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ETHICS, THE LEGACY OF THE REVEREND DOCTOR MARTIN LUTHER KING, JR., AND THE MOVEMENT TOWARD ENVIRONMENTAL JUSTICE

*by Beverly McQueary Smith**

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INTRODUCTION

*A. In the beginning was the Word.*¹

This seminal issue of the *Touro Environmental Law Journal* began with the vision and word of Mr. Keith Brown a member of the class of 1994, and the first Editor-in-Chief of the journal. One day in the spring of 1993 he called me at home to ask if I would agree to serve as a faculty advisor for the fledgling publication. I was on leave that year so he had to investigate to obtain my home telephone number. What his conduct revealed was a level of tenacity and a can-do spirit I admired. I was, therefore pleased that he asked me to write the preface to the inaugural volume which contains two articles. Robert Emmet Hernan's article uses a case study of Love Canal to explore the propriety of awarding punitive damages to

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In the Spring of 1993, I spoke at an environmental law conference held at the City University of New York Law School at Queens College. At that time, I raised concerns about the ethical dilemma which confronts environmental lawyers and suggested that it may be unethical for an attorney to advise clients to locate a pollution source so that it injures or kills black or poor people. Part I of this article is an outgrowth of that discussion. In January 1994, at the Supreme Court of New York County Courthouse at Foley Square, I gave the lecture commemorating the birthday of Dr. Martin Luther King from which Part II of this paper developed.

1. John 1:1 (King James).

states in a public nuisance action. Hernan concludes that the *Love Canal* case provided an opportunity for examining the roots of punitive damages in that borderland between civil and criminal law. Adam Chase uses a law and economics approach to examine barriers to international agreements for the adaptation and mitigation of global climate change. Chase argues that nation-states can not operate in isolation to address the issues of global climate change. He asserts that policy makers must have a model for assessing the costs involved in implementing multilateral accords. In sum, this first issue of the *Touro Environmental Law Journal* addresses the ethical conduct of environmental lawyers, the intersection of civil rights and environmental law, ways to fashion international agreements to address the problems of global warming and ozone depletion, and harkens us back to the horror of Love Canal so that we can continue to learn lessons from that tragedy. Join with us.

*B. "Thou shalt not kill."*²

Most everyone would be morally outraged if attorneys told their clients that it would be okay to kill or poison someone.³ The horror most of us would express would be profound. Yet, each day many environmental lawyers work to construe treaties, protocols, statutes, regulations and cases to help business-people determine what is legally permissible conduct and when and how much pollution can be released into our environment. These attorneys query whether a proposed course of action is legal and not whether it is moral or ethical or right. The existence of environmental racism or injustice suggests that our environmental laws and the rules which govern lawyers' professional conduct inadequately protect the rights of minorities and poor people so that they carry a disproportionate share of society's environmental burdens. Environmental lawyers who advise polluters should use a more refined ethical ba-

2. Exodus 20:13 (King James).

3. Perhaps serial killers like Jeffrey Dahmer would not be affronted. Paula Chin, *The Door of Evil; the Unimaginable Horror in Apartment 213 Leaves a Shaken Coty Wondering about the Serial Killer in its Midst*, PEOPLE WEEKLY, August 12, 1991, at 32.

rometer to advise their clients about the propriety of their conduct. As guardians of our planet's resources, they must not fall to the ethical norms used by most attorneys in the adversarial system.

By way of introducing this inaugural issue of the *Touro Environmental Law Journal*. This article contains two parts: Part I questions whether environmental attorneys ask the correct questions when they attempt to advise their clients about environmental issues, and Part II discusses the movement toward environmental justice and its intersection with the civil rights movement and the legacy of the Reverend Doctor Martin Luther King, Jr.

PART I

Is it right? Is it ethical? "Remember the Grandma Rule or the Grandchildren rule!"⁴

Most people have a moral compass that they use to guide their decision-making processes. Most workers do not have to pass a standardized test like the Multistate Professional Responsibility Examination as a prerequisite to being able to practice their professions or trades, as would-be lawyers do.⁵ Nonetheless, the mere

4. Although I do not teach professional responsibility per se, I do address ethical issues in my classes in contracts, torts, legislation, environmental and consumer law. Many of my students remember my edict to apply the Grandma rule or the grandchildren rule to ethical dilemmas. In short, I advise the students to reflect upon what their grandmother would say about a proposed course of conduct. If her answer would be, "I don't think you ought to do that," then, even if it is legally permissible, I suggest they should not do it. Similarly, even if it seems appropriate conduct by today's standards, I advise the students to ask themselves whether if they did it and got away with it, and it subsequently came to light while their grandchildren were alive to read about it would they regret it? Again I urge them to conclude that they probably should not do it. The one caveat I give the students is to disregard the advice of any grandmothers who are felons.

5. The Multistate Professional Responsibility Examination (MPRE) is assembled and administered by the National Conference of Bar Examiners as partial fulfillment of the requirements for application for admission to practice law in jurisdictions that require the MPRE. The purpose of the MPRE is to measure the examinee's knowledge of the ethical standards of the legal profession. The MPRE is not a test to determine an individual's ethical standards; rather, it is

ability to obtain a passing score on a professional ethics examination does not mean that one will use a moral compass which will always result in fair, just or moral decisions for everyone concerned. Indeed, some people might argue that the phenomenon of environmental racism or injustice⁶ springs from the unprincipled use of the law to the disadvantage of people of color or poor people.

The rules that govern the conduct of attorneys throughout the United States of America give them leeway to exercise the highest ethical standards when they practice law. However, too many lawyers seek to construe the rules of conduct so as to find the lowest common denominator of ethical norms so that they can merely avoid imprisonment or disbarment. This paper argues that environmental lawyers should be guided by their roles in the preservation of our planet and its resources and as trustees of the environmental interests of those who may live here seven generations hence.⁷

In 1989, the Section of Legal Education and Admissions to the Bar of the American Bar Association formed a Task Force on Law Schools and the Profession: Narrowing the gap to study and improve the processes by which new members of the profession prepare for the practice of law.⁸ In 1992, the Task Force released a report entitled "*Legal Education And Professional Development — An Educational Continuum*," edited by Robert MacCrate, [hereinafter MacCrate Report]. Part Two of its report delineates "A

intended to measure knowledge and understanding of established ethical standards.

6. Environmental racism refers to the fact that poor black and brown people in the United States bear a disproportionate share of the environmental burdens whereas the richer, white communities enjoy the environmental benefits. For a fuller discussion of environmental racism *see infra* Part II and accompanying notes.

7. *See* Beverly McQueary Smith, *Preface: Developing a World Vision: An Introduction to International Environmental Policy*, 3 *TOURO J. TRANSNAT'L.* i, (1992) [hereinafter Smith]. The Great Law of the Six Nations of the Iroquois requires that every deliberation consider the impact of any of its decisions on the next seven generations. *Id.* at vi (citation omitted).

8. *See generally*, Robert MacCrate, *Legal Education and Professional Development — An Educational Continuum* (Student ed. 1992) [hereinafter MacCrate Report].

Vision of the Skills and Values New Lawyers Should Seek to Acquire.”⁹ The Task Force concluded that lawyers must strive to promote *justice, fairness and morality* (emphasis supplied).¹⁰ In support of its suggestion the Task Force quoted the Preamble to the Model Rules of Professional Conduct of the American Bar Association:

As a member of a profession that bears “special responsibility for the quality of justice” (AMERICAN BAR ASSOCIATION, MODEL RULES OF PROFESSIONAL CONDUCT, Preamble (1983)), a lawyer should be committed to the values of:

2.1 *Promoting Justice, Fairness, and Morality in One's Own Daily Practice*, including:

(a) To the extent required or permitted by the ethical rules of the profession, acting in conformance with considerations of justice, fairness, and morality when making decisions or acting on behalf of a client (citations omitted);

(b) To the extent required or permitted by the ethical rules of the profession, counseling clients to take considerations of justice, fairness, and morality into account when the client makes decisions or engages in conduct that may have an adverse effect on other individuals or on society (citation omitted);

(c) Treating other people (including clients, other attorneys, and support personnel) with dignity and respect;

2.2 Contributing to the Profession's Fulfillment of its Responsibility to ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;

2.3 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to do Justice.¹¹

9. *Id.* at vii.

10. *Id.* at 213.

11. MacCrate Report at 223. I am mindful that a preamble lacks the legal suasion of the Disciplinary Rules or of the Ethical Considerations; however, like

In the commentary which follows, the MacCrate Report cites first to the American Bar Association Model Code of Professional Responsibility DR 1-102(A)(5) (1981) which provides that a lawyer should scrupulously refrain from any conduct "that is prejudicial to the administration of justice[,]" and Ethical Consideration 7-8 of the Code to support the proposition that lawyers should counsel clients to act in a manner "that is morally just" when lawyers encounter situations in which some of the options available for solving a client's problem would result in unfairness or injustice to others.¹² Thus, environmental racism or injustice by its very name suggests that too many lawyers and their clients have disregarded the injunction found in the Preamble to the Model Rules of Professional Conduct.

Unfortunately, as one commentator recently noted, both the American Bar Association's Model Code of Professional Responsibility¹³ and its successor, the Model Rules of Professional Conduct¹⁴ implicitly assume that the adversarial system is the lawyer's proper arena.¹⁵ Moreover, they are premised on the proposition that: Lawyers should subsume their personal ethical beliefs and moral stances to the positions that zealous advocacy of their client's interests require.¹⁶ Thus, Mr. Futrell complains that:

the preamble to a statute it helps to frame the parameters of the debate. Preamble is defined as:

A clause at the beginning of a constitution or statute explanatory of the reasons for its enactment and the objects sought to be accomplished. Generally, a preamble is a declaration by the legislature of the reasons for the passage of the statute and is helpful in the interpretation of any ambiguities within the statute to which it is prefixed (citing *Griffith v. New Mexico Pub. Serv. Comm.*, 86 N.M. 113, 520 P.2d 269, 271). It has been held however to not be an essential part of an act, and neither enlarges nor confers powers (citing *Portland Van & Storage Co., v. Hoss*, 139 Or. 434, 9 P.2d 122, 126).

BLACK'S LAW DICTIONARY 1058 (5th ed. 1979).

12. MacCrate Report at 214.

13. MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1981).

14. MODEL RULES OF PROFESSIONAL CONDUCT (1992).

15. J. William Futrell, *Environmental Ethics, Legal Ethics, and Codes of Professional Responsibility*, 27 LOY. L.A. L. REV. 825, 835 (1994) [hereinafter Futrell].

16. *Id.*

Environmental lawyers are offered little guidance other than the minimum standards prescribed by attorney codes of conduct. Most of the literature in legal ethics and the focus of the profession has been on the letter of those codes, which set forth the lowest common denominator of conduct required to keep lawyers from being jailed or disbarred. Legal ethics — the ideals and aspirations that motivate the ‘good lawyer’ — are seldom discussed,¹⁷

Futrell observes that “many aspects of environmental practice may be similarly ill-suited to the adversary model of professional legal ethics, with its creed of zealous advocacy with little regard for the public interest or moral norms.”¹⁸ In his articulation of a new ethical standard of conduct for environmental lawyers, Futrell suggests that because environmental law cannot protect society unless environmental lawyers ensure that it does so, regulatory agencies could charge environmental lawyers who fail to urge their clients to disclose information in doubtful situations with aiding and abetting — or even causing — any consequent violations,¹⁹ or alternatively, argue that the public law aspect of the statutes they administer effectively renders attorneys fiduciaries — not of their clients alone, but of the public interest in implementing federal laws and regulations — thus imposing on the attorneys themselves an independent duty to disclose potential violations.²⁰ Future codes of legal ethics may dictate that the moral compass of environmental lawyers should be guided by what is in the public interest or in the best interest of the community and not just protective of a client’s narrow interest. No doubt many attorneys may be troubled by Mr. Futrell’s positing of an attorney-client relationship which is far broader than that of protecting the typically narrow interest of a particular client in a given case. Nonetheless, as it now stands environmental lawyers merely serve as tools of the regulated industries to advise them of where the loopholes are in environmental statutes and regulations, and how little they can disclose to comply with the law. Thus, environmental lawyers help pollut-

17. *Id.* at 836.

18. *Id.* at 837.

19. *Id.* at 836.

20. *Id.* at 837.

ers thwart the broader goals of the environmental laws. To continue such a pattern or practice will render environmental laws impotent and result in environmental degradation.

Any new environmental ethic must embrace three aspects. First, people need a world vision founded on the proposition that “there is no away” and that all environmental degradation is in our own backyards. In other words, rather than trying to discard waste products, we should focus on reducing the amount of waste that each person generates and the manufacturing and use of recyclable products. Next, people throughout the world should learn more about indigenous people, and how they co-exist peacefully in their habitats so that — instead of propagating a model of economic development which levels the ground and kills a plant or herb which can alleviate pain in favor of building a manufacturing company which makes synthetic painkillers — we would learn to understand and appreciate and use the data that indigenous people have about the environment. Finally, we must abolish environmental racism or injustice. All people should share the benefits and burdens of environmental pollution equitably. No one group should bear a disproportionate burden for cleaning up the environment or for holding the wastes generated by all members of society.²¹

21. See generally Smith *supra* note 7.

PART II

“Justice is the end of government.”²²

Racial discrimination, or America's apartheid,²³ spawned an array of leaders who fought to overcome the systems which subjugated black people in the United States of America.²⁴ Among those leaders stood one man, the Rev. Dr. Martin Luther King, Jr., who was struck down at the age of thirty-nine by an assassin's bullet while he stood on the balcony of the Lorraine Motel in Memphis, Tennessee. A peaceful man who advocated nonviolent protest as a means of fighting for racial equality, today Dr. King might look

22. In THE FEDERALIST NO. 51, James Madison said:

Justice is the end of government. It is the end of civil society. It never has been and never will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not served against the violence of the stronger . . . *quoted in* CARL T. ROWAN, DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL xiii (1993). *See also* THE FEDERALIST NO. 51, at 162 (James Madison) (Roy P. Fairfield ed., 1981).

23. Apartheid is an official policy of racial segregation promulgated in the Republic of South Africa with a view to promoting and maintaining white ascendancy. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 60 (1975).

As an independent election observer to the historic elections held in South Africa in April 1994, I was profoundly impressed by the energy and patience of the indigenous South Africans who waited on long lines to cast their first votes in the Transkei, an independent homeland under the old regime. Interestingly, President Nelson Mandela was born in the Transkei, and that region experienced such voting difficulties that the Independent Electoral Commission (IEC) determined, based on the reports filed by election observers, that voting had to be extended an extra day so as not to disenfranchise would-be voters.

24. When Thurgood Marshall resigned his post as an Associate Justice of the United States Supreme Court, Cass Sunstein, a former Marshall clerk, said, “[w]hether you agree with his opinions or not, he is one of the greatest Americans our legal system has ever produced. He dismantled the American apartheid[.]” *quoted in* MICHAEL D. DAVIS & HUNTER R. CLARK, THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH 15 (1992).

upon our society and be pleased that we have among us lawyers, judges and law professors who benefited from the civil rights movement he guided until his death.²⁵ But he would also tell us that our job is not over, that our task is not done — that we have much more to do.²⁶

Today's task requires us to apply the tenets of Martin Luther King's philosophy of nonviolent social change to issues of envi-

25. Dr. King vigorously lobbied for passage of civil rights legislation. When the Civil Rights Act of 1964 became law, he stood behind President Lyndon Baines Johnson. For an interesting history of the passage of the H.R. 7152, The Civil Rights Act of 1964 *see generally* CHARLES AND BARBARA WHALEN, THE LONGEST DEBATE: A LEGISLATIVE HISTORY OF THE 1964 CIVIL RIGHTS ACT (1985).

26. For an echo of the same sentiment, see DAVIS & CLARK, at 369 quoting the late Justice Thurgood Marshall who on July 4, 1992, in Philadelphia's Independence Hall said: "[t]he battle has not yet been won; we have barely begun Americans can do better America has no choice but to do better to assure justice for all Americans, Afro and white, rich and poor, educated and illiterate Our futures are bound together."

See also DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992) [hereinafter, Bell]. Bell, a law professor, former law school Dean and a former civil rights activist, questions the way he spent his youth and the causes, like school desegregation, for which he fought. In light of the hollow victories gained by civil rights leaders, Bell struggles in his work to avoid causing disabling despair. In Chapter I, *Racial Symbols: A Limited Legacy*, Bell engages in a conversation with a fiftyish African American limo driver while en route to a school in Westchester, New York, where he is scheduled to give a lecture in connection with Martin Luther King, Jr.'s, birthday. The driver, Mr. Jesse B. Semple, says:

"A holiday for Dr. King is just another instance — like integration — that black folks work for and white folks grant when they realize — long before we do — that it is mostly a symbol that won't cost them much and will keep us blacks pacified. It's an updated version of the glass trinkets and combs they used in Africa a few centuries ago to trick some tribes into selling off their brothers and sisters captured from neighboring tribes."

Id. at 18.

Bell's Semple also states that the designation of a national holiday commemorating Dr. King's birthday is akin to a bogus freedom check which "the Man" never intends to honor. *Id.* at 19.

For an equally dismal report questioning the efficacy of the civil rights movement see Peter Applebome, *In Selma, Everything and Nothing Changed*, N.Y. TIMES, August 2, 1994, at A1, B6 [hereinafter, Applebome].

ronmental racism, injustice and inequity. While the policy analysts remain divided about what if any strides have been made and whether, the civil rights movement lost momentum because many of its advocates began to focus, *inter alia*, on women's rights and environmental issues,²⁷ the destruction of this planet's finite re-

27. Howard A. Glickstein, Dean of Touro College: Jacob D. Fuchsberg Law Center in his introductory remarks commemorating the birth of Dr. King on March 10, 1994 at the Law Center, said:

Whenever we get together to commemorate the birth and work of Dr. Martin Luther King, it is inevitable that we stop to ask what has come of the dream that Dr. King articulated on the steps of the Lincoln Memorial in August of 1963. This year, more than ever, it is appropriate that we review what has become of Dr. King's dream for this year is the 40th anniversary of the Supreme Court's decision on *Brown v. Board of Education*, the decision that some people believe sparked the Second American Revolution.

Among members of my generation, you often find a degree of pride and hope when reviewing what has happened in this country since 1954. I first visited New Orleans in the late 1950s. At that time, the city was totally segregated Now that all has changed. Government-enforced segregation has been eliminated. Blacks have been elected to many public offices and hold state and federal judgeships. There has been a black mayor of New Orleans and a black candidate won a runoff election for mayor just the other day

Yet there are other signs which prompt despair. Recent studies show that our public schools are more segregated now than they were at the time of *Brown v. Board of Education* . . . Progress has been scant in other areas as well. Despite the Fair Housing Act of 1968, patterns of housing discrimination continue, instances of police misconduct multiply, and employment discrimination remains a continuing problem.

Why have we not achieved Dr. King's dream? . . .

Another factor contributing to our failure to make greater progress is the inability of the American public to concentrate on any one issue for all but a very brief period of time. In the early 60s, the nation was focused on racial inequities, and there seemed to be national determination to rectify that blight on our society. Soon we were distracted. There was the Vietnam War, the environmental movement, the movement for women's rights, and many other causes. Many of the persons who had devoted their energies to fighting for racial justice, many of the organizations that had poured their resources into that fight, soon turned their attention elsewhere Today there are laws and organizations dealing with virtually every conceivable sort of unfairness and discrimination. One thing we seem to do in this country is not to discriminate among various types of discrimination. We become as outraged over the treat-

sources and ecosystem stands to gain broader support because of the adverse health consequences environmental degradation will have on all people.

Environmentalists would point to the early 1970s as the start of the modern day environmental law movement because of the proliferation of environmental statutes which Congress passed then.²⁸ Over 20 years of being patient has resulted in too few hazardous and toxic waste sites being cleaned up²⁹ and too many days in which air quality is still so terrible that weather reporters advise people with breathing problems to remain indoors.³⁰

What do we mean when we say environmental racism, injustice or inequity? Environmental racism, injustice and inequity generally characterize the phenomenon of an uneven distribution of environmental risks in poor communities and communities of color. In short, people everywhere like the convenience of being able to enjoy indoor plumbing, but people of color or poor people end up

ment of the snail darter or the spotted owl as we do about the deplorable educational structures we find in many of our inner cities

Every generation must be re-educated There are also those who must be reminded of how far we have yet to go in this country to achieve the ideals of equality so eloquently set forth in the Declaration of Independence.

Howard A. Glickstein, Introduction of Elizabeth Moore, Counsel to the Governor of New York State, Martin Luther King Day Celebration (March 10, 1994) (text in possession of the author).

28. Federal Insecticide, Fungicide, Rodenticide Act, Pub. L. No. 92-516, § 2, 86 Stat. 998 (codified at 7 U.S.C. §§ 136-136y (1972)); Toxic Substance Control Act, Pub. L. No. 94-469, Title IV, § 411, 106 Stat. 3922 (codified at 15 U.S.C. §§ 2601-92 (1976)); Endangered Species Act, Pub. L. No. 93-205, § 15, 87 Stat. 903 (codified at 16 U.S.C. §§ 1531-44 (1973)); Marine Protection, Research, and Sanctuaries Act, Pub. L. No. 92-532, Title II, § 205, 86 Stat. 1061 (codified at 33 U.S.C. §§ 1401-45 (1972)); Safe Drinking Water Act, Pub. L. No. 93-523, § 2(a), 88 Stat. 1691 (codified at 42 U.S.C. §§ 300f-300j-26 (1974)); National Environmental Policy Act, Pub. L. No. 91-190, Title II, 83 Stat. 855 (codified at 42 U.S.C. §§ 4321-70a (1970)); Air Pollution Prevention and Control (Clean Air Act), Pub. L. No. 91-604, §§ 2(a), 4(2), 15(a)(2), (c)(2), 84 Stat. 1676, 1689, 1710, 1713 (codified at 42 U.S.C. §§ 7401-7671q (1970)).

29. See William N. Hedeman et al., *Superfund Transaction Costs: A Critical Perspective on the Superfund Liability Scheme*, 21 ENVTL. L. REP. 10413 (1991).

30. Don Colburn, *Summer Heat Also Brings Dangerous Air Pollution*, WASHINGTON POST, June 21, 1994, at (Health) z14.

with the swelling sewage treatment plants in their neighborhoods. It also means that law enforcement officials enforce violations of environmental laws with less rigor in poor communities and communities of color.

How prevalent is environmental injustice or how bad is it? It's pretty bad. The following story illustrates a problem that has recurred throughout communities in the United States of America. Most people point to 1982 and a grassroots protest in Warren County, North Carolina, as the beginning of the movement toward environmental justice. Local officials decided to situate a polychlorinated biphenyls (PCBs)³¹ landfill in a predominately African-American neighborhood. Residents protested against trucks delivering PCB-contaminated soil to the landfill. Police arrested over 500 nonviolent demonstrators, including Walter E. Fauntroy, who was then the Delegate to Congress from the District of Columbia and the Rev. Dr. Benjamin F. Chavis, Jr., executive director of the United Church of Christ Commission for Racial Justice who is now the executive director of the NAACP.

Delegate Fauntroy asked the General Accounting Office (GAO), an agency of the United States government, to determine the racial and socioeconomic makeup of communities surrounding the four major hazardous waste landfills in the South. In 1983, GAO found that three of the four largest landfills in the South were in predominantly African-American communities.³²

In 1987, the United Church of Christ Commission for Racial Justice released the results of its nationwide study, "Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites."³³ The United Church of Christ found:

31. A group of toxic persistent chemicals used in transformers and capacitors for insulating purposes and in gas pipeline systems as a lubricant. Further sale or use was banned by law in 1979. ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY, 1293 app. (1992).

32. *See generally* U.S. GENERAL ACCOUNTING OFFICE, SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES (1983).

33. *See generally* UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE: A NATIONAL REPORT ON THE RACIAL AND

- Race proved to be the most significant among variables associated with the location of commercial hazardous waste facilities, with household income being second.
- Communities with the highest number of commercial hazardous waste facilities had the highest composition of minority residents.
- Three out of the five largest commercial hazardous waste landfills in the United States were located in predominantly black or Hispanic communities. These three landfills accounted for 40 percent of the total estimated commercial landfill capacity in the nation.
- Three out of every five black and Hispanic Americans lived in communities with uncontrolled toxic waste sites.
- Uncontrolled toxic waste sites were disproportionately concentrated in black and Hispanic communities.

Percival, Miller, Schroeder and Leape in their environmental law text³⁴ describe an inner-city housing complex: Chicago's Atgeld Gardens which reveals the cumulative impact of environmental burdens on African-Americans. Atgeld Gardens houses about 10,000 people, mostly African-Americans. It sits on an old landfill whose odors rise through the residents' basements decades after the landfill was closed. It is surrounded on all sides by various sources of pollution: a hazardous waste incinerator, seven landfills, chemical plants, a paint factory, two steel mills and lagoons filled with contaminants that emit 30,000 tons of poisons into the air each year.

The words of Dr. King would be applicable today if he were trying to marshal the efforts of the general public to oppose environmental racism. Dr. King said, in 1955 in a speech after he had been chosen to lead the Montgomery, Alabama Bus Boycott, the following:

SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES (1987).

34. PERCIVAL ET AL., *supra* note 31, at 6 (Supp. 1993).

We have no alternative but to protest. For many years we have shown an amazing patience. We have sometimes given our white brothers the feeling that we liked the way we were being treated. But we come here tonight to be saved from that patience that makes us patient with anything less than freedom and justice.³⁵

The new frontier for the civil rights movement is environmental justice.

It does us little good to be able to attend integrated schools³⁶ and be treated in integrated hospitals if the polluted air we breath poisons us and our children.³⁷ It does us little good to be able to eat in integrated restaurants if the food we eat is grown in contaminated soils and irrigated with polluted water. It does little good to be able to attend the best colleges and universities in the world when the cumulative impact of our poisoned environment means that we will die young of loathsome diseases. In short, the movement toward environmental justice seeks to address the excessive burden poor communities and communities of color bear when policy-makers locate pollution generating activities so as to impact adversely their neighborhoods.

African-Americans have protested and indicated that our patience has worn thin and that we don't like the way we have been treated: we don't like being dumped on or living in dumps, but we need other voices to join ours and to help reshape governmental policies and practices which are killing us.

In short, the legacy of Dr. Martin Luther King, Jr., is one of taking the high road, of doing what is right, of neither being a dumper nor a dumpee, of applying the golden rule to foster environmental justice.

35. Text of speech in possession of author.

36. *But see* Applebome, *supra* note 26, who states that the schools in Selma, Alabama are just as segregated today as they were 30 years ago because the white people send their children to private academies and the black children attend under-funded public schools by themselves.

37. Regina Austin & Michael Schill, *Black, Brown, Poor and Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 KAN. J.L. & PUB. POL'Y 69 (1991) [hereinafter Austin & Schill].

In a speech he made shortly before his death Dr. King said he had reached the mountaintop and seen the promised land.³⁸ Unless we rally against the environmental degradation which assails our planet, our children and our children's children will not be able to see any land. I hope that the battle against environmental degradation may become a unifying force that helps us to bridge the gaps betweenst and amongst the world's peoples. In that fashion, perhaps we will be able to avoid any future Love Canals and the need for the Montreal Protocol.

38. See generally JAMES M. WASHINGTON, *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* (1992).