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## FOREWORD TO ENVIRONMENTAL JUSTICE IN AMERICA: WHERE WE HAVE BEEN & CAN GO

ZACHARY R.M. OUTZEN\*

In 1978, the Reverend Willie Hunter, a minister in Houston, Texas, approached an attorney named Linda McKeever Bullard.<sup>1</sup> Bullard had recently left her position as a professor at the Thurgood Marshall School of Law to open her own private practice.<sup>2</sup> Rev. Hunter had approached her on behalf of community members in Northwood Manor, a historically Black middle-class suburb of Houston.<sup>3</sup> Rev. Hunter told Bullard that the residents of Northwood Manor had learned that the ongoing construction of a shopping mall in their neighborhood was, in reality, a front for the municipal government's siting of a landfill in their community.<sup>4</sup> The proposed landfill was 1,300 feet away from a local high school, and within a two-mile radius of at least six elementary schools.<sup>5</sup> The community of Northwood Manor was asking for Bullard's help to stop the landfill.<sup>6</sup> She agreed.<sup>7</sup>

Bullard's husband, Bob Bullard—a professor of sociology at Texas Southern University—assembled a group of his students to investigate the siting of the landfill.<sup>8</sup> Together, they pored through state and municipal records and walked through communities to observe waste facilities.<sup>9</sup> They ultimately found that all five of Houston's municipal dumps, six out of its eight garbage incinerators, and three of its four private landfills

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<sup>1</sup> See Linda McKeever Bullard & Luke Cole, *A Pioneer in Environmental Justice Lawyering: A Conversation with Linda McKeever Bullard*, 5 RACE, POVERTY, & THE ENV'T 17, 17 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 17, 20.

<sup>4</sup> *Id.* at 17.

<sup>5</sup> Linda Villarosa, *Pollution Is Killing Black Americans. This Community Fought Back.*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/magazine/pollution-philadelphia-black-americans.html> [<https://perma.cc/U2QJ-QRAJ>].

<sup>6</sup> Bullard & Cole, *supra* note 1, at 17.

<sup>7</sup> *Id.*

<sup>8</sup> Villarosa, *supra* note 5.

<sup>9</sup> *Id.*

were located in Black communities, despite the fact that only twenty-five percent of Houston's residents were Black.<sup>10</sup>

In 1979, Linda McKeever Bullard brought a class action lawsuit on behalf of Northwood Manor against the city, county, and state governments, seeking to prevent the landfill's construction.<sup>11</sup> While the plaintiffs were unsuccessful in court, the case—*Bean v. Southwestern Waste Management, Inc.*—was a landmark moment for environmental justice. It was the first ever case to allege violations of civil rights due to environmental harms and inspired countless similar lawsuits seeking what we refer to now as “environmental justice.”<sup>12</sup>

Since 1979, many of the precipitating factors that led to *Bean v. Southwestern Waste Management, Inc.* have remained intractable. Dr. Bob Bullard has defined “environmental justice” as “[everyone's entitlement] to equal protection and equal enforcement of our environmental, health, housing, land use, transportation, energy, and civil rights laws and regulations.”<sup>13</sup> It cannot be said that we have attained environmental justice in America. Indigenous nations, forcibly displaced by European settlers, now reside on lands disproportionately harmed by the climate crisis.<sup>14</sup> Rural communities, particularly those that are predominately Black and Brown, are engaged in a persistent struggle to prevent the destruction of their environment for the sake of natural resource extraction.<sup>15</sup> Historically redlined neighborhoods are more prone to acute harms from heat waves and flooding,<sup>16</sup> threats that will intensify as the climate crisis worsens.

While the threads of environmental injustice were woven long ago and remain difficult to unravel, years of grassroots advocacy by impacted

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<sup>10</sup> *Id.*

<sup>11</sup> Robert D. Bullard, *Environmental Justice for All*, NAT'L HUMANITIES CTR.: NATURE TRANSFORMED, <http://nationalhumanitiescenter.org/tserve/nattrans/ntuselnd/essays/envjust.htm> [<https://perma.cc/YK8W-BENT>] (last visited Apr. 3, 2022).

<sup>12</sup> Bullard & Cole, *supra* note 1, at 18.

<sup>13</sup> Bullard, *supra* note 11.

<sup>14</sup> See generally Ben Reiter, *Expanding Renewable Energy Tax Credits to Tribal Governments: How Current Legislative Proposals Will Benefit Tribes and Their Members in Their Continued Efforts to Address Climate Change*, 46 WM. & MARY ENV'T L. & POL'Y REV. 687 (2022).

<sup>15</sup> See generally Mary Finley-Brook & Environmental Justice Researchers, *Racism and Toxic Burden in Rural Dixie*, 46 WM. & MARY ENV'T L. & POL'Y REV. 603 (2022).

<sup>16</sup> Sarah Kennedy, *The Link Between Racist Housing Policies of the Past and the Climate Risks of Today*, YALE CLIMATE CONNECTIONS (Mar. 18, 2021), <https://yaleclimateconnections.org/2021/03/the-link-between-racist-housing-policies-of-the-past-and-the-climate-risks-of-today/> [<https://perma.cc/Y8MW-HZY6>].

communities has ensured that hope for progress remains. Centuries after their lands were stolen by settlers, Indigenous communities have achieved a historical milestone, with some of the first land repatriations in American history taking place within the last three years.<sup>17</sup> Rural and historically Black communities across the nation are seeing success in defending their communities from harmful commercial developments proposed by extractive and agricultural industries.<sup>18</sup> In 2021, the City Council of Evanston, Illinois, enacted the first-of-its-kind Local Reparations Restorative Housing Program, which grants financial reparations to Black residents harmed by “discriminatory housing policies and practices and inaction on the city’s part.”<sup>19</sup>

Recognizing that recent progress is only the beginning in a long journey to rectifying past environmental injustices, this Symposium was convened to ask two critical questions regarding the state of environmental justice in America today. First, how did we get here? Second, how do we move forward?

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<sup>17</sup> Ray Levy Uyeda, *The Climate Victories of 2021 that Put Fossil Fuels in Check*, THE GUARDIAN (Dec. 31, 2021, 3:00 AM), <https://www.theguardian.com/environment/2021/dec/31/climate-victories-2021-activism-shareholder-rebellions> [https://perma.cc/KX54-WN2D] (discussing the Passamaquoddy Tribe and Lower Sioux Indian Community’s reacquisition of ancestral lands from the states of Maine and Minnesota, respectively); Rory Taylor, *A City in California Gave Land Back to Indigenous People. It’s a Start.*, CTR. AM. PROGRESS: TALK POVERTY (Oct. 30, 2019), <https://talkpoverty.org/2019/10/30/california-land-back-indigenous/> [https://perma.cc/T8L7-UE86] (discussing the repatriation of roughly 200 acres of land by the City of Eureka to the Wiyot Tribe).

<sup>18</sup> *Rejected: State Denies Chickahominy Pipeline Plan for 83-Mile Unregulated Gas Line*, S. ENV’T L. CTR. (Jan. 7, 2022), <https://www.southernenvironment.org/news/rejected-chickahominy-pipelines-plan-for-83-mile-unregulated-gas-pipeline/> [https://perma.cc/JYA9-EV8X] (discussing the successful advocacy of residents of several Central Virginia counties to block the construction of a natural gas pipeline in their communities); Margaret Renki, *How to Fight the Poison of Environmental Racism*, N.Y. TIMES (Aug. 16, 2021), <https://www.nytimes.com/2021/08/16/opinion/environmental-racism-memphis-pipeline.html> [https://perma.cc/6286-F5AC] (describing the successful community organizing efforts by a historically Black Memphis community to prevent the construction of a crude oil pipeline in their neighborhood); Sean Fahey, *Louisiana Department of Natural Resources Pushes Back on Wallace Grain Elevator*, BIG EASY MAG. (Sept. 16, 2021), <https://www.big easymagazine.com/2021/09/16/louisiana-department-of-natural-resources-pushes-back-on-wallace-grain-elevator/> [https://perma.cc/HW73-Z653] (describing the Louisiana Secretary of Natural Resources granting of a request by a historically Black, rural community to reconsider the construction of a harmful grain elevator in their community).

<sup>19</sup> Rachel Treisman, *In Likely First, Chicago Suburb of Evanston Approves Reparations for Black Residents*, NPR (Mar. 23, 2021, 2:36 PM), <https://www.npr.org/2021/03/23/980277688/in-likely-first-chicago-suburb-of-evanston-approves-reparations-for-black-residents> [https://perma.cc/QR9G-8C3Q].

With an eye to a future in which America lives up to Dr. Bob Bullard's vision of environmental justice,<sup>20</sup> the Symposium hosted four panel discussions, featuring scholars of legal and non-legal disciplines, attorneys and non-legal advocates, and the members of the marginalized communities on the front lines of the struggle for environmental justice.

The Symposium began with a panel on Indigenous environmental justice in America. A fitting topic with which to begin the Symposium, as the beginning of America was built upon the innumerable injustices that were committed against Indigenous nations by European settlers. Yet, as noted by the Natural Resources Defense Council, "the pathway to a brighter collective future is necessarily bound up with reconciliation and Indigenous sovereignty."<sup>21</sup> Panelists, including contributing Symposium author Mr. Ben Reiter, convened to discuss how past injustices came to be, and how, as a society, we can actualize the pathway to a brighter collective future.

The Symposium's second panel centered on rural environmental justice. While environmental injustices committed against Black and Brown communities are not confined to rural areas, an examination thereof is illustrative because low-wealth areas—which are disproportionately both rural and predominately Black<sup>22</sup>—are exploited and forced to bear "high costs from infrastructure."<sup>23</sup> To that end, the panel featured the community members and advocates of Buckingham, Pittsylvania, and Charles City Counties in Virginia, who have been engaged in efforts to prevent extractive industries from exploiting their communities.

The Symposium's penultimate panel focused on the intersection of housing justice and the climate crisis. There is a definitive link between racist housing practices of the 1930s and rising temperatures in the neighborhoods subjected to them,<sup>24</sup> culminating in increased prevalence of present-day climate risks.<sup>25</sup> An individual's ability to safely shelter is our

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<sup>20</sup> Bullard, *supra* note 11.

<sup>21</sup> Giulia C.S. Good Stefani, *Indigenous Leaders at the Frontlines of Environmental Injustices and Solutions*, NAT'L RES. DEF. COUNCIL (Oct. 11, 2021), <https://www.nrdc.org/experts/giulia-cs-good-stefani/indigenous-leaders-frontlines-environmental-injustice-and-solutions> [https://perma.cc/7SVU-ER77].

<sup>22</sup> Robin Davey Wolff, *Rural Housing, Race and Persistent Poverty*, ENTER. CMTYS. (Feb. 5, 2021), <https://www.enterprisecommunity.org/blog/rural-housing-race-and-persistent-poverty> [https://perma.cc/XT6Z-48SB].

<sup>23</sup> Finley-Brook & Environmental Justice Researchers, *supra* note 15.

<sup>24</sup> Jeremy Hoffman et al., *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas*, 8 CLIMATE 12, 13 (2020).

<sup>25</sup> Kennedy, *supra* note 16; Meg Anderson, *Racist Housing Practices from the 1930s Linked to Hotter Neighborhoods Today*, NAT'L PUB. RADIO (Jan. 14, 2020, 2:38 PM),

society's first line of defense against any natural disaster, with the COVID-19 pandemic providing an ongoing lesson as to how persistent lack of access to safe, affordable housing impacts our collective resilience against disaster.<sup>26</sup> This panel was led by scholars and activists who discussed how housing injustices have been key to exacerbating the climate crisis we currently face, and how repairing those harms can be part of the solution to the crisis.

The last panel of the day focused more broadly on the role that legal professionals can play alongside impacted communities and non-legal advocates in grassroots environmental justice movements. Perhaps the most important goal of the Symposium was to put legal and non-legal advocates into conversation with each other to share knowledge with the audience on how to equitably and collaboratively pursue environmental justice. There is a long and sordid history of environmental injustices in America, too long to capture in one Symposium. Panelists discussed how—as a practical matter—we can avoid a future of much of the same. Sparked by *ELPR* Managing Editor Alicia Muir's Note, which is featured in the Symposium issue, the discussion also examined how the law can be changed through “green amendments” to create conditions more favorable for the recognition of civil rights in relation to the environment.<sup>27</sup>

“Environmental Justice in America: Where We Have Been & Can Go” examined how “the color line” of which W.E.B. DuBois spoke<sup>28</sup> is drawn through the history of environmental justice in America, from its beginning to its present. The Symposium placed an emphasis on learning from the communities that are at the forefront of both the impacts of environmental injustices, and the movements fighting against their perpetuation. It is the hope of the Editorial Board of *William & Mary Environmental Law & Policy Review* that these proceedings will both teach the history of environmental justice in America and provide a blueprint for a future in which we all enjoy “equal protection and equal enforcement of our environmental, health, housing, land use, transportation, energy, and civil rights laws and regulations.”<sup>29</sup>

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<https://www.npr.org/2020/01/14/795961381/racist-housing-practices-from-the-1930s-linked-to-hotter-neighborhoods-today> [https://perma.cc/9456-53TT].

<sup>26</sup> Molly Bohannon et al., *COVID-19 Is 'a Crisis Within a Crisis' for Homeless People*, ARIZ. PBS: CRONKITE NEWS (Aug. 24, 2020), <https://cronkitenews.azpbs.org/2020/08/24/coronavirus-homeless-people/> [https://perma.cc/NVP3-PX3B].

<sup>27</sup> See generally Alicia Muir, *Trust Issues: Using States' Public Trust Doctrines to Advance Environmental Justice Claims*, 46 WM. & MARY ENV'T L. & POL'Y REV. 707 (2022).

<sup>28</sup> See generally Soya Jung, *The Endurance of the Color Line*, 2 OTHERING & BELONGING 50 (2017).

<sup>29</sup> Bullard, *supra* note 11.