

The Struggle of Kettleman City:

Lessons for the Movement

Luke W. Cole*

INTRODUCTION

*El pueblo unido jamas sera vencido.*¹

I want to tell a story. Stories are one way we transmit our history, share our successes, and learn from our losses. Stories are also an important part of the movement for environmental justice, which has as one of its central tenets the idea "We speak for ourselves."² The stories from the environmental justice movement offer a different perspective from those told by the dominant institutions in society. It is my hope that this story will give the reader another perspective on, and version of, the story told by Chemical Waste Management through Jane Seigler's piece in this journal.³

* Staff Attorney, California Rural Legal Assistance Foundation; General Counsel, Center on Race, Poverty & the Environment. A.B. 1985, Stanford University; J.D. 1989, Harvard University. This article was originally given as a speech at the Quinn, Ward and Kershaw Environmental Symposium at the University of Maryland School of Law on April 2, 1993. I thank Ralph Santiago Abascal, Elisa Fernandez, Casey Jarman, and Esperanza Maya for their helpful comments on earlier drafts.

¹ Chant and slogan from the farmworker justice movement: "The people, united, shall never be defeated." Long-time farmworker activist and California Rural Legal Assistance community worker Hector de la Rosa offers two possible derivations of this slogan, which he first heard in the late 1960s during United Farm Workers' strikes in the Salinas Valley of California. First, de la Rosa thinks it simply may be a Spanish translation of the similar slogan used by Martin Luther King, Jr. and others in the Civil Rights Movement. Or, it may have been imported from struggles for liberation then taking place in Nicaragua and El Salvador. Interview with Hector de la Rosa, in Salinas, Cal. (Oct. 25, 1993).

² See, e.g., WE SPEAK FOR OURSELVES: SOCIAL JUSTICE, RACE AND ENVIRONMENT (Dana Alston ed. 1990).

³ See Jane Seigler, *Environmental Justice: An Industry Perspective*, 5 MD. J. CONTEMP. LEGAL ISSUES 59 (1994). As Richard Delgado notes, one function of legal storytelling "is to deconstruct and displace comfortable, self-serving majoritarian myths and replace them with less sexist and racist views." Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183, 1191 (1993).

I want to tell the reader the moral of the story at the beginning to give the context for the story. The moral of this story is that environmental justice struggles are *political* problems, not *legal* problems. I know this is an article which had its genesis in a conference on legal approaches to environmental racism, and is in a law review published by, and mostly read by, law students and lawyers. As law students and lawyers, however, we, more than most, need to look at the fact that these are political problems, not legal problems, and understand that one of the great myths of white Americana is the myth that "we need a lawyer."⁴

THE STORY

This is a story about Kettleman City.⁵ Kettleman City is a tiny farmworker community of 1100 residents in Kings County, in California's Central Valley. Ninety-five percent of Kettleman residents are Latino, seventy percent of the residents speak Spanish in the home, and roughly forty percent are monolingual Spanish speakers. They are primarily farmworkers who work in the fields that spread out in three directions from Kettleman City. Kettleman City is much like many rural communities in the Southwest and few people would know about it were it not for the fact that Kettleman City is also host to the largest toxic waste dump west of the state of Louisiana. This landfill is located about three and a half miles from town, hidden behind some low hills. It is owned and run by Chemical Waste Management, Inc. ("Chem Waste"). The dump was created in the late 1970s without the community's knowledge or consent.⁶

Residents of Kettleman City found out about the dump in the early 1980s, after reading in the local paper about multi-million dollar fines levied against the Chem Waste facility for violations of environmental laws. While residents were non-

⁴ This powerful myth is one of the three great myths of white Americana, according to Patty Prickett, an anti-pesticide activist from Los Angeles. The other two great myths are, "The truth will set you free," and "The government is on our side." It is important for environmental justice activists to understand, and get beyond, these myths in order to be effective.

⁵ This story is drawn from my four years of work with the community group *El Pueblo para el Aire y Agua Limpio*, beginning in October 1989, as their attorney.

⁶ People marvel that a gigantic toxic waste site can be placed just miles from a community without the community's knowledge. In California, under state environmental laws, government agencies are required to provide public notice in three ways: (1) in a newspaper of general circulation, which in Kettleman City means a small box in the classified advertisements in the *Hanford Sentinel*, published forty miles away; (2) by posting on and off the site, meaning on a fence post three and a half miles from Kettleman City; and (3) by mail to adjacent landowners. CAL. CODE REGS., tit. 14, § 15072(a) (1993). The adjacent landowners to the Chem Waste facility are large agribusiness and oil companies, such as Chevron.

plussed to find out their town was host to a huge toxic waste facility, they saw few avenues to challenge the dump.

Things changed in 1988, when Chem Waste proposed building a toxic waste incinerator at the dump site. People in Kettleman City heard about this proposal not from Chem Waste, not from Kings County or state officials, but rather by a phone call from a Greenpeace organizer in San Francisco. Bradley Angel, Southwest campaigner for Greenpeace's toxics campaign, had received a phone call from the Kings County sheriff one afternoon in January 1988, asking him if Greenpeace planned to demonstrate at the hearing in Kettleman City that night. After finding out about the hearing, Angel called one of the few people in Kettleman City he knew at the time, Esperanza Maya, and said, "Espy, did you know that there's a hearing tonight in your community about a toxic waste incinerator?" She said, "I haven't heard a thing about it."

Maya grabbed a few of her neighbors and went to the hearing. They were shocked to find out that Chem Waste was proposing to build an incinerator that would burn up to a 108,000 tons — 216 million pounds — of toxic waste every year. That translates to about 5000 truckloads of toxic waste which would be passing through the Kettleman area each year, in addition to the hundreds of daily truckloads bound for the toxic dump.

After the hearing, the people of Kettleman City began to do their homework about the dump, the incinerator, and Chemical Waste Management. They formed a community group, *El Pueblo para el Aire y Agua Limpio* (People for Clean Air and Water) (*El Pueblo*). They found that the San Joaquin Valley is considered one of the worst polluted air basins in the United States, second only to Los Angeles. And, while Los Angeles has ocean breezes to cleanse it, the San Joaquin Valley, because of its unique bathtub shape, is a closed system in which pollutants remain and air contamination levels keep rising.

Members of *El Pueblo* also found out about a 1984 report prepared for the California Waste Management Board.⁷ That report, known popularly as the "Cerrell Report," was written with California taxpayer dollars. The report suggested to companies and localities seeking to site garbage incinerators that the

⁷ J. STEPHEN POWELL, CERELL ASSOCIATES, POLITICAL DIFFICULTIES FACING WASTE TO ENERGY CONVERSION PLANT SITING, REPORT TO THE CALIFORNIA WASTE MANAGEMENT BOARD (1984).

communities which would offer the least resistance to such incinerators were rural communities, poor communities, communities with low educational levels, communities under 25,000 residents, and communities that were largely employed in resource extractive jobs like mining, timber, or agriculture.⁸ When members of *El Pueblo* looked around Kettleman City, they saw that they fit the Cerell profile perfectly.

El Pueblo also looked at California's other toxic waste dumps. California has three Class I toxic waste dumps — the dumps that can take just about any substance that you want to dump in them. They found out that in addition to Kettleman (ninety-five percent Latino), the two other dumps were in Buttonwillow, which is sixty-three percent people of color, primarily Latino, and in Westmorland, which is seventy-two percent Latino.⁹ Both Buttonwillow and Westmorland look just like Kettleman: they are small, predominantly Latino, rural farmworker communities with high levels of poverty. People in Kettleman City began to put two and two together.

CHEM WASTE

Then *El Pueblo* looked at the company, Chemical Waste Management. Chem Waste runs the largest toxic waste dump in the country in Emelle, Alabama. Emelle is in the heart of Alabama's black belt, and in a community that is about ninety-five percent African American.¹⁰ Emelle actually looks a great deal like Kettleman City — small, rural, poverty-stricken — but the residents are Black instead of brown.

Even more interesting was where Chem Waste had other incinerators. Chem Waste owns three other toxic waste incinerators: one on the south side of Chicago, in a neighborhood which is fifty-five percent African American and twenty-four percent Latino;¹¹ one in Port Arthur, Texas, in a community that is about eighty percent African American and Latino;¹² and one in Sauget, Illinois, which is

⁸ *Id.* at 17-30.

⁹ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING, SUMMARY POPULATION AND HOUSING CHARACTERISTICS: CALIFORNIA 62, 66, 73 (table 4, *Sex, Race and Hispanic Origin: 1990*) (1991).

¹⁰ See generally ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY (1990).

¹¹ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS OF POPULATION AND HOUSING, CHARACTERISTICS 205 (*Community Area 51*) (1981).

¹² According to 1980 Census data, the Census Tract which includes the Port Arthur facility is seventy-

surrounded by neighborhoods that are ninety-five percent or more African American,¹³ including East St. Louis, an overwhelmingly African American community that has been called "America's Soweto."¹⁴

The people in Kettleman City started to see a pattern. Every community where Chem Waste operates their toxic waste incinerators is a community of color, and substantially so: starting with seventy-nine percent in Chicago and Port Arthur; up to the nineties in Sauget; well, they have almost reached 100 percent, as Kettleman City is ninety-five percent people of color.¹⁵

The people of Kettleman City then turned to Chem Waste's compliance record. This is the largest toxic waste dumping company in the country. What did their record look like? At the Kettleman City facility, Chem Waste had been fined \$3.2 million for more than 1500 incidents of overfilling evaporation ponds, dumping too much waste into these ponds.¹⁶ The people in Kettleman said to themselves,

seven percent African American and two percent Latino, compared to Jefferson County as a whole, which is fifty-five percent white. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1980 CENSUS OF POPULATION AND HOUSING, SELECTED DEMOGRAPHIC AND HOUSING DATA (1980).

¹³ Martin G. Rosen noted:

[T]he census tracts surrounding Sauget and Trade Waste Incineration [are] more than 96% black. The average racial composition of the first five Census tracts to the north of Sauget . . . is 97.6% black with 40% of the population under the poverty level. The average racial composition of the four Census Tracts to the east of Sauget . . . is 95% black with 43% of the population under the poverty level. These results are significant considering that the average proportion of black people in the St. Louis SMSA is only 17%.

Martin G. Rosen, *A Case Study of Environmental Racism in Sauget, Illinois*, (unpublished manuscript, on file with author). I thank Robert Bullard for his extensive help in compiling the demographic figures on Chem Waste facilities nationwide.

¹⁴ Charles Lee, *From Los Angeles, East St. Louis and Matamoros: Developing Working Definitions of Urban Environmental Justice*, RACE, POVERTY & THE ENVIRONMENT (Cal. Rural Legal Assistance Found. & Earth Island Inst.) Winter/Spring 1993, at 4.

¹⁵ We found out later that Chem Waste had built an incinerator in Tijuana, Mexico to hit the 100 percent mark. The Tijuana incinerator was denied a permit by the Mexican government after long community opposition, including a meeting between Kettleman City activists and Mexican environmentalists. Joel Simon, *U.S. and Mexican Activists Stop Incinerator Project*, CALIFORNIA LAWYER 89 (1993); see also Mark Grossi, *Tijuana Activists to visit waste site in Kettleman City*, FRESNO BEE, Mar. 7, 1992, at B2.

¹⁶ CALIFORNIA ASSEMBLY OFFICE OF RESEARCH, TODAY'S TOXIC DUMP SITES: TOMORROW'S TOXIC CLEANUP SITES 19, 24 (1986) ("In 1985, the EPA fined CWM Kettleman \$7 million for improper groundwater monitoring, dumping incompatible wastes into ponds, keeping inadequate records, and more than 1,500 incidents of over-filling ponds. CWM settled by agreeing to pay EPA \$2.1 million and DHS \$1.1 million."). See also DEPARTMENT OF SHERIFF, COUNTY OF VENTURA, WASTE MANAGEMENT, INC. Attachment 6 (1991) [hereinafter VENTURA COUNTY REPORT]; EDWIN L. MILLER, JR., FINAL REPORT: WASTE MANAGEMENT, INC. (San Diego District Attorney's Office, Mar. 1992).

“Wow, maybe management had some involvement in this; maybe this wasn’t just a worker messing up and dumping a little more into the pond.” Residents might have believed Chem Waste’s claim of worker error if there had been two or three violations, but when they found out it happened 1500 times, it was a little more difficult to believe.

El Pueblo looked at the record of the Chicago incinerator and invited people who lived near the Chicago incinerator to come to Kettleman City. Illinois State Representative Clem Balanoff came to Kettleman. He described Chem Waste’s overfilling of the Chicago incinerator, of the incinerator spewing black smoke plumes, and of Chem Waste being fined for turning off the air monitoring equipment to the incinerator so that nobody knew what was being emitted — not once, not twice, but many times over a period of months.¹⁷

El Pueblo looked at Chem Waste’s facility in Vickery, Ohio where Chem Waste took in oil contaminated with PCB for disposal and then turned around and resold it to a company which used it to repave streets and sold it as fuel oil in nearby communities.¹⁸ They looked at Chem Waste’s actions in Louisiana, where the company was caught storing toxic waste in a store-it-yourself type rental locker.¹⁹ Kettleman residents discovered that Chem Waste’s incinerator in Chicago blew up and was shut down by the Illinois Environmental Protection Agency.²⁰

¹⁷ Cyndee Fontana, *Kettleman Incinerator Draws Fire: Firm’s Poor Record in Illinois Cited*, FRESNO BEE, Jan. 17, 1990, at Valley Page. Balanoff told the people of Kettleman City that Chem Waste is “not a company that can be trusted at all.” *Id.* See also Ron Nielsen, *Illinois Politician Denigrates Burner*, HANFORD SENTINEL, Jan. 17, 1990, at 1.

¹⁸ Jeff Bailey, *Tough Target: Waste Disposal Giant, Often Under Attack, Seems to Gain from It; Waste Management’s Jousts with Environmentalists Deter Rivals from Field; How It Sanitizes Its Image*, WALL ST. J., May 1, 1991, at A1.

¹⁹ SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, HOUSE COMM. ON ENERGY AND COMMERCE, EPA’S CRIMINAL ENFORCEMENT PROGRAM, H.R. REP. NO. 102-163, 102d Cong., 2d Sess., 13-14, 32-39 (1992) (citing memorandum of Sept. 9, 1992 by John D. Dingell detailing storage of dioxin-contaminated material at David’s Mini-U-Storage in a residential neighborhood of Baton Rouge, La.). According to Representative Dingell:

Rather than immediately alerting the EPA, Chem Waste initiated a cover-up effort, designed to protect the reputation and interests of Chem Waste at the expense of the public The dioxin-contaminated drums were falsely manifested as an “unknown” and delivered by night to Chem Waste’s facility at Emelle, Alabama. Emelle had no permit to receive dioxin-contaminated waste.

Id. at 14. A criminal prosecution ensued and a trial in Louisiana resulted in felony convictions of several individuals in 1991. *Id.*

²⁰ See Katherine L. Ratcliffe, *Fusing Civil, Environmental Rights*, CHRISTIAN SCI. MONITOR, May 24, 1991, at 12; Rae Tyson, *Where there’s smoke, there’s fiery debate*, USA TODAY, May 23, 1991, at 6A.

El Pueblo found out that Chem Waste and Waste Management had paid more than \$50 million in fines, settlements, and penalties for price fixing, bribery, and related environmental crimes.²¹ This company, they found out, was such an environmental bad actor that the San Diego District Attorney's Office told the San Diego Board of Supervisors that "the company's history requires extreme caution by the San Diego County Board of Supervisors or any other governmental entity contemplating any contractual or business relationship with Waste Management" because of a pattern of continuing criminal behavior.²²

Nor was this behavior ancient history: in the fall of 1992, Chem Waste was fined a record \$11.5 million for a botched Superfund clean-up in Pennsylvania.²³ Most recently in Kettleman City, just a few months ago, Chem Waste was caught "sample packing." Ten trucks of waste would show up at the gate of the dump, and, by law, Chem Waste was required to sample each truck to determine the contents to ensure that incompatible wastes were not disposed together. What Chem Waste was doing was taking ten samples out of the first truck and then waving all the other trucks through.²⁴

Kettleman City residents were certainly justified in being a little alarmed by the prospect of this company running yet another facility near their town. They figured if this company cannot run a hole in the ground correctly, they should not be given the ability to do something worse.

²¹ See VENTURA COUNTY REPORT and MILLER, *supra* note 16.

²² MILLER, *supra* note 16, at 57. According to the District Attorney:

Waste Management, Inc.'s methods of doing business and history of civil and criminal violations has established a predictable pattern which has been fairly consistent over a significant number of years. The history of the company presents a combination of environmental and anti-trust violations and public corruption cases which must be viewed with considerable concern. Waste Management has been capable of absorbing enormous fines and other sanctions levied against it while still maintaining a high earnings ratio. We do not know whether these sanctions have had any punitive effect on the company or have merely been considered as additional operating expenses.

* * *

Our examination of the activities of Waste Management in San Diego County causes us additional concern. When viewed in the context of their established history of business practices, it is clear that Waste Management engages in practices designed to gain undue influence over government officials.

Id. at 57-58.

²³ Katherine Bouma, *Chem Waste to Pay Millions in Settlement*, MONTGOMERY ADVERTISER, Oct. 10, 1992, available in LEXIS, Nexis Library, Newspapers File; Casey Bukro, *Chemical Waste to Pay \$10 Million Spill Fine*, CHI TRIB., Oct. 10, 1992, at Business section, 3.

²⁴ Notes on file with author.

THE PERMITTING PROCESS

As part of the permitting process for the incinerator, Kings County issued an Environmental Impact Report (EIR).²⁵ The EIR was about 300 pages, with another 700 pages of appendices — about 1000 pages total. The people of Kettleman City, forty percent monolingual Spanish speakers, ninety-five percent Latino — said to Kings County, “Look, to include us in this decision, you need to translate these documents into Spanish.” Kings County stonewalled them. The county decisionmakers did not want to set a precedent because if they translated the EIR, they felt they would have to translate documents in other situations, which is something the people of Kettleman City thought would probably be a good idea.²⁶ Chem Waste, in a generous offer, translated a five-page executive summary and distributed that to every household in Kettleman City. So, English speakers in Kings County had about 1000 pages of data to pore over, while Spanish speakers had five pages.

Despite being shut out by the lack of environmental review in their own language, Kettleman City residents still attempted to take part in the process. More than two-thirds of all the comments on the EIR were from the people of Kettleman City — in Spanish.²⁷ Residents wrote in saying, “Hey, translate this document. Include us in the process. Let us know what you are proposing to do up on the hill. If you say it’s safe, why won’t you let us know what you are doing? Why won’t you translate this document?”²⁸

Then came the public hearing on the project. The public hearing was scheduled not in Kettleman City, but in a town forty miles away, the county seat of Hanford. It was held in the largest venue in Kings County, the County Fairground building, which is about the size of a football field. The hearing room was set up with a

²⁵ McLAREN, REVISED DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT, KETTLEMAN HILLS FACILITY, PROPOSED HAZARDOUS WASTE INCINERATOR (Mar. 1990) (prepared for Kings County Planning Commission).

²⁶ Nor was this an isolated incident by the County, whose long history of pervasive discrimination against Latinos earned it the dubious distinction of being one of only three counties in all of California to be specifically mentioned in the regulations implementing the Voting Rights Act of 1965. Because of this history, Kings County must obtain preclearance from the U.S. Department of Justice before changing any of its voting laws. Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973(b) (1988); 28 C.F.R. § 55 (1993).

²⁷ See McLAREN/HART, FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT, KETTLEMAN HILLS FACILITY, PROPOSED HAZARDOUS WASTE INCINERATOR, (Sept. 1990) (prepared for Kings County Planning Commission).

²⁸ *Id.*

raised dais in the front, with a table at which the Planning Commission sat, looking down on the room. Then there was an open space, then two microphones set up for the public. Behind the microphones were about fifty rows of seats, and then, behind that, some bleacher seats were set up toward the back of the room. Behind the bleachers was empty concrete floor back to the very rear of the auditorium, about 300 feet from the Planning Commission.

The people of Kettleman City showed up. There were about 200 people who had come by bus and carpool from Kettleman City, and one of the their leaders basically said, "We're here, we want to testify on this project and we brought our own translator."²⁹

The chair of the Kings County Planning Commission looked down on the crowd and said, "That request has been denied. The translation is taking place in the back of the room and it won't happen up here."³⁰ The people looked to where the Planning Commissioner was pointing: they looked from the Planning Commission up on their dais, they looked at the open space and the microphones, they looked at all the rows of chairs and they looked at the bleachers. And then, they looked way back behind the bleachers, nearly at the rear of the room, where there was one forlorn man sitting surrounded by a little circle of about twenty-five empty chairs. The Planning Commission chair said again, "Why don't you go back there. There are monitors back there. We are all in the same room."³¹ The 200 people from Kettleman City looked around, and they looked at the back of the room at those twenty-five chairs and they looked at the empty chairs up front, and they said, "Adelante, adelante!" (forward, forward), and they moved up to the front of the room. And, from the front of the room they testified, in Spanish, that the last time they had heard about being sent to the back of the room was when their African American brothers and sisters were sent to the back of the bus — a policy dumped in the dustbin of history a generation ago. They said they were not going to stand for such treatment.³²

²⁹ The translator was provided by California Rural Legal Assistance, after Kings County made it known to *El Pueblo* that it would not be providing for translation for the audience at the hearing. See, e.g., Reporter's Transcript at 170-72, Kings County Planning Commission Special Meeting, Public Hearing for Conditional Use Permit No. 1480 (Nov. 14, 1990).

³⁰ Remarks of Kings County Planning Commission Chair Mike Wheatley, Reporter's Transcript at 172, Kings County Planning Commission Special Meeting, Public Hearing for Conditional Use Permit No. 1480 (Nov. 14, 1990).

³¹ *Id.*

³² Testimony of Mary Lou Mares, Reporter's Transcript at 257, Kings County Planning Commission

The public hearing on the project brought to a close the public's ability to comment on the incinerator. The Planning Commission then voted to approve the incinerator, and *El Pueblo* appealed that decision to the Kings County Board of Supervisors.

Before going into the Board's actions, I want to mention one other fact that is relevant to this story. California has a compensated siting law.³³ Under the law, local governments can tax hazardous waste facilities up to ten percent of their gross revenues.

What does this have to do with the story? Well, Kings County, which is about sixty-five percent white, has five members on the Board of Supervisors. They are all white. The whites in Kings County mostly live in one area, while most of the Latinos live in another part of the county. If this page were a map of Kings County, almost all the white people live in the upper right corner of the page, in and around the county seat of Hanford, while most of the Latino people live at the bottom of the page. In this example, Kettleman City would be in the lower left of the page, and the Chem Waste dump would be next to it. Every single town in Kings County is predominantly white except for Kettleman City, which is ninety-five percent Latino, way down in the lower left of the page. Under the California law providing for compensated siting, Kings County gets about \$7 million a year in revenue from Chem Waste's pre-existing dump.³⁴ That \$7 million is approximately eight percent of the county's annual budget.³⁵ Kings County likes to keep this company happy because of that big chunk of money. Incidentally, most of the money is spent up near Hanford (in the upper right of the page), in the white community, and very little of it trickles down to the people of Kettleman City (down in the lower left of the page).³⁶

The incinerator promised to almost double that tax revenue, so that the county would be receiving about one-sixth of its annual revenue from this single company.

Special Meeting, Public Hearing for Conditional Use Permit No. 1480 (Nov. 14, 1990); testimony of Ephraim Camacho, *id.* at 180; testimony of Allen Brent, *id.* at 149.

³³ CAL. HEALTH & SAFETY CODE § 25149.5 (West 1991).

³⁴ See Tracy Correa, *County to Share Chem Waste Tax*, HANFORD SENTINEL, Nov. 16, 1991, at 1 (County revenues from 10% tax on Chem Waste were \$6.1 million in 1990-91, \$7.4 million in 1989-90).

³⁵ Petitioners' Memorandum of Points and Authorities In Support For Peremptory Writ of Mandate, *El Pueblo para el Aire y Agua Limpio v. County of Kings*, No. 366045 (Cal. Super. Ct. Sept. 20, 1991).

³⁶ For example, there are no sidewalks throughout most of Kettleman City.

What the compensated siting law did was skew the permitting process, so the Board of Supervisors said to themselves, "Hey, we're getting all this money. We just built this new courthouse and government center in Hanford. This is great and we want more." They look around at their constituents who live up in the upper right of the page, they see what the tax revenues buy in terms of fancy new government buildings,³⁷ and then they look at where the incinerator is going to go, way down in that Mexican community at the bottom of the page. The Supervisors voted for the incinerator on a three to one vote.

Faced with this situation, we had no choice but to file a lawsuit. To make a long story short, our lawsuit was successful when the judge ruled that the Environmental Impact Report had not sufficiently analyzed the toxic waste incinerator's impacts on air quality and on agriculture in the San Joaquin Valley;³⁸ and, most importantly, that the people of Kettleman City had not been meaningfully included in the permitting process.³⁹

THE MORAL, AGAIN

I want to cut to the moral of the story again, which is that these are political problems, not legal problems. Although we won the lawsuit, it is important to point out that legal approaches are the least favored approaches to solving environmental problems. They are disempowering to community residents because they take the struggle out of the community and put it into the hands of a lawyer.⁴⁰ In these types of fights there are two types of power: there is the power of money, which the polluters have, and there is the power of people, which we have. In court, the power of money often prevails. A community also has to translate its grievances into the narrow confines of a law — if there is even a law to address

³⁷ The new Kings County Government Center is known to locals as "The House that Chem Waste Built."

³⁸ *El Pueblo para el Aire y Agua Limpio v. County of Kings*, No. 366045 (Cal. Super. Ct. Sept. 20, 1991) (ruling on submitted matter).

³⁹ The judge stated:

The residents of Kettleman City, almost 40 percent of whom were monolingual in Spanish, expressed continuous and strong interest in participating in the CEQA review process for the incinerator project at the CWM's Kettleman Hills Facility, just four miles from their homes. Their meaningful involvement in the CEQA review process was effectively precluded by the absence of Spanish translation.

Id. at 10.

⁴⁰ For an in depth discussion of the pitfalls of legal actions, see Luke W. Cole, *Remedies for Environmental Racism: A View from the Field*, 90 MICH. L. REV. 1991, 1995-96 (1992) and Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 641-54 (1992) [hereinafter *Empowerment*].

what the community is trying to fight. In many of these situations, the law is simply bad. These are political problems: the problem we had in Kings County was that we had lost the vote at the Board of Supervisors.

Now, we won the law suit. Kings County, the government agency we sued, decided not to appeal largely because of the political pressure the Kings County Board of Supervisors was receiving from Kings County residents and their supporters across California.⁴¹ Chem Waste, however, appealed the judgment.⁴² Rather than going back and doing the environmental study in response to the judge's (and the people's) concerns, they were more comfortable staying in court. But Kettleman City's struggle had become a national struggle. The people of Kettleman City and their representatives had told the Kettleman City story at meetings, conferences, symposia, and rallies across the country. People all around the country knew about the struggles of the people of Kettleman City.⁴³ This knowledge is very important because what we need is a political movement to stop the siting of facilities in communities like Kettleman City.⁴⁴

Why is a *political* movement necessary? Environmental justice struggles are "political," in that word's narrowest definition, in at least two ways. The first is

⁴¹ A postcard campaign targeting the Board of Supervisors and the local Farm Bureau, orchestrated by *El Pueblo* and Greenpeace, generated more than 5000 postcards to the Board and the Farm Bureau, while a petition campaign in the San Joaquin Valley by Citizen Action generated more than 17,000 signatures in opposition to the incinerator.

⁴² *El Pueblo para el Aire y Agua Limpio v. County of Kings*, No. 3 Civil 014017 (Cal. Ct. App. 1992) (notice of appeal).

⁴³ This knowledge was transmitted through a number of stories mentioning the Kettleman City struggle which appeared in local, regional, and national media, including: Julia Flynn Siler, *'Environmental Racism': It Could be a Messy Fight*, *BUS. WK.*, May 20, 1991, at 116; Jeff Bailey, *Waste Disposal Giant, Often Under Attack, Seems to Gain From It*, *WALL ST. J.*, May 1, 1991, at A1; Roberto Suro, *Pollution Weary Minorities Try Civil Rights Tack*, *N.Y. TIMES*, Jan. 11, 1993, at A1; Marcia Coyle, *Lawyers Try to Devise New Strategy*, *NAT'L L. J.*, Sept. 21, 1992, at S8; Ratcliffe *supra* note 20; as well as segments on National Public Radio on November 8, 1992 and November 27, 1992, and the McNeil-Lehrer NewsHour on February 11, 1992. Exposure through the press — building a community's movement through public education and consciousness raising — is crucial to a successful struggle.

⁴⁴ I should point out that the movement for environmental justice is much broader than merely stopping facilities that are inappropriately sited in low-income communities and communities of color. Among other things, the movement for environmental justice is about creating clean jobs, building a sustainable economy, guaranteeing safe and affordable housing, and achieving racial and social justice. See, e.g., *Principles of Environmental Justice*, RACE, POVERTY & THE ENVIRONMENT (Cal. Rural Legal Assistance Found. & Earth Island Inst.) Fall 1991/Winter 1992, at 32 (ratified at the First National People of Color Environmental Leadership Summit in Washington, D.C., in Oct. 1991). I focus on siting in this article as that was the issue in Kettleman City.

that state and federal environmental laws which offer communities a legal handle in environmental justice struggles are almost all procedural. What this means is that if we challenge an environmental impact report as inadequate, and we win in court, the court does not say "You can never build this project in this community." The court instead merely sends the EIR back to the local decisionmaker to do it again, correctly. If a community (and their lawyers) have not done the political ground work to make sure that the vote is different the next time it comes before the Board of Supervisors or City Council, we are going to lose the vote again. In this situation, we may win in the short term, but in the long term, the community is going to lose and the project is going to be built.⁴⁵

The second reason a political response — rather than, or in addition to, a legal response — is necessary is that when polluting companies lose in court, they often seek to change the law. We learned this when the Chamber of Commerce introduced a small bill — about one paragraph long — in this session of the California Legislature, that would have had the effect of overruling the central part of our victory in the Kettleman City case by changing the law to favor Chem Waste's interpretation of the law rather than the Superior Court's interpretation. Luckily, we were able to stop this bill from becoming law. But, if we are not vigilant and we do not have the political muscle behind our position, even if we do win in court, the laws will be rewritten, putting us back out of the equation.⁴⁶

Again, the moral of the story surfaces: these are political struggles. As we go out to do the legal work, which is desperately needed in this field, we have to remember the context of our legal struggles. Our legal work is only a small part of a much larger political movement for environmental justice. We, as lawyers, must focus our talents on educating the public and decisionmakers, and working with our client communities to build the movement for environmental justice.

⁴⁵ This is why I constructively criticize much of mainstream environmental organizations' litigation agenda as counter-productive. Such groups have not built the political base upon which to place their court victories. See *Empowerment*, *supra* note 40, at 641-55.

⁴⁶ In another recent case here in California, Laidlaw Environmental Services went to the state legislature to try to get around environmental review procedures for one of their toxic dump sites after encountering strong opposition from residents of its host community, Buttonwillow. The bill written by Laidlaw, S. 1006, 1993 Cal. Regular Sess., was stopped by a concerted effort by grassroots environmental justice activists throughout California, who educated their legislators and several mainstream environmental groups so that the bill was defeated in the 1993 legislative session. See Tom Maurer, *Hazardous Waste Bill Draws Ire of Environmentalists*, THE CALIFORNIAN, Apr. 22, 1993, at B1.

CONCLUSION

This story has a happy ending. On September 7, 1993, Chem Waste announced that it was withdrawing its application to construct the toxic waste incinerator near Kettleman City.⁴⁷ Although Chem Waste cited only changing economic conditions and a new public policy turn away from incineration,⁴⁸ the General Manager of the Kettleman Hills Facility personally hand-delivered the news to one of the leaders of the community group *El Pueblo*, acknowledging the group's role in the decision.⁴⁹ As *El Pueblo* leader Espy Maya said, "I don't care how they word it, we won."⁵⁰

*Si se puede.*⁵¹

⁴⁷ CHEMICAL WASTE MANAGEMENT, INC., CHEM WASTE WITHDRAWS INCINERATOR PROPOSAL FOR KETTLEMAN HILLS, (news release of Sept. 7, 1993).

⁴⁸ *Id.*; Jeff Bailey, *WMX Technologies Ends Plan to Build California Incinerator: Demand Shrinks*, WALL ST. J., Sept. 8, 1993, at C5.

⁴⁹ Dennis Pfaff, *Enemies of Toxics Incinerator are Cheered by End of Project; California Rural Legal Assistance had opposed the construction, once slated for a Hispanic Community*, DAILY J., Sept. 8, 1993, at 3.

⁵⁰ Mark Grossi, *Chemwaste Won't Build Kettleman Incinerator*, FRESNO BEE, Sept. 8, 1993, at A1. Even the chemical industry's house organ, *Chemical Week*, credited the environmental justice movement's role in the decision in its editorial accompanying a recent cover story on Environmental Racism. See Ronald Begley and David Hunter, *Environmental Justice: Staying Ahead*, CHEMICAL WK., Sept. 15, 1993, at 2.

⁵¹ Literally, "Yes we can." This expression, originated by Cesar Chavez of the United Farm Workers, is used as a political slogan in Latino communities to mean, "We can win." I learned it from my friends in Kettleman City, who showed me that, yes, we can win.