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Cognizable Causes of Action and the Need for New Legislation (Introductory Remarks for the Third Panel)

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**INTRODUCTORY REMARKS
FOR THE THIRD PANEL
COGNIZABLE CAUSES OF ACTION AND
THE NEED FOR NEW LEGISLATION**

PHILIP WEINBERG*

In our society, when the executive and legislative branches of government fail—and let us face it, we have been sitting here since nine o'clock this morning cataloguing how they failed to deal with the problem of environmental justice—it usually falls to the courts to try to provide some kind of remedy. That has happened in the civil rights movement itself. It has happened in the areas of civil liberties and innumerable other areas that all of us know, and environmental justice is certainly no exception. We are still paying for the legacy of decades of pervasive discrimination that has led to the kinds of problems that have been catalogued here today. It is somewhat ironic, in fact, that although this has been a problem for all these decades, it has only recently surfaced, but surfaced it has.

We have to focus now on some practical remedies that are available both through the common law and through possible statutory remedies that need to be enacted and have not yet been, as well as attempts to try to use the Constitution, particularly the Equal Protection Clause, as a vehicle for challenging constitutionally suspect discrimination, through section 1983¹ actions in the federal courts, and to try to provide some relief to people victimized

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¹ 42 U.S.C. § 1983 (1988).

by the kind of environmental racism that we have been discussing today.

Our speakers today are going to concentrate on the availability of common law and statutory remedies, the availability of constitutional remedies, and finally some specific case studies from right here in New York City and around the metropolitan area. I think this will serve to dramatically bring together the existence of and, to some extent, lack of, available legal remedies in this area.

Gerald Torres did an excellent job of summarizing President Clinton's recent Executive Order.² I also want to call to your attention the fact that a bill has been introduced, called the Environmental Justice Act, introduced by Senator Carol Moseley-Braun and Representative John Lewis in Congress, and is currently the subject of hearings before Senator Baucus's committee, which has jurisdiction over environmental matters. The proposed Environmental Justice Act really has some teeth in it, and if enacted will require the Environmental Protection Agency ("EPA") to focus on, county by county, the extent to which people have had hazardous or other kinds of environmentally suspect landfills and other kinds of facilities placed there.

The counties around the country will have to be ranked, from the most environmentally benign to the most environmentally beset, and in the case of the hundred most toxic counties, steps will have to be taken to start correcting that imbalance. Any federal permit that is issued by the EPA or any other applicable federal agency for any kind of toxic chemical or hazardous waste or nuclear waste facility in these high impact counties that is going to add to the health impact suffered by the people residing in those counties, which, of course, are largely those populated by racial and ethnic minorities, is going to have to be offset by some improvement in the environmental numbers for other facilities that are located in that county. So I think, if enacted, the Environmental Justice Act, will really generate some improvement in this area.

² See Gerald Torres, *Keynote Address: Changing the Way Government Views Environmental Justice*, 9 ST. JOHN'S J. LEGAL COMMENT. 543 (1994)