

## LOYOLA LAW REVIEW SYMPOSIUM: PERSPECTIVES ON ENVIRONMENTAL JUSTICE

*Keynote Speaker: Lisa F. Garcia\**

### EJ 2014 & ENVIRONMENTAL JUSTICE INITIATIVES

#### ROBERT VERCHICK (MODERATOR):

It's my pleasure right now to introduce a good friend that I met while I was working in government at the EPA. I am going to introduce the EPA's Senior Advisor to the Administrator for Environmental Justice, and who also holds the title of Associate Assistant Administrator for Environmental Justice. Those are two titles that never existed before in EPA, and it's a testament to the work that the EPA is now doing on environmental justice. The *New York Times* calls the Senior Advisor on Environmental Justice "optimistic and ambitious," which are two of my favorite traits, and I think what you will see when you hear from Lisa Garcia is that she's somebody who is particularly adept at talking to these issues from different perspectives. When I first met Lisa and had the pleasure and privilege of working with her in the agency, one of the things that I noticed was that she was able to see issues not only from different perspectives, but from different perspectives within the same communities that EPA was working with. The other thing that impressed me a lot, and still does, about Ms. Garcia, is that when it matters, I find that although she gets along with everyone and is very diplomatic, but in the end, if something really matters, she sticks absolutely to her guns, and that is a trait that is valued in the EPA under Lisa Jackson. I think it's something that serves us well.

What you'll find is that Lisa Garcia is charming; she is

---

\* Senior Advisor to the Administrator for Environmental Justice at the United States Environmental Protection Agency. The following is a transcript of Ms. Garcia's keynote address at the 2012 Loyola Law Review Symposium.

disarming; she is shrewd, and she is very bright. She joined the EPA in 2009. Before that, she was Chief Advocate for Environmental Justice and Equity in New York State, working in the Department of Environmental Conservation. And when she was in New York, she also served as co-chair of the Governor's Environmental Justice Interagency Taskforce. It is my pleasure and a privilege for us all to welcome Lisa Garcia.

(Applause)

**LISA GARCIA:**

Thanks for having me. Thank you so much for such a kind introduction. It's great to be here. Thanks for hosting this important discussion. It's great to have the support of not only your professors and students, but also of the Dean. I went to a law school that I had never heard of environmental justice, and as students, we fought very hard to get a class on environmental law. I know you're thinking maybe, "That was a long time ago," but it was actually 1998, so it wasn't that long ago. So it's just great to see that support.

I'm going to talk about environmental justice but in a little bit of a different way. I think, after hearing Dr. Bullard<sup>1</sup> speak, it's very hard to follow that because I think he speaks to the truth, and it's kind of overwhelming. One of the things is: What in the world are we supposed to do about all of these issues? So I want to talk about it a little bit differently and spin it in the way that I came to environmental justice, and maybe this is why Professor (Robert) Verchick was saying that I'm "optimistic and ambitious." When you hear the facts and the stories, the only way to really work on this is to be optimistic and very ambitious.

But the other thing that you really have to understand is that sometimes things aren't as straightforward as they seem. In law school, we learn about "What is the bright line rule?" Or at EPA, you'll have the engineers or scientists say, "What's the formula?" In environmental justice, there is no real formula. There is no right answer. So I am going to talk about how we unwrap the gift or peel the onion back and think outside the box. That's really the theme of what I want to talk about. It's really important, certainly where you are as law students becoming

---

1. Dr. Robert Bullard, Dean of Barbara Jordan-Mickey Leland School of Public Affairs at Texas Southern University.

2012]

**Plan EJ 2014**

403

lawyers, how we begin to enter this field, understanding that you can always peel the onion and the layer back and figure something out and ask questions in ways to figure out where you want to go.

One of the interesting things as I started down this journey of an environmental lawyer, I started doing some classes in high schools and middle schools. I thought, “How in the world am I going to talk about environmental law to high school and middle school children?” I would just ask this question of, “What is the environment?” It’s just really interesting to see that what kids will say is the air, water, trees—something we think about the environment. I think of how our laws came about, it was certainly at first this idea of “conservation.” We even as a society started thinking about the environment in that way, too. How do we conserve and protect our trees, our lands, our water, our air? And then you keep digging, and the kids will start to say things about what they see—I was in new York City, so it may not be what you see—but they start saying garbage and odors and sometimes it’s *smelly* out there.

Then you think about how environmental law became a little bit more about environmental protection because we want to protect against maybe some of these odors. Then some of the kids started saying that the bad air impacts their asthma, and so they will have asthma attacks, and they started thinking about power plants and some of the bigger structures there and how there were a lot of trucks in their neighborhoods. Then, on the law side, you begin to think about environmental justice. So this is that concept of just keep digging down and asking yourself those questions.

I’ll give you a quick story about how I got involved in environmental law. When I graduated from law school, I took the bar, and I decided that I wanted to go to Spain and practice environmental law. When I got to Spain, I walked into Greenpeace—of course, I didn’t have a job. I wouldn’t recommend that, actually—but I was ambitious and optimistic. So I walked into Greenpeace and said, “I’m an American lawyer and I want to help your environmental lawyers.” They said, “We don’t have environmental lawyers here.” I said, “But this is Greenpeace. You’re working on all of this environmental stuff.” But, they said, “We don’t have lawyers here. There are no laws in Spain protecting the environment. We have one lawyer that you can

call.” So I called him up. I was excited and thought maybe I can intern with him or work with him. I called him up and he said, “I’m not an environmental lawyer. I’m a divorce lawyer who does criminal work for Greenpeace because they’re always getting arrested out in the Mediterranean.” (Laughter). I said, “Wait a second, that’s not what I want to do!”

But I dug a little deeper, and of course I had to find a job. So I did some contract work and CLE courses for the big companies or law firms on environmental law, but then I also started working with people in Spain on drafting legislation on environmental law. So it’s really interesting to work on how they were starting off thinking about environmental laws. Then I came back to the United States, and I realized that I was still really interested in environmental law and wanted to work in communities. So I went about doing the normal thing and just applying to the all of the environmental organizations. I got “Nos” from everybody I wrote to—“Thank you for your application, but we don’t need anyone.” I continued the contract work I was doing but did some volunteer work at a group that was doing community work, and that’s where I learned about environmental justice. This is where I came to learn about the impacts certain communities are burdened with by either the facilities or the roadways, the trucks operations, some of the odors. Then I was told there is no environmental justice lawsuit. So there’s no lawsuit that says, “You can’t build more than three power plants or four nuclear power plants in a neighborhood.” There’s no such law. So there’s nothing that really gets to this cumulative impact question.

As a community lawyer, I was hired to go into communities and see what their issues are, what they’re suffering with, what their burdens are, and then go to the laws to figure out how we can address some of those impacts. Once again, you go to the community, and they tell you there are no trees, there are really no parks, high asthma rates, lots of odors from their air and the water. We can’t even get to the water front—forget about enjoying the water front. Lots of noise, garbage, lots of waste transfer stations. In New York, they truck all of the garbage to these areas, and then they just pile up the garbage and truck them out. In some neighborhoods, there’s noise from rail yards. And there’s no air conditioning; it’s really hot in the summer.

I take what I learn from the community and I go to the laws.

2012]

**Plan EJ 2014**

405

The Clear Air Act talks about the national ambient air quality standards (NAAQS). The Clear Water Act talks about the national pollution discharge elimination system (NPDES)—permit conditions, land use, storm water management, plumes, migration. As a young lawyer or as a lawyer starting out, it didn't mesh. What I was hearing from the communities and what we have on the books didn't really mesh, so you can't really get to some of these environmental justice issues. Earlier we were talking about how do you eliminate those disproportionate impacts or how do you reduce them? There's no such law that says that, except for when you dig back, when you peel back the layers, there's actually a lot of stuff that we can do with our existing laws that gets to some of the prevention or mitigation that we're talking about.

So as a community lawyer in New York, we started filing lawsuits. Some were on procedural stuff, so that's one thing: you can use your administrative laws. We were in front of one judge, and we gave him the environmental impact statement (EIS). There are hundreds of pages, and each side files all of their briefs. So we had our briefs and all of our exhibits. He takes the environmental impact statement and plunks it on the desk and says, "Do you really expect me to read all of this and understand it, or can you guys work it out?" Immediately, you see how a judge reacts to what we call the battle of the experts. It's all of this environmental data and information and testimony and witnesses on all of this scientific stuff. What we realized is that maybe we need to begin to find partners to get to a place where we're talking about the environmental laws and the environmental impacts that communities see and begin to think outside of the box. In certain cases, we came up with settlements that, through using the laws—storm water management or odor from the community site—we were able to take a sewer sludge plant and get the company to put certain parts of it in an enclosed area with a good ventilation system, and then leeching—on the, let's say, the legal side—was the odor on the ground. So when the garbage comes off, it emanates this horrible smell, so how do you begin to get the discharge from that funneled into the proper area so that the smell doesn't go into the community?

As a lawyer, it was clear to me that we had to begin to think of these other ways to get to some of the impacts that the communities had and reduce the impacts they had. How do you talk to the city council about changing the truck routes that go

through a community and have them go around the community or take the highway straight to the operations, even though maybe they have to sit in traffic? How do you get them to stop idling when they're in queues for either a construction site or waste transfer station? It was really interesting coming to this and realizing that you have to use all of your tools and all of your partners in this to really reduce some of these impacts.

Another thing I'll talk about so we can think about this is green infrastructure. You think about reducing the runoff from water into our systems that overflow into our sewage systems in urban areas. If you can reduce the storm water impact, then you alleviate the pressure on the waste water treatment plant. But in alleviating all of that runoff, you could build trees that have storm water capture basins, and that community, when you look at it, may have streets and streets and streets of concrete jungle. If you can begin to plant all of these trees, you basically beautify a community, reduce the storm water runoff, and then in the summer, you reduce that heat island effect, which hopefully reduces the pressure on the power plants from jacking up and trying to meet the energy demand because everyone is cranking up the electricity. The power plants have the air emission impact.

You begin to see that if you think globally or think of a community as a whole and how we can begin to reduce some of these impacts working with everybody, sometimes you really get to a much better place. I think we're here to encourage you to understand that all of these impacts and all of these legacy issues that exist in the United States need to be addressed, and we need all of the partners at the table to address it. I can say sometimes it's really exciting going into a community and talking to the community, seeing what they want and what their vision is for a cleaner, healthier community and trying to use those laws, trying to be creative, and trying to figure out who those partners are to bring about some of those benefits.

I'll just go a little bit into where we are at EPA. Now that I have that experience as a community lawyer, coming to the government was very different because I also sued the EPA. My experience with the EPA was a little adversarial before I got to the EPA, and I knew that it would be a challenge to incorporate environmental justice principles into all the work that EPA does. I think that this asset, I'll say, that I have of thinking outside of

2012]

**Plan EJ 2014**

407

the box really helped me in understanding how the EPA programs worked and how to move forward. Before I got to EPA, the Administrator (Lisa Jackson), when she got appointed, realized that environmental justice was going to be one of her priorities. She grew up in New Orleans, and she understood very quickly these issues that Dr. (Robert) Bullard was talking about. She challenged the EPA on incorporating environmental justice.

Someone asked, what are the statistics of this? I think the Center for Disease Control (CDC) has done a study on how we still have health disparities in the United States, and it's based on racial and ethnic populations. As we see over the forty years of the Clean Air Act that we celebrated last year, and this year we are celebrating the forty years of the Clean Water Act, things have improved, but how come we're still seeing certain "hot spots"? How come we're still seeing these disparities in certain communities? That's what [Lisa Jackson] likes to call the "unfinished business." The Administrator has said that environmental justice cannot be relegated to the margins, and it's really EPA's unfinished business. That we've done a great job of improving the quality of life and in the environment and protecting human health in the United States with all of these environmental regulations. But we still have work to do. That's the unfinished business—environmental justice.

I won't go through some of the statistics; you've heard it from Dr. Bullard. But I will say there's a study done by CDC. It shows that African-American children are five times more likely to die of an asthma incident than white children. If you're really interested, I'm sure you can come up with some of that data. Puerto Rican populations—and I can't even believe these statistics—have 125% more incidents of asthma than other populations. So there is data out there, and it does suggest that you can hone in on a certain minority population and see the differences.

So the Administrator, for EPA as a whole, made sure that EPA is guided by scientific integrity, unparalleled transparency, and the rule of law, and then she quickly made expanding the conversation on environmentalism and working for environmental justice a priority. So I came in with that kind of task—that this is a huge priority for the Administrator, but it has to be guided by the science, the law, and make sure we're being transparent and inclusive throughout the whole process. For the

first time in essentially a decade, we have this great opportunity to address many of these issues.

I will talk about our roadmap, which we call Plan EJ 2014, so that it sets the stage for the next panel. When I came into the EPA, we polled some of the communities, and we went out on tour with the Congressional Black Caucus, the Congressional Hispanic Caucus, and had community roundtables to understand nationwide what some of the issues are. Internally, I met with a lot of staff, programs, and regions to try to figure out what some of their barriers are or how they are addressing environmental justice. What we developed was Plan EJ 2014. It's a plan on how EPA is going to incorporate environmental justice into all of its programs and all of its decisions moving forward. The plan is about environmental justice, and 2014 marks the twentieth anniversary of the Executive Order on Environmental Justice. President Clinton signed an executive order in February of 1994, thanks to the advocacy of many people, like Dr. Bullard and others. What we want to do is in 2014 be able to look back and say: have we met some of the mandates in that executive order?

The goal of Plan EJ 2014 is to protect the health in communities that have been overburdened by pollution and empower communities to take action to improve their health. This is a huge environmental justice principle, that you don't come in and tell the community what they need; you listen to a community and figure out what their issues are, and help them get to a place where they want to be. The other thing is this partnerships concept. We need to really establish partnerships with local, state, tribal, and federal governments, and communities to create healthier places to live.

The way the plan is laid out is that we have cross-agency strategies, and I think the strategies mainly come from what we heard from in the community. [For instance,] incorporating environmental justice into rule making. The EPA issues—or used to, or maybe will issue—about 300 rules a year. The thinking among many—inside or outside the agency or in government—is that if you are creating a standard that is going to protect human health, it necessarily and automatically protects any vulnerable population. What we want to do in incorporating environmental justice is to take a look at how those rules are being implemented a little bit closer. So if you implement a rule and say that only one person is going to be

2012]

**Plan EJ 2014**

409

impacted, you're assuming 100% compliance, number one, and you're assuming that there's only one of those facilities next to that one person, let's say, and they're spread out equidistant. You're looking at it from this nationwide level. But what we're finding is that certain facilities or certain rules in the implementation are actually impacting communities at a much higher rate. So how do we begin to look at proximity? How do we begin to look at health impacts from those rules? And so this is a huge change I think, and thanks to Professor Verchick, when we were working there, is really understanding that this is a big movement for EPA to get away from that saying: "Our laws protect everybody because they protect human health," and so we just want to make sure that we understand how rule-making and environmental justice intersect in the application and its implementation. And that's what we heard from communities.

The other huge thing we heard from communities is about permitting. Once again, if your permit meets the environmental law or the environmental standard, here's your permit. And what we are asking permittees to do is to look a little bit more at where that permit is going to be, what the community make-up is, and are there opportunities to even further mitigate some of the impacts. So, in permitting, one of the things we did, which is new, is in California, for the first time in an EPA permit assessment, we looked at asthma rates. It's not a pollutant that we regulate, but we heard loud and clear from the community that they were very concerned with asthma rates, and so in this permit we were able to say—the facility still got the permit, so you know we issued the permit—but we discussed the high asthma rates in this community and talked about trying to mitigate some of the PM 2.5, some of the particulate matter impacts and bringing about some of the health benefits to the community.

Another thing, since environmental justice also incorporates tribal work, is up in Alaska, we heard that every time we issue a permit, we don't consider their whaling hunting season. Now this kid from Brooklyn (speaker referencing herself) would have never thought of that. They're right, they're absolutely right. I would never have considered their sustainable hunting and fishing season. But we learned from that, from being with the community, and so we were able to say, "Ok, well first of all we are going to hold a public hearing, when they are actually around and can get to a public hearing, so we can hear from them. And

then the other thing, the final outcome of that, was in the permit—this is in region 10—is we incorporated permit conditions.” It’s not in the laws, but because we have that discretion, we put in permit conditions that speak to traditional knowledge. This is what the Alaska natives call their traditional and cultural history, and we need to begin to be sensitive to that in our permitting. So these are some of the things we are trying to do as we change the way we look at our permitting process.

The third thing is compliance and enforcement. Another thing that we heard from communities is that they want to make sure that there is enforcement and compliance. Once you issue the permit, who’s going out to ensure that there is compliance with those permit conditions? And so we have a priority of ensuring that there is compliance in certain industries. So refineries, for instance, is [sic] a huge concern among environmental justice communities. We are beginning to look at: what is the compliance rate of refineries? Almost like as an industry, just looking at refineries, looking at CAFOS (concentrated animal feeding operations). Some of them are concentrated and they are very odorous [and] problematic. But really beginning to listen to communities and figure out how we ensure that there is 100 percent compliance in some of these facilities. And if we can’t be out there all the time, how do we begin to think creatively about putting in bells and whistles at the facilities. So could you have fence-line monitoring so we don’t need an EPA person standing there looking at it, but could you have monitoring or continuous emissions monitors in different places that feed us information so that we can go out and be better enforcers of the law, especially in these communities where you really see high rates of noncompliance? And they are usually in low income or minority communities.

The fourth one is supporting community based action. So as much as Dr. Bullard and Monique Harden and folks have been working on this for many years, you still hear communities saying at a basic level we need capacity building, we need grants to just even understand what an environmental impact statement is. We need technical assistance, and so the community-based action programs are really trying to make sure that all of our grants are accessible to communities, not just to the local government. Historically, communities in a discussion with businesses or government meant, “Call the mayor’s office,” and communities for us in the environmental justice world really

2012]

**Plan EJ 2014**

411

means, “Call the residents who live on Elm Street.” And so you drill down a little bit further to make sure you are involving the community and giving them access to funding, or to information to build that capacity and to empower the communities to really build these community visions. So if you can clean up the water front, what do you want to see, there’s a lot of money for brown fields, which is cleaning up contaminated sites. Making sure the community has input in what is then planned there, what’s developed there, what’s built there.

The fifth part is fostering administration-wide action on environmental justice. This speaks more to our partners. The Administrator, Lisa Jackson, and Chair Sutley from the White House Council on Environmental Quality hosted the first cabinet level meeting at the White House, gathering about eighteen agencies and four white house offices to talk about reaffirming the commitment to environmental justice. That was done in September of 2010, and since then, there’s been a few milestones.

One is doing eighteen listening sessions around the country on environmental justice with all the agencies. So as Dr. Bullard was saying, it’s about housing, it’s about transportation, weatherization. So we go out with the Department of Labor to talk about worker practice protection standards, the Department of Energy to talk about weatherization programs and how folks access some of those grants. We’ve been going out with seventeen different agencies to really get out to communities to help them understand what’s available at the government, what kind of grants there are, and then also to inform the agencies on how they can improve their work. And then the next step with the inter-agency working group was issuing environmental justice strategies so each agency under the executive order of 1994 had to issue an EJ strategy. Many of them did in 1995, and then didn’t do anything. But this year what we did, as part of a memorandum of understanding on environmental justice, was that each agency had to issue again this EJ strategy, not only issue it but do annual reports, so there’s a real accountability and transparency to the public. I would encourage you to look at those EJ strategies that came out in February of this year (2012).

The other piece of Plan EJ 2014—and this is what you guys are going to talk about a little bit later—are tools. So that’s what we heard from communities: permitting, rule-making, enforcement, community-based actions. Where are the other

agencies and how come they are not working with you? That's what the communities really wanted. EPA and the other agencies said, "Well, where are the tools for us to get to these places where we can reduce some of these impacts?" One of the big ones was science. We hear a lot about cumulative impacts; we hear a lot about how does the science and data support our work. One of the tools we are working on is cumulative impact assessment—or cumulative risk assessment. Our office of research and development is heading up that tool and beginning to work with some of the health data and the other information that we can use to make better decisions in our rule making and our permitting.

The other tool is law. We heard a lot that people didn't know where their discretion was—do they have the authority to do it? Our EJ legal tools document, as the general counsel Scott Fulton says, is the enabling document. We don't want to hear people say, "I don't know if we can." The general counsel has basically made it very clear, "Yes, we can, and here are some of the tools and the authorities that you should be looking to." And it's not limited to that, but the point is to begin to get everyone to think along these lines of peeling that onion back, continuing to think outside the box. We have these laws and we *can* use the discretion or use [the laws] in a way to protect communities better. Hopefully you'll hear from folks about the EJ legal tools. It's the first time that kind of document has ever come out, with all the different laws and for everybody.

The third part is information. A lot of the things we heard, and I know that Dr. Bullard talked about this, but: "I don't know what an EJ community is. How do you define an EJ community?" As much as I want to walk into a room and say, "Well, let's get up, let's get on the bus, and I'll show you what it is," or "You know it when you see it," or whatever the statement is, I am a big believer in that you cannot define an environmental justice community because in California, when we are thinking about this information tool—how do you assess where an EJ area is—the folks in California said that one of the components should be linguistic isolation, and Professor Verchick worked on this a little bit, and then you go to Appalachia, and linguistic isolation is not going to get you anywhere. Everybody there speaks English. But maybe if you think about plain English, maybe that's a determinative factor. That you can't have everything in this technical language, so plain English. Is it linguistic isolation?

2012]

**Plan EJ 2014**

413

Immigrant populations? So we decided to just stick with the executive order, which says: “low income and minority populations” are going to set the basis for where we start this EJ screen, so a screening tool to just be able to say, “What populations are we trying to protect?”—low income, minority, and tribal populations.

Then the other factor that we are putting in is environmental burdens because what we are trying to look at is in areas that have burdens of pollution. So we have the national air toxics data, we have super fund data, we have our NAAQS,—the National Ambient Air Quality Standards—which show which areas are meeting pollution health standards. And so this at least sets a stage for a screen, and I and a lot of people that I work with are huge advocates of saying that once you do that screen, it gives you an idea of where an area may be overburdened, where you may have a minority or low income community. But go to the community to see what they are really dealing with. Speak to the community, see what some of those issues are before we can address it. That’s one of the things that we are doing. We are providing this kind of information screen tool that will help at least narrow the field. You’ll have an area of concern, and then you can go out and do your permitting, or NEPA (National Environmental Policy Act) work, or grant work.

The two final ones: resources—so how do we ensure our grants are getting out to people? We do grant workshops, working with other agencies to do environmental justice training. And then—this is a new one—the fifth one is we are working on a supplement on civil rights. We’ve heard a lot from advocates that our civil rights work is really lagging, and so the Administrator made improving the civil rights work and our civil rights office a priority. So stay tuned for the supplements of Plan EJ 2014 on our civil rights work.

I think I would open it up for questions so it’s not just me talking. Another EJ principal: just don’t talk at the communities, listen to the communities. (Laughter).

Why don’t I stop there. I just think once again along the lines of what we’ve been doing at EPA is to really think about how to think outside the box. How do you get to environmental justice issues when there is no formula, when there is no environmental justice law? It’s kind of the same thing with the work you do. So I guess I would close in saying, I really

encourage all of you, no matter where your paths take you, is to always kind of think about: don't just take "No" as the first answer, or this is the one case. As we've read, the cases used to always go this way, and then there's that one case that takes us this way. So think about being that kind of lawyer, spinning everything on its head, and in anything that you do. So even if you do policy work or health insurance, your legal training is a great tool to always expand where we are going and to think about how to address impacts to communities that aren't really getting the benefits of all the great work on the environment. And also always making sure that we have all the right people at the table. And so if you don't have the answer, think about inviting other people to the table because they, a lot of times, have great answers or great solutions that maybe you haven't thought of. I always remember looking up certain things on Westlaw, and it would always come back: "You have 1,000 documents. Do you want to open them up, or do you want to narrow the search?" It's kind of like that. Or the other way, we didn't find anything. Keep narrowing the search, but also keep expanding the search. Always think about different ways that we can attack and get to some of these issues. Thank you for having me.