

Color-Blind, Color-Mute, and Color-Deaf: Race and Expertise in Environmental Justice Rule Making

Sofía Martínez

ABSTRACT

This article provides a brief history and analysis of the environmental justice movement. The author focuses on environmental justice efforts in New Mexico by the New Mexico Environmental Justice Working Group (NMEJWG). The group is made up of seven New Mexican organizations affiliated with the Southwest Network for Environmental and Economic Justice (SNEEJ) a regional, binational, non-profit environmental and social justice network. Issues of race, expertise, and knowledge in a rule-making process are interrogated.

WHAT IS THE state of environmental justice (EJ)¹ in America in 2007? Where does the historical timeline begin? Do we begin with early European colonization and the theft of land, the killing of the buffalo, the near genocide of Native peoples and nations? Do we begin with the diversion and pollution of our waterways, our air, and our places of labor and prayer? Maybe we begin with those geographic regions to which we have historically been restricted, whether by state force or by planners and developers? Or, do we start with the Council on Environmental Quality's (CEQ) Annual Report of 1971 acknowledging that racial discrimination adversely affects urban poor and the quality of their environment? Some may say that we start with the struggle against a sewer plant in Albuquerque, New Mexico's South Valley, or rather "Perfume Alley" as the local folks called it in the 1970s. Maybe we begin with Robert Bullard's documentation of an African American community's attempt to block the siting of a toxic landfill (1991). Where do we begin? Who, what is first? Who said what? How do we participate in this activity—or is this an exercise in the comodification of history, of knowledge?

We do know that many land-based and indigenous peoples have been living in harmony in their eco-systems building on socially constructed and evolving knowledge that is reciprocal and sustainable by its very nature. With the victories of liberation movements internationally and the US civil rights movements of the 1950s and 1960s, com-

munities began to confront other ills in their communities: landfills, sewer systems, unhealthy living and working conditions, violence, health, and polluting industry and facilities. This is true whether in urban neighborhoods, Native nations, or the agricultural fields. In the 1980s, folks who had been part of civil rights and liberation movements and new activists talked, strategized, and moved on environmental issues locally and regionally finally coming together as a national movement with a national agenda. This networking resulted in the creation of the first EJ networks: the Indigenous Environmental Network (IEN), The Southwest Network for Environmental and Economic Justice (SNEEJ), the Asian Pacific Islander Environmental Network (APEN), the Southern Organizing Committee (SOC), and many more since then.

The EJ movement made its debut on the national level with The First People of Color Leadership Summit held in 1991 in Washington DC (UCC 1991). This followed a report of research sponsored by the United Church of Christ's Commission for Racial Justice directed by the Rev. Benjamin Chavis. *Toxic Waste and Race in the United States*, authored by Charles Lee (UCC 1987), affirmed what communities had been saying: that the siting of dirty and polluting industry disproportionately impacted poor and communities of color. The First People

¹Environmental justice is the appropriate response to environmental racism or injustice. Environmental racism or injustice is the siting of dirty and polluting industry and processes in poor communities and communities of color without regard to disparate and cumulative impacts and the meaningful participation of communities.

Sofía Martínez is a doctoral candidate at the University of New Mexico in Albuquerque.

of Color Leadership Summit challenged the government, in particular the Environmental Protection Agency (EPA) on their racism as well as mainstream environmental organizations. I remember the rainbow of people marching to the Lincoln Memorial to the beat of the drum, and later, on another evening, the words of Dana Alston chosen to speak by the leadership, emblazing forever on our minds the mantra of the EJ movement: "We speak for ourselves!"

Today, sixteen years after the First People of Color Leadership Summit, the EJ movement is financially challenged as funders prioritize civic engagement, and policy at the expense of grassroots organizing and empowerment. The Second People of Color Leadership Summit reflected many of these transitions. For a summary of the Second People of Color Leadership Summit see *Race, Poverty and the Environment* (Urban Habitat 2003). The articles are a collection of reflections on the summit and the EJ movement from some of its many participants and leaders and clearly illustrate the evolution of the movement.

Environmental justice has been impacted by the institutionalization and subsequent cooptation by the government; a process set in motion by President Clinton's Executive Order on Environmental Justice (1994). An executive order which the EJ community pushed for and has benefited from, and which has also been co-opted by its institutionalization in government and universities as well as neo-liberal funding trends and the perspective of the numerous consultants that have sprung up—all experts in EJ. Add to this the passing of many EJ leaders,² most not from natural causes. We are disproportionately impacted by the cumulative social impacts visited upon our communities precisely because we are people of color, not only because we are poor. Today, many of our serious grassroots, community non-profits have no health insurance or 401(k)s. A majority of our people are still unemployed, under-employed, and make up the bulk of the working poor. The Second People of Color Summit showed the strain of the political, historical moment, however, the movement continues to evolve.

The EJ movement has challenged business as usual and the working paradigm. It has created a tool box of tactics and strategies, footholds if you will, for communities to protect and defend themselves against environmental racism and degradation and the subsequent impacts to the health of people, communities, and environment. In researching EJ today one is generally taken to published work. Yet many of the documents³ of EJ are little known, the words, the phrases, the stories are attributed to certain folks sometimes rightly, sometimes wrongly. I propose that this activity is a discussion on the commodification and theft by the printed word, the power and finances of publishing, and the presumed expertise created by black on white paper. The words and knowledge constructed by the EJ movement belong to all that have participated in the numerous local, regional, national, and international gatherings, meetings, and actions that have created and driven the movement. The words, the phrases, the jokes cannot be attributed to any one person or group—they evolved from collective discussion and

action. These knowledge producing events are not in print. They originate in us and our communities.

ENVIRONMENTAL JUSTICE IN NEW MEXICO

Many New Mexicans involved in the formation and evolution of the environmental justice movement in this country have spoken of New Mexico as a national sacrifice state. Environmental racism, like institutionalized racism, internalized racist oppression; classism, sexism, homophobia, and xenophobia continue to thrive in this country. This is how the political social status quo is maintained. The system just mutates to respond to the constantly changing conditions.

Environmental racism in New Mexico is intertwined with the colonial legacy of this country. More specifically, we can begin with the mining of uranium on the Navajo and Pueblo Nations that began in the 1930s. Native Americans and poor *nuevomexicanos* (New Mexicans, mostly poor Mexicans and Chicanos) were exposed to uranium and developed illnesses through mining and the resulting hundreds of mounds created of uranium mine tailings that continue to contaminate the air, water, and soil, where Native peoples live, pray, play, work, and go to school. The ultimate result is thousands of people and families left to deal with cancers and other diseases with little in the way of compensation, much less acknowledgment by those responsible. Today over a thousand of mining sites remain abandoned with no one, including our government, stepping up to take responsibility. With the current rise in uranium prices over 100 new mining claims have been filed to mine uranium in and around Mount Taylor (a sacred site) and other sites in the "checkerboard" area of the Navajo Nation. Nuclear consultants, promoting a clean energy source, peddle uranium, many of them are not white, but they are corporate (SRIC 2007). The lived experience of indigenous peoples in this area holds thousands of stories of disease, suffering, death, and grief. Yet the spirit is not daunted because resistance is survival and life-sustaining.

The contamination left behind continues to impact the majority of New Mexicans and our natural resources. The legacy of a weapons industry that created Sandia Labs and

²Dana Alston, Nilak Butler, Jeanne Gauna, Patsy Oiver, Dorothy Purley, Jean Sindab, Bill Rosse, and Damu Smith are only a few of the EJ leaders that have passed.

³Some of these documents/knowledges include: *Race and Toxic Waste in the United States* (1987, 2007), *The Principles of Environmental Justice* (1991), agreed upon at the First People of Color Leadership Summit and *The Principles of Working Together* (2003), developed and agreed to at the Second People of Color Leadership Summit. The Letters to the Group of Ten, letters challenging the national mainstream environmental organizations on their racism; a cartoon, with a whale carrying a sign that said, "People of Color are an Endangered Species Too!, generated much humor in EJ circles; and the mantra: "We speak for ourselves!" These are all examples of movement-generated concepts, humor, and knowledge. This initial work would also include Bob Bullard's *Dumping on Dixie* (1991) and Bunyan Bryant and Paul Mohai's *Race and the Incidence of Environmental Hazards: A Time for Discourse* (1992).

Los Alamos, the testing of these always newer nuclear weapons throughout New Mexico and then poorly disposing of the hazardous waste materials into arroyos and unlined pits. We are still the only country in the world known to have used a weapon of mass destruction created in New Mexico and making a sham of global nuclear non-proliferation efforts and treaties. In Albuquerque's South Valley, the Rio Grande which already carries contaminants from Los Alamos goes through the Mountain View community a majority *mejicano*/Chicano community which is host to 31 EPA regulated sites, an oil and gas farm, over 40 used auto parts yards, a feedlot, a chicken farm, and numerous other industries (Dominguez, Moore, in E1B, 2006). Most recently the 47th Air Quality Permit was approved in the area for a gravel company which will be located across from the only community center in the neighborhood. The company will contaminate the air and jeopardize the safety of neighborhood children with an increase in traffic of over 80 gravel trucks a day and increasing particulate matter into the air. In spite of massive community opposition, the Albuquerque Bernalillo County Air Quality Board approved this permit, citing zoning issues that they interpreted as not allowing them to protect children. Our work for many years has been on these very issues including landfills, sawmills, sewer systems, etc. These practices are examples of what the EJ movement has identified as environmental racism.

Additionally, the EJ movement has recognized that we must also become more sustainable in order to maintain our sovereignty and ability to speak and have an impact on planning. The community does not need neo-liberal corporate models of a "green economy" or a new gentrification, which may be called "smart growth" or "new urbanism." These negotiations rarely involve our communities.

In 2003, affiliated organizations⁴ of the Southwest Network for Environmental and Economic Justice (SNEEJ) in New Mexico began discussions about national strategies that could be used to bring EJ home to New Mexico. A new state administration and an EJ friendly New Mexico Environment Department (NMED) Secretary provided new possibilities. The result of our discussions in SNEEJ was the creation of the New Mexico Environmental Justice Working Group (NMEJWG). It is composed of seven New Mexico organizations and invited partners. In the last several years we have assisted in initiating collaboration with the NMED who have organized municipal and county associations and industry to begin state discussions and action on environmental justice in New Mexico.

This work has resulted in a state report on environmental justice in New Mexico (NMED 2004), documenting the recommendations from four Environmental Justice Listening Sessions held throughout the state (Acoma Nation, Albuquerque, Deming, and Las Vegas). The Listening Sessions were sponsored by the NMED, Region 6 of the US Environmental Protection Agency, and the Environmental Justice Advisory Committee created by the NMED in discussions with environmental justice stakeholders, industry, and county and municipal associations.

From the state Listening Sessions a policy committee was created to carry out recommendations resulting from the EJ Listening Sessions Report.

Some of the recommendations carried forward from the EJ Listening Sessions by the EJ Policy Committee have included: training on EJ for mid-level management of the NMED and an Environmental Justice Executive Order by Governor Richardson (2005). The Executive Order provided for the creation of an Environmental Justice Task Force composed of state agencies, environmental justice communities, industry, municipal and county governments, and associations. The EJ Task Force is charged with developing a strategy for interagency consideration of environmental justice.

New Mexico's governor, Bill Richardson, has stopped short of full support and has offered no concrete measures, beyond the Executive Order (2005) to assure environmental justice. Mainstream conservation and preservation environmental interests are more powerful and wield more political clout than poor communities of color demanding environmental justice especially during a presidential bid. On many occasions in which the governor has had press conferences on major environmental initiatives he has ignored the grassroots EJ community and invited or mentioned only the mainstream environmental organizations. On his re-election in 2006 Governor Richardson brought together a transition team of 12 that included industry, business, and mainstream environmental groups. No grassroots or EJ representatives were invited.

Under the leadership of an appointed EJ friendly leadership in the New Mexico Environment Department (NMED), some positive collaborations have been accomplished. A large number of the staff are career employees with a practice of basing their decisions on technical questions (Bustamante, in E1B 2006). The Department has developed a comfortable relationship with industry, consulting, and legal firms; NMED staff become nervous, overly defensive, fearful, and/or patronizing when they have to deal with what they consider angry communities or individuals. However the possibility to develop allies exists. In these last several years of EJ organizing in New Mexico, the community is at the negotiating table! They continue to challenge "business as usual" and those that pretend to represent or speak for us. The reality is that power or hegemony in this country is first and foremost guaranteed through the legal system and those that have access to it. Racism is thereby institutionalized.

The NMEJWG has also become involved in the legislative process. In each of the last three years we have introduced bills at the New Mexico State Legislature. We

⁴The Southwest Network for Environmental and Economic Justice (SNEEJ) is a regional bi-national network that includes a diverse ethnic membership. It is composed of over 50 organizations throughout the southwestern United States and the northern states of Mexico that border the US. In New Mexico the organizations include: Cambio, Colonias Development Council, the Concerned Citizens of Wagon Mound and Mora County, Kalpulli Izkalli, Laguna-Acoma Coalition for a Safe Environment, Sage Council, and the SouthWest Organizing Project.

knew it would be an up-hill struggle consequently; one of our principal goals was to educate legislators and the public at large on environmental justice. This year we were able to convert our bill, the New Mexico Environmental Health Act, into a memorial, and it passed. The memorial instructs the New Mexico Environment Department (NMED) to study the cumulative and disproportionate impact on poor and communities of color is a result of decisions to permit regulated facilities. Most recently the NMEJWG has also participated in a two year process to revise the New Mexico Solid Waste Regulations, a process which this article addresses from a race and the construction of an official knowledge perspective.

RACE AND OFFICIAL KNOWLEDGE/EXPERTISE

Critical and Critical Race Theory authors write much of what community organizers, leaders, and communities themselves already know innately and what community organizations see, critically break down and then plan and organize around. However, in the mystic process of publishing and knowledge construction, the intellectual property and creation of knowledge and story is robbed from the people. They are not seen as authors by those with access and the technical skills to document the stories. These stories then, somehow, through the magic of the printed word and publishing—transform. Community narratives become the knowledge, the intellectual property of those who write about and have access to publishing and media. Michael Apple (2000) writes, "Long-lasting transformations in education often are shaped not by the work of educators and researchers, but by the social movements that push our major political, economic and cultural institutions in specific directions" (xi). However, once these conceptual ideas have been identified, those that pushed and organized become faceless, nameless individuals and movements, whose history is then interpreted and analyzed by those that have skills and access to research, documentation, and publishing. The resulting narratives take on a life of their own and become the property of those that publish. And then, these folks become the authorities. And those that read or see all the published stories of all the authors become the experts.

We need to create in our communities and in our own small newsletters and publications, organizations, in our oral community memory and our political work, stories that stand in contrast to hegemonic narratives by experts. An expertise that is largely uncontested. We are all subject to this non-articulation of a political system of white supremacy that has historically defined, expanded, and created the structures that allow for this constructed reality to be assumed. This knowledge is constructed primarily on Western thought that has been assumed as universal and which has decided on the "slowest fast pace" (Mills 2001) at which justice or regulation can move. In his work *The Racial Contract* (a play on Rousseau's *The Social Contract*) Mills outlines the philosophical, historical, and legal underpinnings of the creation of a political system that supports a system of white supremacy. Racism is basic to this system.

How is an unquestioned common sense, expertise, the technical constructed in Western thought and subsequent law? How do we identify and perceive our expertise? How do we begin to privilege our knowledge and lived experience? We need to break it down or "decolonize" this process. Our stories hold many of the answers (Smith 1999; Cajete 1994; Bell, D. 1992). Whose knowledge is of most worth or value? How do ideas become part of the common sense of a society of a state? How does the rule-making process impact on this?

The Critical Race Theorists use the lens of race when breaking down legal precedents and power. They believe this is primary to understanding our present society and how power is maintained legally. With respect to race, the use of "legal storytelling" as discussed and modeled by the Critical Race Theorists (Delgado and Stefancic 2001; Bell, 1992) present a useful strategy. The idea of legal storytelling is a strategy that can stand in contrast to dominant conceptions of what constitutes expertise. Referring to race expertise Delgado and Stefancic write: "Minority status, in other words, brings with it a presumed competence to speak about race and racism. The legal storytelling movement urges black [and other people of color] writers to recount their experiences with racism and the legal system and to apply their own unique perspectives to assess law's master narratives" (9).

We must learn to value our stories. It is in our communities, in ourselves, that the stories are born, where socially constructed knowledge exists. And, counter stories are powerful strategies. We offer this case and the stories of the NMEJWG as a counter story to state and corporate power and an example of resistance and struggle.

Delgado and Stefancic (2001) in addressing change within the system write: "understanding the ebb and flow of racial progress and retrenchment requires a careful look at conditions prevailing at different times in history. . . . Moreover, what is true for subordination of minorities is also true for the relief of it: civil rights gains for communities of color coincide with the dictate of white self-interest. Little happens out of altruism alone. . . . Rights are almost always procedural (for example, to a fair process) rather than substantive (for example, to food, housing, or education)" (23) or a healthy environment.

In objecting to the use of the word race in the negotiations to revise the New Mexico Solid Waste Regulations, counsel for the state pointed to *Adarand v. Peña* (1995), *Grutter v. Bollinger, et al.* (2003), and the famous *Bakke* (1978) decision, interpreting these to mean that race could not be used in the regulations. Of course, this is one legal interpretation. Neither *Bakke* nor the other decisions prohibit the use of the word race. These decisions however are the basis for the liberal conceptualization of a color-blind country and legal system. In our process to revise the solid waste regulations, although we gained significant victories, the state perspective of "color-blindness" prevailed in contrast to the testimony and stories provided by individuals and community leaders of their lived experience and supported by testimony presented by nationally recognized EJ scholars and legal experts.

We are forced legally to a constructed reality of what

the state will allow and we can see how knowledge is constructed, becomes assumed, and ultimately institutionalized as reality, an assumed common sense. In this case, the suggestion that we live in a color-blind society is privileged and legally reinforced. Never mind of course that poor and working poor people of color and communities know full well that individual and institutional racism and internalized racist oppression are alive and well and play out every day in our lives: in our personal, work, social, political, and even our spiritual spaces.

The new power agenda of conservatives, neo-liberals, and technocrats would also have us be color-mute, and they prefer to be color-deaf. Many an assertive person of color has had the experience of being called a "reverse racist" merely because we bring up issues of race. To challenge individual or institutionalized racism is something those who benefit from the system do not want to hear or talk about. When we consent, our voices, our experiences, our knowledge becomes muted. Therein lays the power of the EJ movement. We speak for ourselves!

A RULE-MAKING PROCESS

As the New Mexico Environmental Justice Listening Sessions drew to a close, the Environment Department announced that it would be revising its solid waste regulations. The NMED invited folks that had been brought together through the Listening Sessions to participate in a negotiated process to revise the regulations. We recognized the opportunity to include EJ principles into the new regulations. Some of the organizations making up the NMEJWG came from communities that were fighting landfills, in particular the Colonias Development Council (CDC), the Concerned Citizens of Wagon Mound and Mora County (CCWMMC), and the residents of Pajarito Mesa in Albuquerque's South Valley. These landfills were all also coming up for their ten-year re-licensing permits in the state. Two of these groups had recently won court cases addressing issues of environmental justice. The CCWMMC won a State Court of Appeals case on issues of notice and language. The other precedent-setting State Supreme Court decision, *Colonias Development Council v. Rhino Environmental Services* (2005) ruled that public testimony in hearings should not be limited merely to technical issues and that public testimony addressing quality of life and human welfare issues must be considered in decisions to permit. This was an extremely important victory. Up to this point, NMED Hearing Officers, in permitting facilities, in general acted to document and give credibility only to technical issues and expert testimony minimizing or ignoring community issues, concerns, wishes, and organizing efforts ultimately excluding these elements from the record presented to the Secretary; a record on which the Secretary is to base his/her decision to approve or deny a permit for a regulated facility.

Numerous meetings coordinated by NMED including industry, municipal and county associations, and the environmental justice community took place over a period of about a year and a half before finally going through a formal hearing before the New Mexico Environmental

Improvement Board (EIB), a governor appointed board that approves environmental regulation in the state of New Mexico.

The hearing began on a Monday and ended around midnight on a Friday. Seven parties submitted Notices of Intent (NOI) to present technical testimony.⁵ It is interesting to note that in the series of comment opportunities presented after the hearing process, in final comments allowed before the record was closed, the lawyers for the Southwest Landfill in Albuquerque's South Valley filed final comments in behalf of all industry, consulting firms, and the county and municipal associations, with the exception, of course, of the NMED and the two EJ parties.

The State EIB appeared to rely heavily on the Department for direction and expertise in making their decisions. Cost issues were mentioned often by industry and municipal and county associations, as well as Board members. The mission of the NMED and the EIB is to protect the health of the environment and the people of New Mexico, not cutting costs.

Community and individual stories/testimony presented at the hearing addressed race and income "... I think that the issue of what we're talking about is different standards of living for people of different races and for people with different ethnicity, especially for people of different social class" (Bustamante, 2006, p. 1543). In contrast, testimony by government, industry, and municipal and county associations overwhelmingly countered with the same argument for why they could not adopt more stringent laws that would provide some measure of environmental and protection; "cost" and the "fear of losing business" were constantly mentioned (EIB 2006). Race as a factor in permitting decisions was denied or ignored.

Luke Cole, a civil rights and environmental justice lawyer and Director of the Center on Race, Poverty and the Environment, presented an exhaustive review of the literature on disproportionate siting and impact on poor and communities of color; this was supported by Eileen Gauna, a nationally recognized legal scholar, and Richard Moore, one of the leaders of the EJ movement (EIB 2006). They testified that race is a primary and independent predictor of environmental injustice. These testimonies complemented and supported the stories that documented the landfill experiences of north, central, and southern New Mexico. Sandra Montes, resident of Pajarito Mesa, a colonia in Albuquerque's South Valley testified (EIB 2006):

In my community, there is no—there is zero infrastructure. We don't have—we're living without any

⁵These included: The New Mexico Environment Department; the New Mexico Environmental Justice Working Group of SNEEJ; Waste Management; the New Mexico Environmental Law Center for two of its clients, the Southwest Organizing Project and the South Valley Coalition of Neighborhood Associations; the Solid Waste Management Association; Daniel B. Stephens & Associates, Inc.; the Southwest landfill; LLC Systems & Environmental Consulting; the New Mexico Municipal League and the New Mexico Association of Counties; and Los Alamos County.

water, electricity, emergency services, no public roads, no postal service, no schools nearby, no police response. They do respond, but they—not—not the way we would like them to respond, because they—they protect better their vehicles instead of the health or the needs of the residents of that area. I was told that they—they don't like to put their cars into the beat-up roads over there. So we don't—you know, a lot of the times we don't get no response from them (p. 1553).

I shared the story of a small, poor, rural, Chicano, community fighting the importation of special waste from throughout the United States to a private landfill next to the community. The CCWMMC has won three decisions in keeping special waste from throughout the United States from coming to a private landfill in their community. These stories, our lived experience, illustrated and reinforced what is supported by data: race is the primary predictor of where dirty and polluting industry is located.

SUMMARY

Although we were initially disappointed that we did not get all that we had wanted into the revised solid waste regulations, we soon realized we had gained significant victories. The NMEJWG had over the last several years been a primary player in shaping the EJ process with the NMED in New Mexico. Industry and government have had to deal with a new partner at the table. It has not been an easy process for these entities as some perceived the community as rude, threatening, and ill-prepared. The community in turn viewed government and industry as arrogant, exclusive, and more in power than prepared. Through the last several years we can say that, in some of the partners, a level of tolerance has developed, in others, respect, new insights, understanding, and knowledge have been shared and learned. Eileen Gauna (2005) offers an interesting discussion on public participation in *The Environmental Justice Misfit: Public Participation and the Paradigm Paradox*.

Our victories in the end were significant, although not everything that the community may have wanted. But as in all our struggles, as poor and people of color, we know that it has been and will continue to be a long struggle to gain protections from environmental degradation, and other social injustices. We lack the political, economic, and cultural capital to be an automatic player and welcomed participant. This understanding however, is never to be perceived as a weakness, but rather, recognition of our lived experience which informs our thoughtful action. It is for this reason that direct action has and continues to be an important tool for communities. We will always have to force our way to the table. Because our interests slow down the process, impact on profits, and make accountability an ethical challenge, our presence is not always welcomed. However, our voices are important and our lived experience is testimony, a counter story, to models and research presented through intermediaries that have and continue to "represent our interests" and, by the way, they are not all white.

Other gains included provisions for appropriate language use and translation, extension of deadlines, some improvement in notice, and church was changed to place of worship. A requirement for a community impact assessment (CIA), which EJ parties has pushed for, was blocked by the creation of a mathematical formula, designating a "vulnerable area," which replaced what we would call an EJ community. With this new concept, industry and government attempt to erase the human face of EJ. Although the provision addresses an overconcentration of regulated facilities, the economic trigger for a CIA was set such that a community would have to be in abject poverty to qualify for a CIA. The definition states (EIB, 2006):

Vulnerable area means an area within a four mile radius from the geographic center of a facility or proposed facility and:

- (a) has a percentage of economically stressed households greater than the state percentage based on the most recent actual census bureau data within either a one square mile area or within the 4 mile radius surrounding the facility or proposed facility: and
- (b) where the New Mexico portion has a population of 50 or more within any square mile, within the 4 mile radius, and has within it 3 or more regulated facilities (NMED web site 2007).

Both the old and new regulations may be accessed through the NMED web site (<<http://www.nmenv.state.nm.us>>). The environmental language is also accessible as a separate document on the web site.

At the end of the day, the EJ community in New Mexico gained some regulatory victories which added to the previous EJ work, and some measure of justice for our communities. The NMEJWG plans to challenge part (a) of the vulnerable area definition and has begun to address other state regulations. This process serves as a counter-story and a model that adds one more strategy in our efforts to resist, build movement, and speak for ourselves!

REFERENCES

- Apple, M. 2003. *The state and the politics of knowledge*. New York: Routledge Falmer.
- Adarand v. Peña*, 515 U.S. 200, 115 S.Ct. 2097 (1995).
- Bell, D. 1992. *Faces at the bottom of the well*. New York: Basic Books.
- Bryant, B. and Mohai, P. 1992. *Race and the incidence of environmental hazards: A time for discourse*. Boulder, CO: Westview Press.
- Bullard, R. 1991. *Dumping in Dixie: Race, class, and environmental quality*. Boulder, CO: Westview Press.
- Cajete, G. 1994. *Look to the mountain: An ecology of indigenous education*. Skyland, NC: Kivaki Press.
- Clinton, W. 1994. Federal actions to address environmental justice in minority populations and low-income populations. Executive Order 12878. <<http://www.ejnet.org/executiveorder.html>> (accessed April 5, 2006).

- Colonias Development Council v. Rhino Environmental Services, In re Application of Rhino Environmental Services*, 138 N.M. 133, 117 P.3d 939, 2005-NMSC-024 (N.M. 2005) (No. 28,337).
- Council on Environmental Quality. 1971. The second annual report of the Council on Environmental Quality. Washington, DC: U.S. Government Printing Office.
- Crenshaw, K., N. Gotanda, G. Peller, and K. Thomas. 1995. *Critical race theory: the key writings that formed the movement*. New York: The New York Press.
- Delgado, R. and Stefancic, J. 2001. *Critical race theory: An introduction*. New York: New York University Press.
- Environmental Improvement Board. 2006. In the matter of the Petition for public hearing to consider a proposed replacement to 20.9.1 NMAC. Solid Waste Management Regulations. Transcript of Proceedings, # EIB 05-07 (R). Santa Fe: New Mexico Environment Department.
- Gauna, E. 1998. The environmental misfit: Public participation and the paradigm paradox. *Stanford Environmental Law Journal*. 17 Stan.Envtl. L.J. 3.
- Grutter v. Bollinger, et al.* 539 U.S. 306, 123 S.Ct. 2325 (2003).
- Mills, C. 1997. *The racial contract*. Ithaca: Cornell University Press.
- National Law Journal. 1992. Unequal protection: The racial divide in environmental law. *National Law Journal*. September 21.
- New Mexico Environment Department. 2004. <<http://www.nmenv.state.nm.us/Justice/>>.
- Richardson, B. 2005. Executive Order 2005-056: Environmental Justice Executive Order. <<http://www.nmenv.state.nm.us/Justice/>> (accessed March 2007).
- Southwest Research and Information Center. 2006/2007. *Voices of the Earth* (Winter) 7 (4). Albuquerque, NM: SRIC.
- Smith, L.T. 1999. *Decolonizing methodologies: Research and indigenous peoples*. New York: Zed Books Ltd.
- University of California Regents v. Bakke*, 438 U.S. 265 (1978).
- Urban Habitat. 1994. *Race, poverty and the environment* 10 (1). San Francisco: Urban Habitat.
- United Church of Christ Commission for Racial Justice. 1987. *Toxics, waste and race in The United States*. Washington D.C.
- United Church of Christ Commission for Racial Justice, 2007. *Toxic waste and race at twenty, 1987-2007: Grassroots struggles to dismantle racism in the United States*. Washington, D.C.
- United Church of Christ Commission for Racial Justice. 1991. *Proceedings: The first people of color environmental leadership summit*. Washington D.C.

Address correspondence to:

Sofía Martínez
Southwest Resource & Information Center
P.O. Box 4524
Albuquerque, NM 87196

E-mail: sofiam@unm.edu