

UVA LAW | Civil Rights Violations in the Social Determinants of Health

DAVID TOSCANO: Thank you very much. And good morning, everyone. It's great to have a wonderful crowd here.

This is terrific. It's been long time since I had a crowd like this to address. So I'm going to take the entire time. It's a politician, you know.

So I'm going to give some brief introductions. And these folks are going to speak for maybe 15 minutes. We're going to have to try to have time for some questions and answers. And then we'll wrap it up.

I've got very long introductions. And I'm not going to read them all, because we know they're all distinguished. And I'll try to give you the short version of the introductions here.

First to my immediate right, I don't know why they put me to the far-left, but on my immediate right, we have Marianne Engelman-Lado. She's a lecturer at the Yale Law School in Public Health and School in Forestry and Environmental Studies. She's a visiting professor at the Vermont Law School.

She was a staff attorney for Earthjustice, where she focused on civil rights enforcement. She's been involved previously with the New York lawyers for The Public Interest and the NAACP Legal Defense Fund. She has a BA from Cornell, JD from university California Berkeley, an MA in politics.

So she's got a lot going here. Her publications include, *No More Excuses*, *Building a Vision of Civil Rights Enforcement*. And she will be the second person to speak today.

We have Jeffrey Fagan to her right, who is Isidor and Seville Sulzbacher professor of law at Columbia and a professor of epidemiology and also in the Mailman School of Public Health at Columbia. His emphasis has been on policing issues. And if you look him up on the internet, there is a lot there on everything from civil rights issues in Ferguson to the New York City Stop and Frisk Policy, which would be very interesting to hear from him on it, since Michael Bloomberg is making such a play in the presidential race.

JEFF FAGAN: Don't get me started.

DAVID TOSCANO: I know. I know.

VERNICE MILLER- We're all New Yorkers here. So you might want avoid that.

TRAVIS:

DAVID TOSCANO: I am trying to edge him on a little bit here-- senior research scholar at Yale Law School and has a PhD in policy science from SUNY in Buffalo. I'm from Syracuse, by the way. So we're avoiding snow here in Charlottesville.

And then certainly not last, but not least, Vernice Miller-Travis, Travis who spent some time in Charlottesville. And we've been comparing notes about our favorite restaurants. We didn't get to our favorite people. That comes later-- one of the nation's leading experts in the issues of environmental justice, has been all over the country talking with people as a consultant and trying to help them understand a concept which has been around for a long time but is not always embraced all that well in statehouses around the country, that is environmental justice.

She's worked with the EPA's Agency on Urban Waters, the Chesapeake Bay and Airports Capacity Building Program has been involved with WE ACT For Environmental Justice, has a BA in political science at Columbia, where she has served as a resident fellow in urban planning. She worked for the National Resources Defense Council and was involved with the Ford Foundation. And the group now is called Metropolitan, the Metropolitan Group.

She's executive vice president. They're a consulting group. And they consult on all kinds of varieties of civil rights issues. So that's our distinguished panel today. And I think, if I'm not mistaken, Vernice is starting out.

VERNICE MILLER- Yes, I am.

TRAVIS:

DAVID TOSCANO: Welcome to the stage, Vernice.

VERNICE MILLER- Thank you. So I just realized that, though, I was at Columbia years after him, I follow him on

TRAVIS: Twitter. If you want to get a deep immersion in sort of policing and social justice and racial justice, follow him on Twitter. And it's really a wonderful thing. So you're one of my current heroes. Thank you.

So I thought for this panel on civil rights violations and the social determinants of health, housing, neighborhoods, and the environment, I would just take us through for just a very few minutes the history of how this conversation came to be, where it is now, and then focus on some of the work that the nonprofit organization that I'm the co-founder of, WE ACT For Environmental Justice on which Marianne and I serve on the board together, sort of how we've combined all of these things that this panel is talking about how, we do that work and how long

we have been doing that work, for 32 years in this space. So first, I would say with for me, at least, my own journey. In 1986, I went to work at the United Church of Christ Commission for Racial Justice.

At the time, the United Church of Christ was headquartered in New York City. It moved to Cleveland, because they thought there were too many brown people in New York City. That is the truth.

And the church itself decided to do a special project on toxic injustice. And the reason that the church decided to do this project is because the member churches, particularly in the States of North Carolina and South Carolina, were calling with regularity to the national headquarters in New York to say that hazardous waste landfill was being planned for their town, but nobody asked them. There was no public process. No notices went out.

All they knew was they saw trucks. And the trucks were starting to clear trees and land to create a hazardous waste landfill or a hazardous waste incinerator or other such adverse environmental facilities. And so they kept calling the church and saying, can you help us? What can we do?

And so the church decided to, out of their own funds to fund this research project, a special project on toxic injustice. And I had met the deputy director of the UCC Commission for Racial Justice, a civil rights leader named Reverend Ben Chavis. I had met him when he left prison.

He had been wrongfully imprisoned in the state of North Carolina for inciting violence. He was actually trying to register black folks in Wilmington, North Carolina and trying to get them involved in the local politics of their city. The state of North Carolina and the city of Wilmington claimed that he was inciting violence and arrested him and convicted him. And he spent four years in prison, eventually was let out.

When he got out of prison-- while he was in prison, he got his master's of divinity, but he came to finish his PhD, his doctor of divinity at Union Theological Seminary, which was across the street from the college that I went to, Barnard College. And so we invited Ben to campus to speak, to talk to us students. And I stayed in touch with him from then on. So he came to speak to campus probably in about 1982.

I called him every six months from 1982 to 1986 to say he should hire me, because I was the greatest thing since sliced bread in civil rights of my generation. And eventually, one day he

actually said, well, we're about to do this special project on toxic injustice. You should come in and meet our research director Charles Lee and see if you two hit it off and see if this is something you would want to do.

I thought I knew everything there was to know about civil rights at the time as a student and a student of the field, but toxic and injustice are two words that I had never heard linked together. So I go. I meet with Charles Lee. And he explains this hypothesis of what's going on in North Carolina and South Carolina.

And the church wants to look at, is there something going on in North Carolina and South Carolina that are unique to the southeast region? Is this a national phenomena, where people of color seem to be the target and locus for the sighting of unwanted local land uses and hazardous facilities? And so that was our hypothesis.

I was hired as the research assistant. And it was my job to take EPA's database at the time. So this was EPA's national priorities list. The national priorities list, how many people know what the NPL is, the natural priorities list?

So the national priorities list is a list that the Environmental Protection Agency keeps of hazardous waste sites that are ranked under their hazardous waste ranking system to determine that they pose imminent threat to human health in the environment and that EPA and its contractors need to go in and clean up the waste that's in their sights so that they are no longer a threat to public health. So we took that list, the NPO list from 1984 to 1986, and it was my job to correlate where all the sites the hazardous waste sites on that list also known as superfund sites, where they were located, and what was the racial composition of the zip codes in which those sites were located. So we wanted to see is there a correlation between those things?

Now, at that time, only the US department of defense and the main sort of company that does geographic information systems analysis, those were the only two entities that had GIS access to GIS. Even universities didn't have access to GIS at the time. So I had a six foot table in the conference room.

I had a map of the United States broken out by county. And I would correlate and marked by hand where those sites were. And then I would develop a color coding system of how many sites were in each zip code. And the redder it was, the more sites there were. And the redder it was, the more people of color that lived in proximity.

So then I developed this national map. It took me six months to do that data. For those of you who are familiar with GIS, how long would it take you to develop that data now? How long, What you say? Oh, maybe 30 minutes if you know what you're doing, an hour if you don't know what you're doing, but it certainly would not take you six months.

And then I took that map, and I gave it to a friend of mine, who was a graphic artist. And I had her create what would become the cover of our report, which we published in 1987 Toxic Waste and Race in the United States, which was the first report to look at the relationship between race and hazardous waste in the United States. Now, an anecdote that I always find really helpful and I share with people whenever I tell a story, so my grandmother was a nurse, all of my grandmother's sisters were nurses, my mother was a nurse.

So I come from a public health family and a public health background. And I said to my grandmother, at the time, oh my god, grandma, you wouldn't believe this incredible research. This is like mind-boggling. This is going to change the world as we know it.

And my grandmother says, how much money did the UCC spend on this report? And I said, I think we spent about \$200, \$250,000. She said, I am so glad I do not belong to the United Church of Christ.

And I said, how could you say such a thing? And she said, well, I'm just wondering why they spent so much money to document something that every black person in America knows to be true? Wherever we live, that's where all the adverse land uses are. If you're trying to find the landfill, find out where the black people are. If you're trying to find where the municipal dump is find out where the black people are. If you're trying to find out where the factories and the processing plants are, find out where the black people are.

So that's true, where black folk are the dominant manipulation, but in the southwest and in parts of the country where Latinos are the dominant manipulation, that's their reality. In parts of the country where indigenous people are the majority of the population, that's their reality. In parts of the country where Asian and Pacific Islander folks are, that's their reality.

Every place in the United States of America where people of color live, no matter how isolated that local population may be and how few people of color may be there, you can find the adverse environmental impacts exactly correlated one-to-one with where those people are. So I'm rolling out this data. I'm looking at these databases. I'm up to my eyeballs in data analysis.

And it hits me. The one class that I almost failed in college, statistics, something comes back from the depths of my cranium, from statistics comes forward and says, this is not random. The degree of statistical analysis that we ran-- so we had a separate data analysis firm that was running the data that I was finding that was running that data to tell us deeper and deeper analytics.

We looked at 164 social variables, including race, level of educational attainment, land ownership, renter status, value of land, level of educational attainment, per capita income, 164 social variables, race being one of them. Race proved to be the most statistically significant indicator in where these sites were located. This is just one universe of sites we're looking at though. We're only looking at the most hazardous, the most dangerous sites, those on the national priorities list, superfund sites.

We're not looking at impaired water bodies. We're not looking at sources of particulate pollution. We're not looking at other categories of hazardous waste or waste sites. Just superfund sites. And if you lay all that other data on top of the data that we published in 1987, you see a harrowing set of circumstances for communities of color, low income communities, immigrant communities, tribal communities across these United States.

Living in close proximity to those sources of contamination of pollution changes your physiology. It affects your health in fundamental ways. And it shortens your life expectancy.

How do I know that? Because while we were doing this research, it was suggested that I go and meet with some folks in my own neighborhood, where I lived in New York and west Harlem, who were building this independent political organization. And I said, yeah, but they're trying to shake up the Democratic Party. And I don't want any parts of the Democratic Party in New York City.

And they just kept hounding me, you got to go, you've got to go. One night I finally go to the meeting. Late, coming from my research. I show up at this meeting.

I open the door. I sit down. There's like 100 people in the room. And they're talking about the North River Sewage Treatment Plant that is about to be built on the Hudson River waterfront in the very community in which I lived, where I was born, where I was raised, where I grew up, where I went to college, where I went to graduate school. Everything was happening right on my doorstep.

I didn't see it. I didn't perceive it. I did not understand that it was going on. And it hit me like a brick, oh my god, I'm doing this research to look at the environmental threats that communities of color are facing in other parts of the United States and it's unfolding right here on my doorstep where I live.

How could I not have seen this? How could I not have seen this, because I was looking at hazardous waste sites. I wasn't looking at environmental infrastructure. I wasn't looking at a sewage treatment plant built to treat 180 million gallons of raw sewage on a daily basis, the entire waste water, sewage collection system for the entire west side of Manhattan. I wasn't looking at that.

I was looking at hazardous waste sites. And when I tilted my head up a little bit, I realized that the threat was right there in my own front door. So we published this report. It changes the national conversation or it introduces into the national conversation that there is another aspect of racism that we have not been looking at.

And we hardly ever talk about the relationship between local land use and zoning and the racist predicate of local land use and zoning that allows the continual dismantling of communities of color and the continual threat to the lives of people of color based on who controls that local land use process. Here in Charlottesville, that process allowed for the erasure of Vinegar Hill, a historic African-American community here in Charlottesville that we now know, because we have history, we have some churches and a few structures still left, but for all intents and purposes, that community has been disappeared. And Richmond, Virginia, every time you drive on 95 and you're getting near Richmond and then you're driving through Richmond, you are driving through what used to be a thriving African-American community of homeowners that was utterly destroyed to build 95 south and 95 north as it came through Virginia.

I could tell you stories like that around the United States. And I have collected those stories from around the United States, but those stories and the voices of those people in those communities then built and formed a social movement in the United States called the environmental justice movement. In 1988, we've found West Harlem environmental action. In 1990, the University of Michigan held a conference on race and the incidents of environmental hazards.

I want to read to you the definition of environmental justice developed by Dr. Bunyan Bryant,

who led the environmental advocacy program at the University of Michigan. It used to be called the School of Natural resource. It has a new name now.

Sorry, I think it's called-- and Bunyan defined environmental justice as referring to those cultural norms and values, regulations, behaviors, policies, and decisions to support sustainable communities where people can interact with confidence that their environment is safe, nurturing, and productive. Environmental justice is served when people realize their highest potential without experiencing the isms. Environmental justice is supported by decent paying and safe jobs, quality schools and recreation, affordable housing, adequate health care, personal empowerment and communities free of violence, drugs, and poverty.

These are communities where both cultural and biological diversity and respect are respected and highly revered and where distributive justice prevails. So when we talk about environmental justice that's what we mean, the intersection of all these issues, but also to be free of the oppression of those issues is to live in a state of environmental justice, which very few communities of color, low income communities or immigrant communities experience. In 1991, people of color and their allies from all over the United States came together to host the first National People of Color Environmental Leadership Summit, where we laid out our vision of what environmental justice looks like articulated in the 17 Principles of Environmental Justice.

In 1992, EPA established their office on environmental equity, which would become the Office of Environmental Justice. In 1994, President Clinton signed the executive order on environmental justice, which is legally predicated on the National Environmental Policy Act and Title VI of the Civil Rights Act. I need to say something about Title VI.

Dana mentioned it in her opening remarks, but I need to say something about it. So the executive order says that all federal agencies must look at their programs and policies to ensure that in meeting their missions they are not doing so in a way that creates adverse impact or discrimination against people, protected groups of people as defined by the Civil Rights Act of 1964, and they surely cannot use federal dollars in a way that's going to create discriminatory impact, whether intended or not. You should ask Professor Matthew, and I hope she will find the opportunity at some point in his conference to tell you about the year and a half that she spent at the Environmental Protection Agency trying to get the Office of Civil Rights at EPA to understand, one, what does the Civil Rights Act of 1964 say we must do as a federal agency, and how should we do it?

And how long ago do you think she did that? How long ago? Four years ago, four years.

She was there trying to get the Environmental Protection Agency to realize that they had independent statutory authority under the Civil Rights Act, separate and apart from the legion of environmental regulations and the federal environmental framework. They, to this day, don't really understand that don't recognize it and reject it, which is why most states do not have a fully formed environmental enforcement process within their state environmental agencies, because EPA has not told them they had to, because EPA does not understand they have to do it themselves. And I am needing to wrap it up.

DAVID TOSCANO: You're on a roll.

VERNICE MILLER- I am on a roll, but I just want folks to know that in the environmental justice space, we have

TRAVIS: been trying to do two things. We have been trying to make sure that people receive equal protection under the federal panoply of environmental laws and regulations and that people are entitled to equal protection before the law and that the Civil Rights Act of 1964 demands and requires that they not be discriminated against. That's what we have been doing these past 35 years. And we're just now starting to make some headway, until this administration. They will go away.

MARIANNE

ENGELMAN-

LADO:

So I am a little nervous about coming after Vernice, but hopefully there is a flow and I will follow up. As Vernice described, the environmental justice movement is often described as including distributive justice, recognizing and addressing the inequalities on the basis of race and class in the distribution of both environmental benefits-- like access to parks-- and environmental burdens-- like living in proximity to superfund sites, also procedural justice. And this was written about in the paper, the say, the control over your future, having a say, a meaningful participation for formerly disenfranchised communities, and disenfranchised communities today, and also substantive justice, the access to clean air, clean water, and all three of those pieces are central to environmental justice.

Fundamentally, as today's topic has suggested, environmental justice echoes the themes of today in that the decisions that are involved in the built environment and the natural environment have included and perpetuated oppression and insubordination and that environmental justice seeks to address the devaluation of people of color and low income people. David Pellow has written in his work on developing a critical environmental justice studies that marginalized how human populations are treated, if not viewed as inferior and less

valuable to society than others. And the basic idea of environmental justice is to challenge that view, to make change with community-based transformation.

So I feel like I've gone whole circle, because I started my career at of NAACP Legal Defense Fund working on what we called access to health care and disparities in health status. So there's something quite depressing and wonderful at the same time to be part of this. And even at that time, the courts were sort of-- I can't say this in the South-- but going South. And we were worried about this notion that you go to court and you get a judge to somehow align the law with social justice and knew that was not the right theory of change.

And so as far back as 1989, when we were starting this access to health care or health justice program, we brought together people from the NAACP Legal Defense Fund, Meharry Medical College, Johns Hopkins, community folks to say, what is the theory of change? What is an agenda for civil rights in the health care area? So I do feel like this is a great continuation of that dialogue.

Currently, I spend time at Yale and at Vermont Law School. And the very nature, the very reason I'm traveling down the road burning carbon everyday is to bring together an interdisciplinary group of faculty and students to work across disciplines on issues of environmental justice-- so working with communities through community-based participatory research, doing health monitoring, engaging communities, getting direction from communities, and then developing advocacy strategies, including civil rights strategies that will respond, that take our direction from the community. So we can talk more about that.

That was what that was about. Oh, I should go back for a sec, because this started late. I didn't do this. So I just wanted to say who these folks were. We're going to get back to both of them.

On the left-hand side, that is Esther Calhoun, a resident of Uniontown, Alabama. And one of my clients and friends and partners, I'm proud to say. She is walking in a cemetery where her loved ones are buried, which is right next to a mound of coal ash in Uniontown, Alabama that was put in Arrowhead landfill.

And I'm going to talk more about that. And on the right is Naeema Muhammad, the executive director of the North Carolina Environmental Justice network. These networks were developed out of the effort that Vernice talked about in the 1990s, the Ford Foundation, Vernice when

she was there. And others funded groups across the country to develop into networks to have their imprint on social transformation in this area.

And some of them still exist. And the North Carolina EJ network is one of them. And this is Naeema and other folks from the North Carolina EJ network and a group called REACH and their partners Waterkeeper Alliance going to DC and demanding that EPA respond to their civil rights complaint, which EPA eventually did, inadequately, but they did. I want to say just something that probably doesn't need to be said in this law school, but the goals of legal action are not only getting a court to go your way, especially in our time.

This is not about will a court align the law with social justice? Of course, I don't need to say also that every legal action has to be meritorious and non-frivolous, but having said that, the goals of legal action are to lift up to elevate the narrative of the community. And often, when racial justice is invisible or racial injustice or people are holding in that stress, because the law is not talking about racial injustice, we have to articulate that narrative in Title VI of the Civil Rights Act of 1964.

For all the frailties that you heard about is a mechanism for articulating that discrimination is what's going on here. The law can create political space. Vernice mentioned NEPA, National Environmental Policy Act, that is a mechanism for creating political space for voice. The law can build a record, can support community-based movements.

And so when I talk about using civil rights or that partnership that was discussed earlier, it is about using the law in all of these ways to make community-based change. And I just wanted to put on here, Vernice mentioned, the principles of environmental justice. There are many of them.

There are 17, but at core, the fundamental right to self-determination, the fundamental right to participate as equal partners in all mechanisms of decision-making, not only for government, but for me as a technical assistance provider. That is what I do. I'm a technical assistance provider or that is what scientists do.

It is the community that should be driving, the community that has to have-- I'm using the community as if it's monolithic. It's not. So we could talk more about that, but it is the people who are the stakeholders that should be driving. And we are partners in that effort.

Vernice already talked about the fact that environmental justice issues are a broad range of

issues. They're not just a particular decision about the built or natural environment. So I won't spend a lot of time on that. I want to highlight very quickly these three situations and share experiences I've had the honor of hearing about and seeing on the ground that fuel this movement.

So this is Uniontown, Alabama. It's 2,000 people. The community is 87% to 90% African-American. The per capita income is about \$10,000.

There are multiple sources of pollution, not just Arrowhead Landfill. Arrowhead Landfill-- and this is actually significant. We could talk more about this is in an unincorporated area on the side of town. So when people invest in the community, they're investing in the municipality. This is not the place that has the street lights, et cetera.

County Road 1 goes to the south of Arrowhead Landfill. Arrowhead Landfill is one of the biggest landfills. In the state it takes municipal solid waste from all across the Eastern seaboard through the Mississippi 33 states. It takes our waste. And it's all dumped.

VERNICE MILLER- It's important to note it's a municipal solid waste landfill. That's a really important point to just lodge in your head.

MARIANNE ENGELMAN- That's right, because what I'm going to show you on the left there is a pile of coal ash. And that coal ash was shipped 300 and 350 miles across state lines from Tennessee, when there was a coal ash impoundment that broke, creating a superfund site, because under superfund law, coal ash is considered hazardous, but under RCRA, the solid waste law, it is not considered hazardous.

So they piled up the coal ash in predominantly white middle class Kingston, Tennessee, with their hazmat suits and everything, put it on train cars, shipped it to 300 to 350 miles into little Uniontown, dumped it with coal ash going through the air, and unloaded those train cars with no hazmat suits, because suddenly miraculously in Uniontown, in the municipal solid waste facility, it is no longer hazardous. And that message that goes to people in the community, where they had seen pictures of people in predominantly white Kingston with hazmat suits handling the very same stuff that comes into their community, that message was not lost, that their lives were not viewed as valuable as the people in Kingston.

This is an aerial view of the landfill trucks. This is we say, oh, it must be-- it complies with RCRA. It must be safe. You can see the torn lining.

This is Bill and Annette Gibbs in front of their home. Oh, wait, I wanted to go back, sorry. I just wanted to show you in this picture-- I wish I had sort of one of those red things. See on the left-hand side, those are all homes.

Those are people's homes right across the street from that four million tons of coal ash. That's people's homes. So Mr. and Mrs. Gibbs helped to start Black Belt Citizens Fighting for Health and Justice. They are fighting. And I had the honor of working with them and other residents.

35 residents filed a civil rights complaint. And I got involved in this community and can talk more about our partnership and the work in the community if we have time in Q&A or over lunch or whatever, but they have been fighting not only the coal ash, but an antiquated sewage system, a spray field for human waste, all kinds of environmental problems. And this is Esther Calhoun. She was the second president of Black Belt Citizens fighting for health injustice.

There is a phenomenal movie that was put out that's called *Uniontown*. I recommend it to you that features Esther. One of the things that happened that happens when doing this work is the landfill sued Esther and the other leaders of Black Belt Citizens for millions of dollars, \$30 million in a slap suit, which the ACLU defended them and we were able to get rid of.

And Reverend Ronald Smith from the Ashurst/Bar Smith Community Organization, in 2003, Miss Smith and Phyllis Gosa filed another civil rights complaint. It was accepted by EPA in 2005. It alleged that a landfill that was devastating their community, their community that their ancestors settled as a formerly enslaved persons right after the Civil War as part of the Freedmen's Bureau, their community with black-owned land, the Alabama Department of Environmental Management and its wisdom decided to cite a landfill or approve the siting of a landfill in the middle of black-owned land. And of course, they're devastated.

They believe that there are higher levels of cancer and asthma and people have died of cancer or moved away. And so they filed a civil rights complaint. And that is a picture of all of the trash in the landfill. It's also enormous. This is a picture of land.

The pink is black-owned land. The orange is where the landfill is. So they filed this complaint. And we've been representing them in a lawsuit for unreasonable delay, because EPA, as Dana knows, accepted the complaint for investigation in 2005. And as of 2015, when we filed an unreasonable delay suit against EPA, they still had not decided anything about this case.

And again, each case has a long history that I'm not going into the details of, because I only have three minutes. But I want to say we represent the community, not only on their individual complaints helping to work together, my Yale hat is working with them on air monitoring and doing a health survey to get more documentation. And my law school hat is working with them on advocacy. And we're all in partnership.

We have memorandums of understanding to do community-based participatory research all together as part of this sort of mechanism for ground up change. I just wanted to say that this is part of a larger problem of black land loss. And wanted to quote Phyllis Gosa who, said about this, "Our family property means everything to us. My great grandparents were slaves who came to the community in the 1800's as documented by the census.

The land in the community is the most only tangible valuable things that my great grandparents, as former slaves, were able to pass on to their descendants. My parents lived through Jim Crow segregation Alabama, the cradle of the Confederacy. Their land is all they had and all they could pass on to me and my siblings in terms of wealth."

She is quoted in a podcast that's coming out tomorrow on *Hothouse Earth*. And if you want to hear more of her voice, it lifts up her voice in the story in [INAUDIBLE]. This partnership, people had gotten so disgusted by the failure of EPA to move on the complaint, they had just given up. And this partnership and the litigation, for all the challenges of litigation, give a little bit of a shot in the arm to the community. And the next time the permit was up for renewal, hundreds of people came to this permit hearing.

The third and final example I want to give is the North Carolina complaint that we filed. And the person that's standing in front of the American flag is Steve Wing. And I just want to give a shout-out to Steve, who, unfortunately, passed away from cancer a couple of years ago, but not before he changed the world.

And he was an epidemiologist, and he documented the environmental justice impacts of the swine industry. And I only have one minute, so let me just go quickly. To do a civil rights complaint, we need to show that there are adverse impacts of whatever we're complaining about or the decision we're complaining about, and that they disproportionately affect people on the basis of race, or national origin or color. And Steve did years, decades of research on both of those elements with the people he mentored.

This is a confined animal feeding operation. You see animals outside. That's a lagoon, which

is an open-air cesspool. All right, in the case of pigs, pigs make three times as much waste as humans. So without going into all the details, I want to show you this. See the circle?

Can you now-- do you see the circle? That's a 3-mile radius. And the pin, that green pin in the middle, is where Brittany Johnson lives. She lives within three miles of more than 10-- this is not even including poultry facilities-- 10 swine facilities, each of which has something like 3,000 pigs. So she's living within three miles of at least 10 facilities with open air cesspools the size of towns of 10,000 people. Now, you can imagine the health effects, the flies, the smell, the inability to enjoy your property, et cetera.

So very quickly, just a few pictures of the waste flying through the air. That's how it affects the water. This is erosion of the spray field. I didn't describe, the waste comes down at the bottom of the-- they're called "barns," but indoor facilities. They're no big red barn. And then it goes out into these cesspools. It settles there, and then they take the liquid.

I know I'm out of time, but I'm going to just finish. A couple minutes. They take the liquid, and they spray it on fields. It's not-- we can talk about the nutrient management side of it, but they spray it on fields. And when the wind comes-- it has happened to me. It actually, for good or for bad, happened to the EPA investigators who came to town with us. You literally get covered with waste. But it's terrible for-- all humor aside, and I don't have very much of it.

So this is erosion of spray fields, and you can see that waste going out to Stocking Head Creek, which is in the corner there. So you can imagine what is happening to the waterways that people rely on. And this is flooding during the hurricane.

This is all just right in the way of hurricanes. The water pollution, the groundwater pollution, the drinking water pollution, the air pollution, which is unregulated. These are big ventilator fans. The poultry industry, all the chickens would die of asphyxiation. These are some of the chemical effects. I should have warned you-- sorry, I'll move fast-- but this is how they dispose of dead animals. This is a sacred space. Talking about not valuing people's lives and also what is sacred to people.

This is the work Steve did, and Jill Johnston is at USC, University of Southern California. The work that they did to relate the kind of work that Vernice was talking about, relate where these facilities are, which is the black dots-- that's not even taking account of the size of the facilities-- and race. And you can't even see how many people of color live in Dublin County, but there

is a relationship-- a very strong relationship-- between where facilities are located and race and national origin. Actually, the strongest correlation was with Native Americans, but it's significant with Latinos and African-Americans.

When EPA didn't respond, we took the issue to EPA. They wrote-- before the Obama administration left office, they came down. They did an investigation. They did not make a finding of discrimination, which they should have made, but they did issue a letter of concern. We went into alternative dispute resolution and came out with a settlement agreement that is incremental at best, but it is something. Again, we could talk more about that.

And this is the beauty of it, the honor for me to be part of this community. When you go to the North Carolina Environmental Justice Network summit, and you stand hand-in-hand with scientists, and government folks, and community folks saying, I am a link in the chain, and a link in the chain will not be broken here, it is a sacred oath. And we are all working together.

I just want to say one more thing about the use of civil rights lawyers. I'm going to miss that. But there are opportunities for real change, and so the one thing I want to end on is a positive note, which is all of this work to make really systematic change and put information in the hands of communities so that they can advocate with us as support, one of the most exciting things is the development of these environmental justice mapping tools.

And it was mentioned before, this is a picture of CalEnviroScreen. What you see is you can identify, where are the communities of color, and you can identify, what are the cumulative impacts of many environmental health and demographic indicators of health. And this information is now being used in government decision-making.

But it's not just in California. This is Washington State, which used money from the CDC Tracker program to do something very similar that can be used in decision-making and used in advocacy by communities. And there are more than 20 states that are using this. So thank you very much.

[APPLAUSE]

**FEMALE
PRESENTER:**

F So just want to add, for context, while we're coming with our next speaker, North Carolina has approximately 11.5 million people and 19 million hogs also live in it. So there's more pigs than there are people in North Carolina, and they produce a lot of waste.

MALE PRESENTER: OK, Dr. Fagan, and I'm sorry that I keep holding signs up, but that's my role, is to try to be the traffic cop here. I know that traffic cops, we shouldn't talk about traffic cops here.

JEFF FAGAN: Yeah, they're bad.

MALE PRESENTER: Yeah, OK.

JEFF FAGAN: OK, so these two are a tough act to follow. And more seriously, I hope y'all aren't very hungry, because we're going to run over a little bit. And the work that we're doing is, I think, at a much earlier stage in the development of a body of scientific knowledge about the harms of policing and the capacity of police working under the color of law to produce some significant harms-- particularly in children, but for the most part, particular harms that are particularly focused on black and Latino communities.

So let me take this from the top. This thing works same, I assume? Marianne?

MARIANNE ENGELMAN-LADO: I did not use it. I used the--

JEFF FAGAN: You just used the pad?

MARIANNE ENGELMAN-LADO: Yeah.

JEFF FAGAN: OK, well, this works. So this is a cartoon that basically shows the state of mind of your average police employee, police department police officer, who's thinking about the way that *Terry versus Ohio* works, which is the officer has reasonable suspicion that crime is afoot-- meaning it's either just happened, it's in the process of happening, or it's imminent. That's a big space in which police officers can make that decision.

When you load it on top of their everyday experience, what they're trained on, what their biases lead them to, and what their culture reinforces every day, this is where they attach suspicion. I'll show a little bit of data that's going to show how, in fact, that doesn't happen neutrally or randomly, as Vernice says. It's quite systematic.

By the way, everything that Vernice said about where the bad stuff happens, where the police are, it's the same thing. That's-- where they're focused, that's where the bad stuff happens. Except in our case, it's a combination of social and psychological harm. So we'll talk a little bit about that.

Now, just at the low end, this is what we see. This is all just coming out, actually, in New York. It was just revealed, I guess, about a few days ago, maybe a week ago, about the jaywalking summons activity. 90% are people of color who get jaywalking.

I grew up in New York. I jaywalked every day of my life. In order for me to get to my car, I have to jaywalk.

DAVID TOSCANO: It's in the constitution.

JEFF FAGAN: Because otherwise, I'd have to walk around.

VERNICE MILLER- It's in the constitution.

TRAVIS:

JEFF FAGAN: It is. It's on my birth certificate, actually.

[LAUGHTER]

But it's not just here. It's Jacksonville, Florida. It's every city in the country. This is only now becoming an issue. We all know about all the harassment of everyday activities that's focused by the police and by law, generally, on black people in particular, but also on other people of color. This is walking while black.

So this is one end. This is the everyday end. Here's the other end. And the other end is police killings. And I'm going to talk about everything that starts from the beginning to the end.

And this is just a story that was in the times last week, earlier this week over the weekend, I think, about two brothers and their experience with the police under the stop-and-frisk regime in New York. The first one, the younger brother, he gets killed. The older brother, so the older brother gets killed. The younger brother lives in the shadow of that death at the hands of the police. He internalizes it. The family's a wreck.

He's traumatized, and trauma is the thread that I want to talk about through all of this. He's traumatized. His life falls apart. He winds up in a fatal encounter with the police himself.

Imagine the trauma in the family from the first killing. The first killing was the cops thought the guy had a gun. This is a kid. They thought he had a gun. They mistook his hairbrush for a gun.

Now, happens all the time. They make mistakes. If you read Jennifer Eberhardt's work, that mistake is heavily racialized. They don't make the same mistakes, cops don't make the same mistakes, with white folks. They make it with folks of color. And they make it the most with black folks. They make it that make it the least with white folks. And in the middle, as in every other indicia of deprivation, they do it with Latinos.

OK, so this is the deep end. So we're going to talk about everything from the front end to the deep end pretty fast. So it all happens under the regime of what we call the new policing. New policing is something that evolved during the 1980s. Commissioner Bratton, first in Boston, then in the city of New York, later in Los Angeles, created this model that has these three components. We need not go into them. They're pretty straightforward.

Everywhere where Bratton went, by the way, there was a civil rights lawsuit that was successful. So he created-- he created the Floyd regime in New York that wound up in a civil rights trial. It was one of the only civil rights trials that actually happened. Everything else was settled in a consent decree. There was a consent decree from his in Los Angeles, where he was practicing as commissioner for many years as well.

So this is the New Policing. This is the regime that leads to, under the color or under the umbrella of *Terry v. Ohio*, which, essentially, is a standard-less rule for police officers about when they can conduct the common law-- or exercise their common law right of inquiry to stop somebody, and then, once you stop them, there's a progression of steps that they go through during those interactions. And those steps lead to increasing involvement, hands-on, and sometimes hands in pockets, sometimes hands in backpacks, et cetera.

There's a case that just came up about police officers saw two brothers who were walking around with a backpack from the film *Frozen*. And the cop said, I thought it was kind of heavy. He was walking like was a heavy backpack. I thought he had a gun. So he stops them.

He searches the backpack. Completely unconstitutional search, maybe-- maybe. He, the kid, says, why you searching my backpack? There's an interaction. The interaction goes south. The kid winds up on the ground. The cop stomps on the backpack. Then he stomps on the kid's back. The kid's in the hospital, et cetera, et cetera. These are the things that happen every day under this policing regime.

So imagine the harm, psychologically and emotionally, that accrues to that kid, that accrues to the kids who witness this on a daily basis. And you'll see some of the data that actually is produced by that.

So this is a stop regime. Just we're going to whiz through this real fast. This is the New York City stop regime. David mentioned that Mayor Bloomberg is coming. This is a really interesting story. I get phone calls every day about this, because I was the expert for the plaintiffs in the civil rights trial under Floyd. Does this thing have a-- nope, it doesn't.

s anyway, if you go back to the peak and you go back from the 685 to the 532-- so basically, by the way, we did a little calculate, back of the envelope. 80% of all the young men between the ages of 16 and 24, 80% of young black males were stopped one or more times during that one year. That's astonishing. We did do a little-- it was a little back of the envelope, because the data aren't completely transparent. The for Latinos was 38%. The rate for white folks was 10%, white kids. That's pretty large.

Anyway, Bloomberg denies that anything that happened in court led to that decline. It's a long story, but for those of you who took CivPro and stayed awake, we got class certs right in the middle of that thing where it said 532. And immediately, they knew they were going to lose. They changed their habits. And Bloomberg says, oh, no, no, no, I saw the light. I had hurt people's feelings. He never said, by the way-- if you're thinking of voting for Bloomberg, he never once said--

MARIANNE Sorry.

**ENGELMAN-
LADO:**

JEFF FAGAN: --I was wrong on the merits.

MARIANNE That's right.

**ENGELMAN-
LADO:**

JEFF FAGAN: He said, I'm sorry I hurt your feelings. Fuck him.

[LAUGHTER]

[APPLAUSE]

This is a trial that went on with Marianne's colleagues that worked for LDF. They were one of the people who brought the case. This went on from 2008 to 2013. There's an order in effect. We're monitoring the order. I'm working for the plaintiffs still and monitoring on that. And there's a limitation of law, and I want to get to that at the very end, because there's just so much that law can do. And I think that's something to bear in mind.

Anyway, so you just see, they're much more careful with white people. On the left side, they frisk white people less often. On the other hand, when they do frisk 'em, they get it right almost twice as much. That's really quite amazing. Which means they're very careful. They're either very careful with white folks, or they're very promiscuous with black folks, one of the two. And it's not hard to see the evidence.

Anyway, so this is the new regime in practice. And when you get into the data and you actually talk to kids, stuff that came out in our trial, it comes out in ethnographic studies. Think about the name Rod Brunson, who has done astonishing ethnographic work with kids in East Saint Louis talking about their experiences with the police or with these regimes, these are the kinds of things that come out. My colleague Bernard Harcourt wrote a really fascinating paper about a body cavity strip search that happened on the side of the road by police officers. I believe, actually, the research site was Richmond, although they kept it anonymous, but I'm pretty sure it was Richmond.

And they searched the guy. And they've got him. He's naked on the side of the road, and they search him, and they get back in the car. And there happened to be a research kid, grad student, in the car. And so the cop turned around and he says to the kid's face, I know he had the drugs, even though he never found them. So guy's naked. Where's the drugs? And he did a cavity search. So this is kind of the thinking that's infiltrated the culture under this regime which rewards and if not celebrates it.

OK, so let's get into the harms. We did surveys of kids in New York. We surveyed 1,250 kids. We interviewed them twice over a one-year period. We asked them a whole series of questions. How were you treated by the police? What were you doing? How many times have you been stopped, et cetera, et cetera.

And here, we asked them to scale, on the bottom, reported stop intrusion is everything from the most polite intervention to a strip search, or you get down on the street and spread your

hands on the top of the car or on the sidewalk.

And to make a long story short, we ask them two different measures, standardized psychiatric and mental health measures. These come straight out-- you'll see these in any kind of study. The one on the right is a PTSD study, the same things that they give to combat veterans, to people who have survived earthquakes, and floods, and fires, but also from combat veterans.

So you can see that on the right side, as stop intrusion gets more severe, the level of PTSD goes up. That's a pretty damning graph. The same thing on the left side. We used a very simple measure of anxiety. How anxious are you?

So in our survey where we actually talk to kids, the more or worse the stop intrusion, the higher the rates of anxiety. We also got a positive rate-- we don't show it here-- for hostility and for depression. So you can imagine the baggage. Most of these stops are-- it's 58% black kids, black young men. It's mostly 16 to 24. 58% black, 29% Latino. I think that comes out to about the right numbers. And so this is who we're talking about. when we break this down by race.

What's interesting is, white kids who were stopped under the same regimes have the same outcomes, but it's all happening to black kids. So it's kind of a universal effect, and you can see that the decisions about how to allocate the resource of policing is producing an entire generation of kids who are harmed.

OK, these are the neighborhoods where this stuff is happening. So this is a survey that's done by the health department. This is the New York City Health Department. The darker the neighborhood, the higher the rates of psychological distress. They use the same kinds of measures that we do. These are epidemiologists who are very, very talented. Abigail Sewell, who is the lead investigator in this, who's now a professor, I think, at the University of Georgia did a lot of this work.

But it turns out if you actually draw a map in New York-- and here, we get into the same things that Vernice talked about and Marianne talked about-- those neighborhoods, the darker the color of the neighborhood, the poorer, the more minority, the higher the school dropout rate, the higher the unemployment rate, the higher the suicide rate. Every single dimension of deprivation-- economic, social, and psychological deprivation-- is in the very same neighborhoods, and the psychological deprivation piles on top of that.

So her study is, basically, the effects of policing on mental health of a random sample of New Yorkers. Ours was a stratified random sample. Hers is a sample. The two studies absolutely converge.

OK, and if anybody wants me to name the neighborhoods, I can. But the dark one up towards the top, that's a whole strip of neighborhoods through the Bronx. And on the West Side, that dark strip is where Pier 84 is, where they built the dump in West Harlem.

MARIANNE Mm-hmm.

ENGELMAN-

LADO:

JEFF FAGAN: So OK, now, here's another one. So this is also Abigail's work, and it's basically the same thing. Now, one way you read these kinds of charts is to say, here's a whole set of effects, different measures, and you look at how often, or, just simply as a matter of numbers, how many results are significant. That's the red ones.

So this is roughly about two out of three. And you don't get a two out of three pattern. If it was random, if the effects were random, you'd see it scattered around. They're not.

So basically, if you look at the top one, which is a global measure of health, and you correlate that in Abigail's work from the city-wide study, we get-- it shows, basically, the higher the ratio of minority to white stops in a neighborhood, the higher the levels of poor unfair health. If you get down to the bottom, you see some measures of obesity. The one that really grabbed me is the asthma results.

So this is all bad news. That's all I can say. This is all just bad news about the health indicia and the health effects of a policy of, basically, unregulated stops and unregulated encounters. If you go back to the corpus, and you read the corpus of language that's infused in all of our laws going back to the originalists, your friendly originalists-- and I'm sure there are several in the building-- and you say to them, tell me, in the corpus, what does "search" say? How do you define the concept of "search" in the corpus? And the answer is, the word is "accostings."

So I don't know how you get from "accostings" under the common law to search and unreasonable suspicion under *Terry v. Ohio*. But you can understand that there's an ontology there that's worth paying attention to.

OK, so here's our work. This is myself and Joscha Legewie, who's at Harvard. He's up for

tenure, in case anybody gets a letter asking for his evaluation. Give him a very strong evaluation. He's fantastic. And what's interesting is, the only result we get is on the upper-left-hand corner. So what you're looking at is school test scores by age. So the ages are on the bottom. We start at age 9. We continue through 15.

- Oh, wow.

JEFF FAGAN: This is a standardized set of achievement scores, math and English, for all New York City school students. The older they get, black kids, the lower their test scores become. It doesn't-- what's really interesting is the gender, the absence of a gender effect. Why? Because the people who are being stopped are young black males. And this is what we get.

Now, the 9-year-olds aren't stopped very often. Nor are the 10-year-olds and the 11-year-olds, as best we can tell. It may not be written down. But we do know about 13, 14, and 15. So these are very interesting effects.

So we're mortgaging the future of people, of kids. We're mortgaging their mental health. And the one thing that's important to bear in mind about this is that it doesn't produce public safety. We've done these runs. We've done these analyses. We've published in the journal called *PLOS ONE*. I published in *The University of Chicago Law Review*. We've published it all over. It doesn't contribute to public to safety except in one circumstance.

**MARIANNE
ENGELMAN-
LADO:** White kids.

JEFF FAGAN: Now, think about law. *Terry* supplanted [INAUDIBLE]. [INAUDIBLE] was probable cause. *Terry* was reasonable suspicion. Basically, depending on how cynical you are, anything else.

When we actually break down the stops-- and I don't have the graph with me, so you have to trust me on this-- when you break the stuff down between those that look like probable cause, and you look at the concentration of those stopped by neighborhood, versus the ones that are pure guesswork-- what the *Terry* court called "hunches," the probable cause stops actually do produce a positive crime control effect.

So one way to think about our data-- this is the [INAUDIBLE] stop-and-frisk [INAUDIBLE] Fourth Amendment that I'm working on-- basically is going to say, we made a terrible mistake

on *Terry*. Now, there's a whole other conversation [INAUDIBLE] much of it. *Terry*, why *Terry* happened has to do a lot with the '60s, a lot to do with police killings themselves, and the officer safety rationale, et cetera. But I'll show you a graph on that in a second.

Anyway, so here's one part of the mortgaging. We're mortgaging their [INAUDIBLE]. So let's talk about police killings. Everybody has this on their mind when you think about police. We think about Tamir Rice. We think about Michael Brown. We think about all of these cases.

The one case that we really want to understand how it actually works on the ground is a guy named Saheed Vassell. It was a killing in Crown Heights in Brooklyn. And the *Times* wrote it up very extensively. The "Vassell" is V-A-S-S-E-double L. First name Saheed.

And it's a horrible story about a mentally-ill guy. And it's got all kinds of stuff packed into the story because it happened in Crown Heights, a gentrifying neighborhood. Saeed. Was well-known in the neighborhood. He was crazy. He would poke around, and he actually used to poke around and pretend he had a gun and would [INAUDIBLE].

So finally, one day, he gets into somebody's-- he has an encounter with a young woman with a baby in a stroller. She freaks out. They call the police. The neighborhood patrol guys know Saheed. He was fine. They were fine with him. They used to talk him down all the time. They'd feed him and talk to him. They liked him. He was a Jamaican guy.

The anti-crime guys, the cowboys, show up. They leap out of the car, and within 10 seconds, they fired four rounds of bullets. Roughly within 10 seconds. It's written up very extensively in a number of different outlets in New York City newspapers. But that's the other side of the coin from the Tamir Rices, which are horrible mistakes-- racialized mistakes, for sure, but horrible mistakes.

What this says is, if you actually paid attention to diversity in policing, then you would ameliorate some of the problems in police killings. And that's as simple as that. And this is basically what we're showing in these two graphs.

This is police killings. So on the left, you see data from the *Washington Post* database. There are about five different crowdsourced databases now on police killings. We're doing a project at Columbia where we're actually reconciling all of the information in each of the databases. It's painstaking, painstaking work, but it's actually important. Here, we're just showing that there's roughly 1,000 killings a year from 2015 to 2018, a four-year period.

So those are going up, and up, and up. That's 1,000. You can look at the trend on the right side in the number of police officers who were killed. Now, remember, *Graham v. Connor* says anything goes-- this is another example of anything goes. *Graham v. Connor* is one of the worst Supreme Court cases, and we agree, because it basically said officers can act under a split-second decision-making process, even if they make a mistake, if they reasonably believe that they are in danger.

So the condition of danger, as in the case of Tamir Rice, as in the case of [INAUDIBLE], aren't really [INAUDIBLE]. Sahib basically had a broken-off piece of pipe and a soldering iron. That was his weapon.

So that's going down. If you look at the trend line from 280 to 142, and then a real steep drop in 2017 down to 128. They're not in more danger, and yet police killings keep going up and up. They actually flattened out.

This is our analysis of the *Washington Post* data. And there's two things to think about here. I'm sorry I don't have the red thing working [INAUDIBLE], which would be helpful. I'll finish.

DAVID TOSCANO: Yeah.

JEFF FAGAN: So if you look at the top line, that's the distribution. We look at the bottom four lines. Were they armed, were they mentally ill, were they both armed and mentally ill, and were they neither. Look at the percentage on "neither." This is roughly 50% higher than the raw percentage in the distribution of the data. These are unarmed people or not experiencing a mental health crisis.

And when we do the math on this, you get the same thing again. The way you read-- [INAUDIBLE] read the top row? The top row is about black people, without getting into it. And David's giving me notes to tell me to shut up.

Last thing, this is a study by Desmond Ang, who's at the JFK School, about the effects on school test scores of kids in Los Angeles, he had a map of where the police killings of civilians happened. And when he drew circles using GIS technology, isolated kids who live within the circle, roughly a one-mile radius, and looked at their test scores, and that's what you see on the right side. So the left side is before the shooting, the right side is after the shooting.

So we're creating a generation of traumatized kids by everyday policing, whether it be in

jaywalking tickets, or stops on the street, or police killings that everybody in the neighborhood [INAUDIBLE]. We're traumatizing and mortgaging them in terms of their educational outcomes, and in terms of their mental health, and we're not launching them off into the successful adult life.

OK, the last thing-- databases. So this is the new frontier. This is-- there's a gang database of New York. It's completely Private. You can't see it. There's a gang database in Los Angeles. You can sort of see it. You sort of can't. There's one in Chicago that the police, actually, on their own self-investigation just did, [INAUDIBLE].

[INTERPOSING VOICES]

But this is what's happening when we translate this sort of inchoate indicia of suspicion into police action. Once you're on the database, you're under suspicion. And that's when it happens.

And just here are some things that are happening. This is a long fight because the Supreme Court is not on our side in this. We run up against the difficulty of litigation. And there's something that we call "willful racial blind sight," a line that I got from the late Andrew Taslitz, about the way that the courts think about the data that we're presented here.

So how we bring that into litigation and into community action are the next set of challenges. And I'm behind on my environmental colleagues on this.

[APPLAUSE]