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Green Criminology in Action

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This entry is adapted from a forthcoming book chapter: Jarrell, Melissa L. and Ozymy, Joshua. "Communities as Victims of Environmental Crime: Lessons from the Field" for the Delft conference on Environmental Crime and its Victims and an invited talk: "Toxic Crimes and Environmental Injustice: Research in the Sacrifice Zones", sponsored by Colorado State University, Department of Sociology.

Researchers engaging in green criminological research and activists fighting for the environment and public health must take into consideration several challenges inherent in these pursuits. For one, the immediate consequences of an environmental offense may not appear obvious or severe. People may not become sick from exposure to toxic pollution, for example, for decades after their exposure. Consequently, green crime does not fit most people's perceptions of crime. Researchers must be prepared for the complexities associated with green crime research. It is possible to change public conceptions about certain issues but not without extensive time and effort. For example, we can look to the political and public attitudes toward smoking that have changed significantly since the 1960s, when the Surgeon General reported

on the health hazards associated with smoking cigarettes. Numerous studies have shown that cigarette smoking causes various forms of cancer. Laws have been passed all across the nation that ban cigarette smoking in public venues. Anti-smoking campaigns have appeared in the mainstream mass media. However, public attitudes toward smoking did not change over night. Even when it was extremely apparent that cigarette smoking caused numerous health problems, attitudes and behaviors toward smoking did not change immediately. We needed more proof and more studies to confirm that cigarette smoking was causing illness and disease. It is not enough to have a few studies linking environmental contaminants to human health problems. We need hundreds of valid and reliable studies to show that environmental pollution and toxins *cause* illness and disease. Even then, studies aren't enough. The information must be made available to the public in an understandable format. Most people do not read academic journals. Consequently, in order to change public perceptions as to what constitutes crime; information must be presented to the public in a "friendlier" format so we can help change the public's perception of what constitutes a "crime".

Green Crime Activism

Green crime research is a good step in the right direction. Green criminologists play an important role in identifying green harms that produce injury and victimization that currently exist beyond the boundaries of the law. However, many of us also want to become active participants in the fight to eliminate and reduce green crimes and help communities in need. Therefore, beyond contributing to the growing body of green crime literature, we can use our knowledge and expertise to educate the public and our students as well as to assist in grassroots activist efforts. Social scientists can play a primary role in assisting victims of green crimes and the communities in which we live and work; a path that not only helps some of the most vulnerable members of our society, but can assist in producing interesting, policy-relevant work that is of interest to both an academic audience and the broader public. I suggest a three-step process for working with communities to combat green crimes: learning, gaining rapport, and taking the lead; building on eight years of experience working with residents of an environmental justice community on "refinery row" in Corpus Christi, Texas.

Learning

When moving to Corpus Christi in 2005, I thought I knew a lot about green crimes and environmental justice. I wrote a dissertation about environmental justice. I knew all about the efforts of my “environmental justice heroes” such as Dr. Bullard and Lois Gibbs. However, at my first meeting with activists, members of non-governmental organizations (Sierra Club, Global Community Monitor, Environmental Integrity Project), Environmental Protection Agency officials, and Texas Commission on Environmental Quality reps, it became abundantly clear that while I had a very in-depth academic understanding (from a social scientific perspective), I was the most clueless person in the room. I remember feeling like a fish out of water as they discussed chemical compounds, air-monitoring flaws, refining processes, permit totals, etc. I quickly learned that many of the people now working for environmental non-profits such as Sierra Club and Environmental Integrity Project had once worked for the EPA or other regulatory agencies. They talked the talk because they had also walked the walk. While most of the community members turned activists did not have college degrees, they spoke as if they had extensive educational backgrounds in environmental engineering, chemistry, and environmental law. I remember feeling very frustrated in the beginning. I had just spent that past eleven years of my life immersed in education. I remember feeling a deep sense of frustration that I was starting over in many respects; but I learned a lot very quickly. I read all of the documents and studies that the local grassroots group, Citizens for Environmental Justice (CFEJ) had collected and compiled over the years. I met with community members, local officials, regulatory representatives, members of NGOs, and anyone else that could tell me about the community, the refining process, air monitoring, studies, and the like. I learned, much like the activists around me, that one need not have a background in environmental science to help out. Once you master the jargon and stakes at hand, one finds that there are actually more than enough scientists on both sides fighting political battles with data. The world is not wanting for chemists, engineers, and other consultants to undertake health impact studies for profit. Environmental victims are often in more need of people of all stripes, but especially those of higher social status and educational status, to help with what is ultimately a fight over power and representation first and science second.

Gaining Rapport

Establishing rapport and building trust between academics and community activists takes time, patience, and mutual understanding. It took over a year before I gained an in-depth understanding of most of the issues in the local community and twice as long for local community activists to trust me and recognize that I was in this for the long haul. I don't live in the community. I can go to meetings and visit with people in the community but I don't have to live with the smells, the explosions, and the fear. I get to leave. At first, activists and people in the community were convinced that I was like every other academic they had encountered. I was there to collect data for my research and then go on my merry way. I did my best to disabuse them of this impression by showing up to meetings, by speaking up on their behalf, by attending media events, by sitting down and listening to their stories. I learned that my credentials lend credibility to their concerns and the officials from the city and the refineries were more likely to listen with a Ph.D. in the room even though in the beginning, I was an observer rather than a participant. Community members and activists began to trust me because I didn't let them down. I showed up, I expected nothing from them, and I listened.

As I learned more about the community and gained the trust of the people in the community, I began to participate in efforts in the community. I prepared remarks for the record in public hearings. I collected additional data from regulatory agencies to assist the community in compiling data to support their cause. I became a co-principal investigator in a health study with toxicologists from another university who had procured funding from the National Institute of Environmental Health Sciences to examine benzene in the blood and urine of people in the community. In essence, I became an organizer of people and information and learned that one of my greatest assets was the ability to bring these together; underscoring the "social" in "social scientist". I am often chosen as the default expert on environmental justice issues from the community's perspective. To encourage the media to report on environmental crime, researchers with important information to present to the public need to establish ties with reporters and members of the press in order to provide voice for victims. I quickly learned that we must be able to explain our findings to reporters in clear and concise terms and that even if we talk to a reporter for thirty minutes, we will likely only get a two-sentence quote or a ten-second sound byte.

Taking the Lead

In addition to assisting with on-going efforts, social scientists can bring new ideas and take the lead in efforts in the community. I offer two primary examples of ways in which I have taken the lead to help my community: undertaking policy-relevant research and legal advocacy for victims.

Undertaking and Promoting Policy-Relevant Research

In 2006, I attended a community meeting and learned about “upset events” for the first time. One of the local refineries was sharing environmental data with the community. While most people were more interested in the elaborate buffet provided by industry, I was appalled to learn that in just one month, this refinery had sixteen upset events. Through my subsequent research, I learned that many states allow companies to exceed their air pollution permit limits through a host of exclusions including system maintenance and equipment malfunctions. These excess emissions events are known as upset events. Even though many of these excessive emissions may be considered illegal under the Clean Air Act (CAA), in over half of all states, companies are able to offer a number of affirmative defenses in order to avoid enforcement action, alleging that these events were unavoidable (Public Citizen 2005). Events can last for just minutes or for possibly several weeks. In fact, upset events often involve large releases of concentrated toxic chemicals in a short amount of time (although some may last for weeks), unlike emissions from routine operations, and represent the release of highly concentrated pollutants that can have serious health implications. Teaming up with my colleague in political science, Dr. Joshua Ozymy, we conducted our own studies on upset events in Texas and have since published three studies (Jarrell and Ozymy 2010; Ozymy and Jarrell 2011; Ozymy and Jarrell 2012).

Upset events are just one of many examples of behaviors that are harmful to the environment and humans that are not considered criminal behaviors in law but which produce severe public health consequences. Undertaking policy-relevant research in this context has brought additional academic attention to an understudied issue, while helping draw attention to the issues in the community and providing good data for original, peer-reviewed research; something we have continued to pursue with recent research on similar environmental struggles in the community (Jarrell, Ozymy, and McGurkin 2013). Moreover, we have endeavored to help tell the story of CFEJ’s efforts and bring it to an academic audience, by working with Suzie Canales, the director of CFEJ, to produce another peer-reviewed publication (Canales, Ozymy, and Jarrell 2012).

Legal Advocacy

In 2006, a federal grand jury in Corpus Christi, Texas, returned a 10-count indictment, charging CITGO Petroleum Corporation, its subsidiary, CITGO Refining and Chemicals Co., and the environmental manager at its Corpus Christi East Plant Refinery with criminal violations of the CAA and the Migratory Bird Treaty Act (MBTA). According to the indictment, CITGO operated two large open top tanks as oil water separators between January 1994 and May 2003 without the required emission controls. More than 4.5 million gallons of oil were discovered in the tanks during an unannounced inspection by the Texas Commission on Environmental Quality (TCEQ) in March 2002. Resident complaints of odors were investigated by the TCEQ and it was determined that tanks 116 and 117 were the source of continuous emissions into the neighboring community.

On May 17, 2007, a federal jury in Corpus Christi heard opening statements in the case against CITGO. The case represented the first criminal trial for a refinery under the CAA where the corporation did not settle out of court. Witness for the prosecution Jean Salone, a resident of Hillcrest, the predominantly low-income, minority community bordering CITGO, testified for the prosecution that she woke up the morning of September 23, 2001 because of a “strong heavy smell from the refinery that was making me sick”. Salone said that she had gotten used to the smell but noticed when it is much worse than usual. Salone immediately contacted the Texas Commission on Environmental Quality (TCEQ) to report the strong odor. “The smell was so strong, it woke me up. The smell was indescribable,” Salone stated at the trial. Two years later, Salone was diagnosed with breast cancer. According to Salone, burning throat, watery, irritated eyes and itchy skin are a common occurrence for residents of Hillcrest and Oak Park.

On June 27, 2007, four and a half weeks after opening statements were heard and numerous witnesses had testified for the United States and for CITGO, a Corpus Christi federal jury unanimously determined that CITGO knowingly operated two large open-top tanks as oil-water separators between January 1994 and May 2003 without the required emission controls that regulate the amount of benzene released into the environment.

Over 400 Hillcrest and Oak Park residents attended townhall meetings held by the Department of Justice in the fall of 2007. More than 300 people signed victim impact statements, describing the health problems associated with breathing toxic air. Fifteen residents testified at the pre-sentencing hearings held in 2008 about the odors and health problems associated with CITGO's crimes. In a letter to Judge John Rainey from lead Prosecutor Howard P. Stewart on July 7, 2006, Mr. Stewart stated, "The emissions from these tanks were uncontrolled for more than ten years and routinely engulfed the Hillcrest community and physically affected the citizens that live there. The government introduced evidence that the emissions from tanks 116 and 117 made people living in the community and at least one TCEQ investigator physically sick." Three years later (after numerous delays with no apparent reason), Judge Rainey issued an order excluding the community members as "victims" under the Crime Victims Rights Act (CVRA), based primarily on lack of medical evidence as proof of victimization even though the evidence presented at the pre-sentence hearings clearly showed that people living in close proximity to the CITGO refinery, including elementary school children, experienced health effects included but not limited to: burning eyes, nose, and throat, nausea, and dizziness. A toxicologist and medical doctor testified that the chemical emissions from the tanks were the cause of the health effects exhibited by the people. On one occasion, a State Inspector responding to an odor complaint (emissions event) got sick about a mile away from the tanks. Even though the government worked diligently to identify victims and include victims in the case, the Court did not believe that the evidence supported victimization under the CVRA.

I am proud to say that I played a major role in providing support for the victims in this case. After the judge denied the government's motion to include the community members as victims, it appeared that we had no recourse. I spoke with the DOJ prosecutor who told me that the only recourse was to hire an attorney for the victims and make an appeal to a higher court. The community members did not have the money to hire an attorney and I knew that finding a local attorney to work pro bono would not happen in a refinery town (we had already gone down this road many times). I decided to review the literature pertaining to the CVRA and environmental crime cases. I know this case intimately, as I attended the trial in 2007 and have read every document in the case (over 800 filings as of 2012). In the scholarly and legal literature, I found very little written about the CVRA and environmental crimes and few previous cases involving the CVRA and environmental crime. The few articles and cases I read in the legal literature had one person in common: a former federal judge and current law school professor at the University of Utah. I decided to give him a call to see if he would help us. He

asked me to provide a brief of the case. Over the course of the next year, along with assistance from a legal aid office in Austin, Texas, we worked on motions to file in the district court as well as a petition for writ of mandamus to file with the Fifth Circuit Court of Appeals. Victims' attorneys filed additional motions with Judge Rainey to include the victims. These motions were subsequently denied. One week prior to the sentencing in late 2012, the victims' attorney filed a petition for writ of mandamus with the Fifth Circuit Court of Appeals, asking the appellate courts to overturn the district court's ruling, suggesting that the judge erred when he required medical proof of victimization. The Fifth Circuit quickly ruled that district judge needed to re-examine the victims' previous filing. At the sentencing, after hearing oral arguments from the victims' attorney, the district court judge reversed his previous order, declaring the community members as victims of CITGO's crimes; a huge victory for the community.

This case is far from over and it remains to be seen if the community members, now designated as victims, will receive any type of restitution or compensation for their victimization. This case, though, is extremely important in that it represents the first time in the history of environmental crime cases that an environmental justice community has been designated as "crime victims" under the CVRA. While producing academic research is not the primary reason for working as a legal advocate on the case, the important contributions to case law that are illustrated in the CITGO case should be analyzed and brought to an academic audience. Our work recently culminated in a publication that accomplishes this goal (Jarrell and Ozymy 2012), again highlighting the fact that service to the community can help serve a dual academic purpose.

Conclusion

Community groups need us: dedicated academics willing to give their time, expertise, and skills. At this same time, it can help us pursue our intellectual interests in a way that embodies the great tradition of civically-minded social scientists, such as Frances Fox Piven or Robert Bullard, who appreciated the social and academic value of long-term involvement in their communities, well before the overarching need to appear scientific and generalizable sapped the life out of countless graduate seminars. We are needed.

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