remedying Environmental Racism*, 90 MICH. L. REV. 394 (1991); Luke W. Cole, *Remedies for Environmental Racism: A View from the Field*, 90 MICH. L. REV. 1991 (1992); Richard J. Lazarus, *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. (1993); Peter L. Reich, *Greening the Ghetto: A Theory of Environmental Race Discrimination*, 41 U. KAN. L. REV. 271 (1993); Anthony Chase, *Assessing and Addressing Problems Posed by Environmental Racism*, 45 RUTGERS L. REV. 335 (1993); Naikang Tsao, *Ameliorating Environmental Racism: A Citizen's Guide to Combating the Discriminatory Siting of Toxic Waste Dumps*, 67 N.Y.U. L. REV. 366 (1992); Walter Willard, *Environmental Racism: The Merging of Civil Rights and Environmental Activism*, 19 S.U. L. REV. 77 (1992); Robert W. Collin, *Environmental Equity: A Law and Planning Approach to Environmental Racism*, 11 VA. ENVTL. L.J. 495 (1992); Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 FORDHAM URBAN L.J. 523, 538 (1994).

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the thrust of their argument is that constitutional claims have provided little protection even for people of color faced with environmental dangers. This view is supported by the courts; the few reported cases that alleged discrimination in environmental decision making under civil rights constitutional theories have been unsuccessful.³ Thus, communities burdened by environmental

The strategic use of the political-participation provisions of environmental laws can help relieve the burden of environmental dangers on communities and bring those communities together to realize and exercise their collective power.

hazards, and their advocates, have sought other approaches.⁴ Some of these approaches have included the use of environmental laws. This article contends that strategic use of the political-participation provisions of environmental laws can in fact help relieve the burden of environmental dangers on low-income communities and communities of color and, at the same time, bring those communities together to realize and exercise their collective power.

This article will briefly sketch two models of environmental advocacy: the participatory and the power models. 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. Although both models recommend themselves for use by community groups and their legal advocates, the power model is the style of advocacy that will likely achieve the best results.

II. Public Participation in Environmental Decision Making: It's the Law

Recognizing the strong interest that residents in the United States have in their environment-, Congress and state legislatures over the past 20 years have included public-participation provisions in a number of environmental laws.⁵ These provisions generally have several features in common: public input during the environmental decision-making process, a requirement that agencies respond to this public input, and provisions allowing lawsuits by the public (known as "citizens' suits") to enforce the law.⁶ Some laws include provisions for technical assistance grants to local

³ See, e.g., *Bean v. Southwestern Waste Management. Corp.*, 482 F. Supp. 673 (S.D. Tex. 1979), *aff'd without opinion*, 782 F.2d 1038 (5th Cir. 1986); *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); *R.I.S.E. Inc. v. Kay*, 768 F. Supp. 1141 (E.D. Va. 1991). All were unsuccessful challenges to the siting of garbage dumps in African American neighborhoods. As Ralph Santiago Abascal concludes, these cases, in hindsight, were brought under the wrong laws; other civil rights approaches, such as those using Title VI or Title VIII, may have more efficacy. See his *Tools for Combating Environmental Injustice in the 'Hood: Title VIII of the Civil Rights Act of 1968*, in this issue.

⁴ While this article will not explore civil rights strategies, legal services advocates should recognize that the movement for environmental justice owes much in history, inspiration, and tactics to the civil rights movement. Robert D. Bullard & Beverly H. Wright, *The Quest for Environmental Equity: Mobilizing the Black Community for Social Change*, 1 RACE, POVERTY & ENV'T 3, 15, 17 (1990).

⁵ See, e.g., National Environmental Policy Act (NEPA), 42 U.S.C.A. §§ 4332(C), 4368 (1988 & Supp. 1990); Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. §§ 9617, 9659; Emergency Planning and Community Right-to-Know Act, 42 U.S.C.A. §§ 11044, 11046; Clean Water Act, 33 U.S.C.A. §§ 1365, 1344(o), 1342(j); Toxic Substances Control Act, 15 U.S.C.A. §§ 2619-2620; Coastal Zone Management Act, 16 U.S.C.A. §§ 1457, 1458(b); Surface Mining Control and Reclamation Act, 30 U.S.C.A. § 1270. For more on the public-participation features of NEPA, specifically, see Melany Earnhardt, *Using the National Environmental Policy Act to Address Environmental Justice Issues*, in this issue.

⁶ See generally statutes cited *supra* note 5.

groups to help them better take part in the process.

While all environmental laws with public-participation provisions have the potential to be useful in environmental justice struggles, state laws based on the National Environmental Policy Act (NEPA)⁷ are probably the most useful to communities struggling against proposed noxious land uses.⁸ NEPA requires that "major" federal actions that will have a significant impact on the environment be subject to an environmental impact review.⁹ Currently, fourteen states, the District of Columbia, and Puerto Rico have

"mini-NEPA" statutes,¹⁰ while another five states require environmental analysis for specific types of projects.¹¹ In several

The participatory model has as both its central idea and goal maximizing client input into the administrative-permit process.

other states the duty to undertake environmental review has been imposed by the courts¹² or by the executive branch.¹³ In states with mini-NEPA statutes, the statutes either explicitly cover actions by

⁷ NEPA, 42 U.S.C. §§ 4321-70.

⁸ My discussion here is influenced and informed by Reich, *supra* note 2, at 305-13. For more on state mini-NEPA laws, see generally Nicholas A. Robinson, *SEQRA's Siblings: Precedents from Little NEPAs in the Sister States*, 46 ALA. L. REV. 1155 (1982), and Jeffrey T. Renz, *The Coming of Age of State Environmental Policy Acts*, 5 PUB. LAND L. REV. 31 (1984).

⁹ 42 U.S.C.A. § 4332(2)(C); see 40 C.F.R. pts. 1501-8 (1993). The Clinton Administration has expressly directed federal agencies to use environmental justice criteria in applying NEPA. In the memorandum (Feb. 11, 1994) accompanying his recent Executive Order on Environmental Justice, President Clinton directed that "[e]ach 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." While this memorandum is not legally enforceable, it should be used in environmental justice advocacy. The executive order accompanying the memorandum can be found at 59 Fed. Reg. 7629-33 (Feb. 11, 1994). The memorandum and executive order were a direct result of community mobilization at the grassroots level using both participatory and power strategies and serve as a concrete example of why both models are needed.

¹⁰ See CAL. PUB. RES. CODE §§ 21000-21177 (West 1986 & Supp. 1992); CONN. GEN. STAT. ANN. §§ 22a-1a to -1h (West 1985 & Supp. 1992); D.C. CODE ANN. §§ 6-981 to -990 (Supp. 1992); HAW. REV. STAT. §§ 343-1 to -8 (1985 & Supp. 1991); IND. CODE ANN. §§ 13-1-10-1 to 10-8 (Burns 1990); MD. NAT. RES. CODE ANN. §§ 1-301 to 305 (1989); MASS. GEN. LAWS ANN. ch. 30, §§ 61-62H (West 1992); MINN. STAT. ANN. §§ 116D.01-.07 (West 1987 & Supp. 1992); MONT. CODE ANN. §§ 75-1-101 to -324 (1991); N.Y. ENVTL. CONSERV. LAW §§ 8-0101 to -0117 (McKinney 1984 & Supp. 1992); N.C. GEN. STAT. §§ 113A-1 to -10 (1991); P.R. LAWS ANN. tit. 12, §§ 1121-42; S.D. CODIFIED LAWS ANN. §§ 34A-9-1 to -13 (1992 & Supp.); VA. CODE ANN. §§ 10.1-1208 to -1212 (Michie 1989); WASH. REV. CODE ANN. §§ 43.21C.010-.910 (West 1983); WIS. STAT. ANN. § 1.11 (West 1986 & Supp. 1992).

¹¹ See ARIZ. REV. STAT. ANN. §§ 40-360 to -360.13 (West 1985) (power plant siting); DEL. CODE ANN. tit. 7, §§ 6601-20, 7001-13 (1991) (wetlands and coastal area activity); FLA. STAT. ANN. §§ 403.801-.817 (West 1986 & Supp. 1992) (new environmental standards stricter than federal equivalents); GA. CODE ANN. § 95A-1241(5) (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) (wetlands and coastal area activity).

¹² In Louisiana and Pennsylvania, courts have imposed environmental-analysis duties on 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 (La. 1984) (construing LA. CONST. art. IX, § 1); *Payne v. Kassab*, 312 A.2d 86, *aff'd*, 361 A.2d 263 (Pa. 1976) (construing PA. CONST. art. I, § 27).

¹³ Michigan, New Jersey, Texas, and Utah have promulgated executive orders establishing environmental-review procedures. See Robinson, *supra* note 8, at 1158.

both state and local agencies or have been judicially construed to do so.¹⁴

While this article focuses on siting, the public-participation principles discussed below are broadly applicable to other government decisions. It should also be noted that the campaigns described here are usually aimed at *blocking* the siting of some project, but could just as easily be used to *ensure* the siting of a desired facility, such as a low-income housing complex.¹⁵

III. Into Action: How to Use the Law in Local Siting Disputes

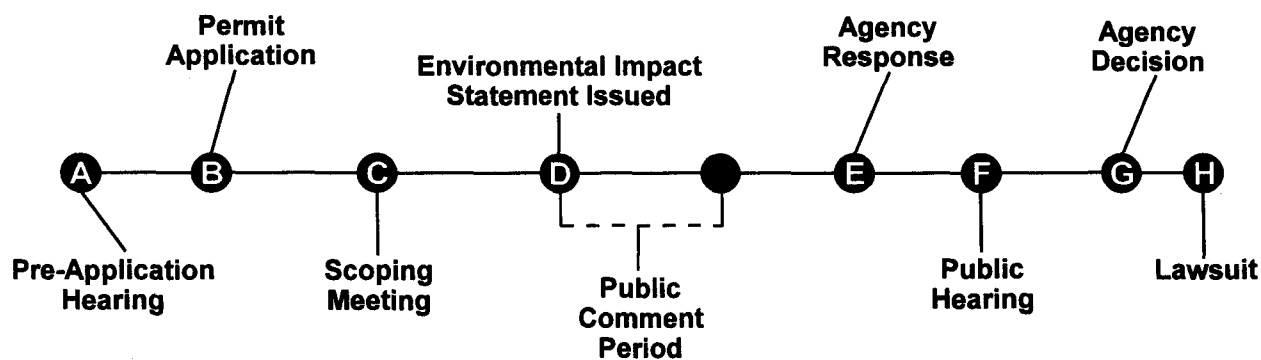
Legal services advocates will increasingly encounter clients with environmental justice claims, often in the context of a community group trying to block the siting of a potentially dangerous local polluting facility. The permitting process de-

scribed below is based on the mini-NEPA statutes mentioned above.

A. The Process, Generically

The basic mini-NEPA administrative process used in local land use decisions looks, broadly, like the time line illustrated in figure 1 below, which is modeled on the California Environmental Quality Act, simplifying the process for the purpose of discussion.¹⁶ The time line highlights significant events in the permitting process, including the opportunities for public input during that process. It is assumed that (1) this is a local land-use decision and the agency preparing the environmental impact report (EIR) and approving or disapproving of the project is a local governmental body and (2) the project *will* have a potentially significant effect on the environment and thus will require an EIR.¹⁷

FIGURE 1
A Sample Public Participation Process



¹⁴ Reich, *supra* note 8, at 306 n.203; Renz, *supra* note 8, at 32.

¹⁵ A note on taxonomy: I call the focus of client concerns “facilities” or “projects” throughout this piece to make the article and advice more generic and applicable to a variety of situations. In actual practice, I urge legal services advocates and their clients to call such projects by their full, descriptive names at every juncture; “massive toxic waste incinerator,” “the city’s first tire-burning facility,” “the polluting industrial company,” and “the leaking garbage dump” all are more powerful and evocative catchwords 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.”

¹⁶ CAL. PUB. RES. CODE §§ 21000 *et seq.* and its attendant regulations. Some state mini-NEPA processes will look slightly different from this, but the overall idea is similar.

¹⁷ For purposes of this discussion, this article uses the terms found in the California Environmental Quality Act (CEQA). These terms vary from statute to statute. E.g., the federal NEPA requires environmental impact *statements*, while CEQA calls for environmental impact *reports*.

In a nutshell, the process is as follows. 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 *preapplication hearing* (point A in the time line in fig. 1). The purpose of the hearing is to explain the project and the permitting process. The company then files a formal *application* with the agency (point B). At this point, the agency evaluates the project for its potential effect on the environment. If it will have a potentially significant effect on the environment, state law directs the agency to prepare an EIR. The local agency holds a meeting to determine the scope of the EIR; this *scoping meeting* (point C) is open to the public but is most often attended 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 then circulated for *public comment* (point D) to any who request it. The local agency then prepares a *response to public comments* (point E). Often, a local agency will hold a *public hearing* on the EIR (point F). The local agency will then make a *decision* on the project (theoretically based on the EIR and public comment) (point G).¹⁸ If a proponent or opponent of the project is

unhappy with the decision, he or she can then file a *lawsuit* (point H).

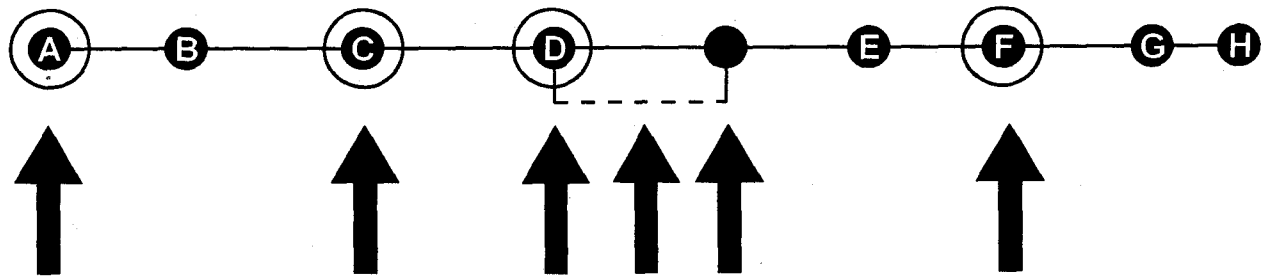
This time line will be used in discussion of the models of environmental advocacy discussed below. These models are necessarily caricatures; they do not describe particular situations but are a teaching tool to facilitate examination of the results of different styles of environmental advocacy.

B. The Participatory Model

The participatory model has as both its central idea and goal maximizing client input into the administrative-permit process. It seeks to take advantage of every opportunity afforded by that process to make client voices heard and, one hopes, listened to, by decision makers. Figure 2 outlines the points during the process that are designed for public input.

Point A, the preapplication hearing, is the first opportunity for clients to get involved. The hearing is an educational opportunity for all involved. At the hearing, clients can learn about the project for the first time and can sometimes ask questions of agency officials. Agency officials often take the turnout at the preapplication hearing as an indication of how much time they will need to spend in overseeing the permit process. In the author's experience, officials are far more

FIGURE 2
The Participatory Model:
Opportunities for Client Input



¹⁸ "Theoretically" because in actual practice such decisions are usually made on political and economic grounds that have little to do with the evidence offered during the environmental-review process. See, e.g., *infra* note 24 and accompanying text.

likely to review carefully an application and adequately document its potential impact if they know that the community is actively involved in the permitting process. Bureaucrats in state and local environmental agencies respond to pressure, and if they are receiving pressure from the community as well as the company, the community generally fares better. The preapplication hearing also gives the company involved a chance to learn about potential opposition to the facility. If there is overwhelming opposition, a company may reconsider or modify the project.

The scoping meeting (point C) is the next public forum. Here, local agency officials can hear from the public and other agencies what the scope of the environmental review should be. For example, an EIR for a parking garage in a downtown area will generally take into consideration different impact (traffic, air pollution, congestion) from one for an irrigation canal through a wilderness area (wildlife, water quality, etc.). The scoping meeting is another opportunity for client input and for legal services advocates to help community members value their own expertise. Those who will actually experience the impact of the proposed project are home-grown experts. No one better knows how truck traffic down a main street will affect a community than the neighbors who live on that street. The scoping meeting is one place to recognize and exercise that community knowledge.

Perhaps the most important point of public input is public comment on the EIR itself (point D). In the participatory model, the EIR offers the greatest opportunity for client involvement in the environmental-review process. The EIR itself can become an organizing and educational tool for a community, through which the group teaches itself about a

proposed project while building broad opposition (or support) at the community level. The EIR is usually a dense, technical document largely incomprehensible to the public (and sometimes even to its legal services advocate); this is often especially true in the sections on impact on human health. Because of the EIR's impenetrability, lawyers and other technical consultants are sometimes necessary to translate the document into plain English.¹⁹

One way to maximize the public education and organizing value of the EIR is to have one's client group use it in a study-group fashion, taking different chapters of the EIR and analyzing them, learning as much about a particular topic (e.g., air pollution, traffic impact, waste-management projections) as possible and comparing that information with what is 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 a study-group-type analysis of the EIR, the group's own comments often point out serious flaws in the project, suggest alternatives, and educate decision makers and the public.

Even if community groups are not sufficiently prominent or organized to run a full campaign around an EIR document, the EIR can still be a useful organizing tool. Clients may choose to hold house meetings for 10–12 neighbors at which community leaders discuss the campaign against (or for) a particular project. One member of the community group (or the group's technical consultant or lawyer) can explain the EIR's findings, and those present can discuss their hopes, concerns, and fears about the project. As individuals articulate their concerns, many will recognize that those concerns are shared by the entire group, and the

¹⁹ In situations where one's client population does not speak English, the material needs to be translated again to make it accessible. For one model of organizing and advocacy around translation issues, see Cole, *supra* note 1, at 674–79, and 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 under environmental laws, see *El Pueblo para el Aire y Agua Limpio v. County of Kings* (Cal. Super. Ct. Sacramento County Apr. 13, 1992) (Clearinghouse No. 50,348), particularly Petitioners' Memo (50,348B), Petitioners' Reply (50,348E), and the Ruling (50,348F).

group members can move from isolated individual fear toward empowered community action.²⁰

The next (and last) opportunity for client input in the process is at point F, the public hearing on the project. The public hearing serves several important educational functions. At the public hearing, the community and its experts educate decision makers about the flaws in a project, and their testimony also educates others in the audience. In addition, decision makers are educated by the number attending the hearing. If there is a big turnout, decision makers learn that they will suffer significant consequences if they vote against the will of the crowd. Public hearings can serve as organizing tools for client groups and as relatively easy ways to bring people together to learn about a project.

After the public hearing, the public is largely left out. The decision makers render a decision, and anyone unhappy with the decision has only the courts to look to for recourse (point H). At this point, a community group must necessarily use a lawyer, rather than its own voice, if it wishes to proceed. However, if a community group has been active during each of the public-participation opportunities along the way, it has likely built a good administrative record, enhancing a lawsuit's chances of success.²¹

The participatory model essentially accepts the system and strives to take part in the system. An adherent of the participatory model might say, "If people had more access to the system, environmental decision making would be more fair." The

people's sense that the system works, and that their voices can be heard, is reinforced when citizens' groups have victories in siting battles.

The power model relies on a step-by-step analysis of the power dynamics of the decision.

C. The Power Model

Adherents of the power model believe that the system is stacked against the public and that no amount of participation in itself will change the relations of power that give rise to environmental degradation.²² A supporter of the power model might say, "More access to the system without power within that system means nothing." If it is used at all, the public-participation process is seen as a vehicle for organizing communities, and the participation itself is seen as a means to community empowerment. By bringing people together to realize, then exercise, their collective strength, practitioners of the power model try to get at some of the roots of communities' problems: powerlessness.

The power model is characterized by three central ideas. First, it eschews the permitting process as co-optive. Second, it focuses on the actual leverage point in the process, the decision. Third, it is based on strategies to influence the decision makers. The third of these ideas offers legal services advocates and their clients a significant opportunity.

²⁰One example of such a campaign is described in Cole, *supra* note 1, at 674-79.

²¹*Id.* at 677.

²²Longtime skeptics of "the system" who embrace the power model have sympathizers among mainstream analysts of environmental decision making. A less-than-sanguine view of public-participation processes is taken, e.g., by Lawrence Susskind, director of the MIT-Harvard Public Disputes Program. Susskind describes a typical local hearing: "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." Lawrence E. Susskind, *Overview of Developments in Public Participation*, in PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING (Elissa Lichtenstein & William T. Dunn eds., 1994).

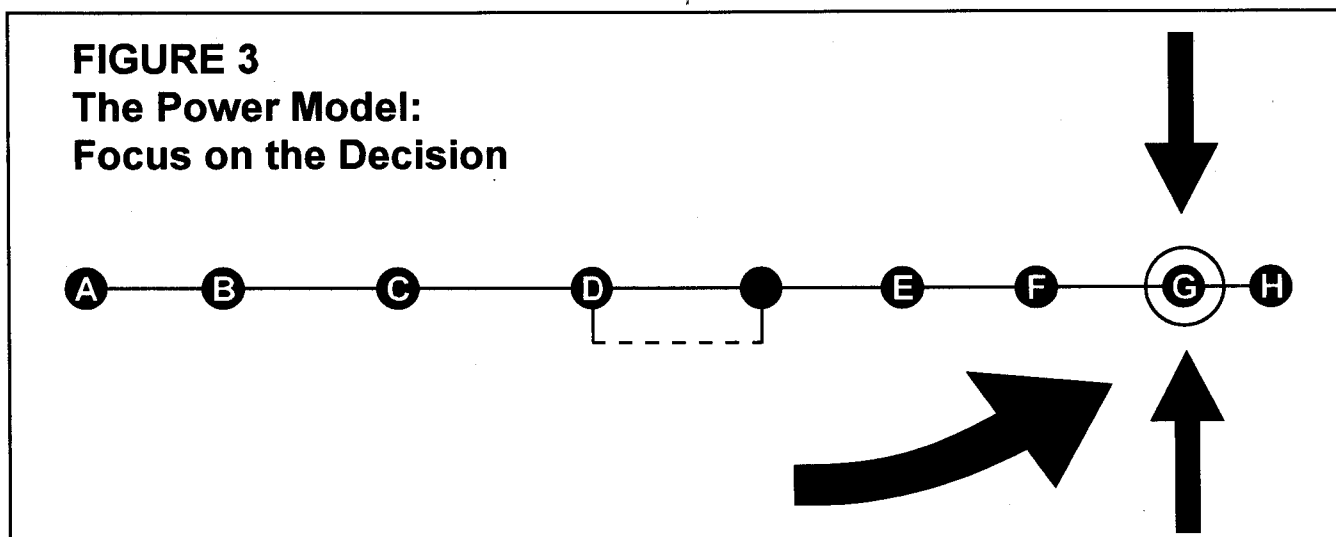


Figure 3 makes clear the strategy of the power model: all attention is focused on the actual decision (point G), perhaps even to the exclusion of participation in the rest of the process. It is important to note that this does not mean that the client group is active only *at the time of the decision*—the group must be active in trying to influence the decision from the first moment it becomes aware that the process is under way.

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 the following.

- (1) *Who are the actual decision makers?* While a local appointed body such as a planning commission or zoning board may make an initial decision on a project, the ultimate decision is usually made by an elected city council or board of supervisors.
- (2) *Where do the individual decision makers stand on the project?* Client groups can discover the answer to this key question through meetings with the

elected officials or their staff, or through research in press archives at a local newspaper or television station.

- (3) *How can the group shift or neutralize its opponents on the decision-making body?* Depending on the timing, the client group's energy and resources, and the creativity of the group, this activity can take a variety of forms. Community groups in California have made neighborhood struggles citywide issues by appearing at candidate forums during election years and asking pointed questions.²³ In smaller communities, group members have run for and won seats on the decision-making body. Participation in the *political* process is not necessary, however, to pressure an elected official. Groups have picketed or held sit-ins at an official's office; have distributed "WANTED" posters with the official's name, face, and "crimes" listed; have joined local elected officials at their churches to

²³ This tactic was used effectively by Concerned Citizens of South Central Los Angeles to defeat a garbage incinerator in its neighborhood. Group members went to every candidate forum held during the city council race, no matter what district, and asked the candidates' stance on the incinerator issue. When city council members from other districts demurred that the incinerator would not be built in their district, group members pointed out that air pollution from the incinerator did not recognize the district boundaries. See, e.g., Cynthia Hamilton, *Women, Home and Community: The Struggle in an Urban Environment*, 1 RACE, POVERTY & ENV'T 3, 11 (Apr. 1990).

Southeast Chicago Grassroots Organization Fights Environmental Racism

People for Community Recovery (PCR) is a southeast Chicago grassroots organization dedicated to educating and empowering communities of color living in hazardous environmental conditions. Concerned with the problem of pollution and the especially high incidence of cancer in the area, PCR incorporated on October 25, 1982. Under the leadership of Hazel Johnson, PCR has spent years investigating the health and environmental problems of its community, discovering that surrounding manufacturers and disposal companies exposed the area to substantial amounts of toxic chemicals.

PCR has developed a variety of strategies to pressure industries to reduce or eliminate pollution in nearby communities. In the past decade, PCR has conducted several community surveys, primarily documenting health problems related to industrial landfill sites. Such documentation is useful in educating community members, political leaders, and the industries themselves about the relationship between hazardous-waste practices and community health. PCR has also organized rallies to combat industrial

pollution, in one instance to protest the discovery of carcinogens in the Calumet River caused by drainage from local landfills. PCR cooperated with Greenpeace in a demonstration at a landfill that prevented 57 trucks from entering the site and led to the arrest of 17 protesters, including PCR's Johnson. Finally, PCR organizes community members and professionals to testify at hearings dealing with landfills and water supply. The testimony has resulted in the closure, cleanup, and delay of formation or expansion of landfills in the area.

In recognition of its success in educating and encouraging minorities to act in response to environmental problems prevalent in their communities, PCR received the President's Environmental and Conservation Award in 1992, the nation's highest environmental honor. Furthermore, in 1993, Johnson received the Tampax Women of Action Environmental Award. For more information about PCR, contact People for Community Recovery, 13116 S. Ellis Ave., Chicago, IL 60627, or call (312) 468-1645

pray for the official;²⁴ and have launched boycotts of businesses owned by elected officials. The possibilities are limited only by the imagination of the community group and its advocates.

- (4) *How can the group solidify the position of its supporters on the decision-making body?* Making sure that the client group's adherents stick with their position is as important as targeting the group's opponents. Client groups can influence decision makers in positive ways by creating positive press for them. For example, the group could stage an event to "plant

a tree for council member X" or present the decision maker with a "community leadership award." Other, more traditional ideas include volunteering in the decision maker's office, working on his or her campaign, or holding fund-raising events for the decision maker.

The power model recognizes that taking part in the permitting process often is futile for legal services' clients, who cannot muster the political power within the system to compete with well-connected and financed companies. Many a group has taken part in the permitting process for a facility, earnestly presenting

²⁴ This is a tactic pioneered by Latino organizers in Texas to pressure racist white Southern decision makers; 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 Latinos' presence was communicated forcefully to the official. This is a tactic used and taught by Alfredo de Avila, a longtime trainer with the Center for Third World Organizing.

damning evidence about a company, a project, or a technology that all experts agree is bad, only to see the facility approved by their elected representatives. Such communities learn the hard way that the public-participation process is in many ways designed to co-opt community opposition to projects.

Because of its focus on building power, rather than using the system, the power model provides a less clear role for the legal services attorney than the participatory model. However, advocates can fill several roles in the power model. First, attorneys are likely to know of other community groups that have organized successful strategies against similar projects (and may have even represented them); these groups are a key source of knowledge for the new client group. Second, attorneys are sometimes in a better position to know of strategies and tactics used in other communities throughout the region and the country and can share their knowledge with the client group. Third, attorneys may be more familiar with the local power structure and can help community groups determine the best leverage points for putting pressure on decision makers. Finally, in some cases, attorneys can provide a group with counsel on what is and is not legal in a protest, demonstration, or civil-disobedience action.

One significant downside of the power model is that if it fails, and the decision makers approve the project at point G, the community group may be precluded from pursuing a lawsuit (point H). Most administrative processes under environmental laws require potential litigants to exhaust their administrative remedies before filing suit. If a community group has ignored the administrative process, it will almost certainly be barred from suing to overturn that process. Even if a group *is* allowed to sue, if it has not taken part in building a strong administrative record with which to challenge the decision, success is less likely.

IV. Competing or Complementary Strategies?

Although some might see the power model as the antithesis of the participatory model, the two models described above are actually complementary. A strong community group and a creative legal services advocate can use both models—the insider and the outsider strategy—to achieve the desired outcome in the permitting process. Gaining information about a project through the participatory model gives organizers in the power model more leverage with decision makers. Putting pressure on decision makers through the power model makes them more receptive to hearing alternatives put forward by those pursuing the participatory model. The legal services advocate's role in choosing a path should not be underemphasized, as often a client group will look to the advocate for advice on which course to pursue. In our experience, to maximize the effectiveness of their clients' advocacy, and their own, legal services advocates must embrace *both* models in community-based environmental advocacy.

V. Conclusion

Public-participation provisions in state and federal environmental laws give legal services advocates and their client communities one tool for fighting environmental injustice. Particularly in the siting context, public-participation laws create a ready-made process for educating and 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 the decisions that affect their lives.²⁵

²⁵ For an excellent article on further strategies to help legal services clients take control of the decisions that affect their lives, see William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. U. L. REV. 455 (1994).