

**WILLOW SPRINGS:
A LOUISIANA CIVIL ACTION**

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You will not find Willow Springs by yourself, even on a map. Tucked away in the southwest corner of Louisiana, it has but one road along a sandy bluff leading down to Little River, past small houses tucked under the trees. It was named for groundwater that bubbled to the surface, and streams over sandy bottoms so clear you could see fish chasing bait to the line.¹ People lived simply here with garden crops out back and farm animals wandering by. No one was wealthy but they tended to live full lives.

Then the trucks appeared.

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1. David Snyder, Special Report, *The Poisoned Land: 10-year Struggle to Shut Down Waste Site Stymied by State*, TIMES-PICAYUNE, Sept. 12, 1985, at A1 (comprising the first of a four-day long series of special reports on lax attention to Louisiana's environmental problems).

1. THE SURPRISE

Nobody knew where they came from. One day big tankers and eighteen-wheelers started rumbling down Anthony Ferry Road and into an abandoned oil-well site to dump their loads.² Over time they would arrive in fleets, backing up for half a mile down the road with up to 350 tons a day of liquid laced with PCBs, benzene, trichloroethylene, mercury, vinyl chloride, chloroform, formaldehyde, and other top-of-the-chart toxic compounds.³ Some came after nightfall and on weekends when they were difficult to report, had there even been someone to report to.⁴ When you could stop a tanker, the driver would say he had no idea of what was in the load.⁵ People managing the site told residents that they were building a resort; the pits they were digging would be fishponds.⁶

Strange things began to happen. Gentry Vincent's home was some 300 feet from the site.⁷ Chemicals leaked into his farm pond and four of his hogs died.⁸ His neighbor, Wilbert Benoit,

2. See Theresa Schmidt, *Cecos Willow Springs Site Hearing Set*, KPLC (Oct. 17, 2008, 5:56 PM), <http://www.kplctv.com/Global/story.asp?S=9197968&clienttype=printable>. Ms. Schmidt covered the Willow Springs issue and trial for the Lake Charles American Press.

3. Keith Schneider, *Pollution Alley: Louisiana's Petrochemical Legacy*, 1984 AMICUS J. 26, 26 ("The chemicals . . . 83,000 tons a year, [were] solidified, then dumped into shallow trenches as large as football fields or poured into Olympic-pool-size lagoons, before being pumped down 4,000 feet of pipe for permanent disposal in an abandoned natural gas well.") (on file with author & Loyola Law Review).

4. See PEGGY FRANKLAND, *WOMEN PIONEERS OF THE LOUISIANA ENVIRONMENTAL MOVEMENT* 92 (Univ. Press of Miss. 2013) [hereinafter PIONEERS] (interview with Gay Hanks) (describing early toxic waste dumping in Southwest Louisiana).

5. Deposition of Sam Keys at 40, *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, No. 80-6185 (14th Judicial Dist. Ct., Calcasieu Parish, Oct. 18, 1989) ("Anytime you catch one of those truck drivers or something, they've always lost their manifest or they didn't know what they were carrying.") (on file with author & Loyola Law Review).

6. See PIONEERS, *supra* note 4, at 46 (interview with Ruth Shepherd).

7. See *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 5 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1322; see also Letter from Michael Tritico, Biologist, President of Restore Explicit Symmetry to Our Ravaged Earth (RESTORE), to author (July 14, 2012) [hereinafter July 2012 Letter] (on file with author & Loyola Law Review); Robert McClure & Fred Schulte, *Laws Fail to Prevent Pollution at Dump Sites*, SUN-SENTINEL (Dec. 6, 1987) available at http://articles.sun-sentinel.com/1987-12-06/news/8702100676_1_water-pollution-wast-e-site-bfi.

8. PIONEERS, *supra* note 4, at XVII.

lost twenty-three hogs in a month and ten more a few weeks later; he said they were “foaming at the mouth.”⁹ His chickens roosted at night in the pine trees until one morning he found them lying dead on the ground.¹⁰ A lady next door to Vincent kept chickens too until they began walking backwards and collapsed.¹¹ Nearby residents gave up raising rabbits when they found the newborns deformed.¹² Pet finches died downwind, three miles away.¹³ Harvey Miller’s bull wandered into a waste pit and lost all its hair.¹⁴ When Miller complained, the company gave him a five-gallon bucket and soap and told him to wash the bull.¹⁵ He did, but it died too.¹⁶

Herbert Rigmaiden lived a quarter mile away.¹⁷ Sixty-five of his cattle wandered onto the waste site, drank standing water, and died.¹⁸ He decided to autopsy one of them and found its kidneys and liver filled with a green slime that “smelled just like the stuff that’s in the pits.”¹⁹ His cattle rubbed against the vegetation and opened holes in the brisket “this big,” showing the size of a grapefruit.²⁰ His wells went bad.²¹ The local district attorney advised him not to drink from them.²² He and his neighbors began buying and hauling bottled water from miles away.²³ None of them had the money for that kind of thing.²⁴

9. Snyder, *supra* note 1.

10. *Id.*

11. See July 2012 Letter, *supra* note 7.

12. Snyder, *supra* note 1.

13. Michael Tritico, Heroes and Horrors: My View of the History of the Environmental Movement in South Louisiana 25 (Dec. 4, 2008) [hereinafter Heroes & Horrors] (unpublished manuscript) (on file with author & Loyola Law Review).

14. See PIONEERS, *supra* note 4, at 44 (interview with Ruth Shepherd).

15. *See id.*

16. *See id.*

17. Interview with Herbert Rigmaiden, in Willow Springs, La. (Feb. 21, 2012) [hereinafter Author’s Rigmaiden Interview] (on file with author & Loyola Law Review).

18. See Interview by Jamal Knight with Herbert Rigmaiden, in Lake Charles, La. (Mar. 13, 2012) [hereinafter Knight’s Rigmaiden Interview] (on file with author & Loyola Law Review) (“I lost sixty-five head of cattle in 1966 and 1977. They drank some of the water off of the pits.”).

19. *Id.*; Author’s Rigmaiden Interview, *supra* note 17.

20. Author’s Rigmaiden Interview, *supra* note 17.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

Some had no cars.²⁵

Nor were the humans spared. Although cause and effect in these cases is notoriously hard to prove, Rigmaiden said, “We have been sick. The young kids have been sick. I think I lost my dad over this.”²⁶ Miller’s throat came to burn constantly, and he had trouble breathing.²⁷ His wife was also ill, and his daughter developed a catalogue of lumps, blood clots, and menstrual abnormalities.²⁸ By the time authorities checked Vincent’s water well he was very ill himself.²⁹ Several of his female kin and neighbors had come down with aggressive cancers and died.³⁰ Benoit, meanwhile, had died from his asthma; he couldn’t afford the inhalers.³¹ Ruth Shepherd, who moved to Willow Springs shortly after the dumping began, and Mabel Rigmaiden Jones, Herbert’s sister, counted twenty-two people in the immediate area who had died of cancer, noting in understatement, “this [was] not a thickly populated area.”³²

The fumes were the worst. Charles Bergeron would later testify, “I don’t know if they was [sic] chemicals or what, but the stink was so bad—like I said, it would gag you at times. When it was fog, it was real bad.”³³ Reverend J.W. Bartlett, a leading citizen of the small community, testified that early one morning, “after apparently BFI [Browning-Ferris Industries] had been unloading heavily during the night,” the gases settled down into a small ravine and drifted to his house:

I went out in my back yard . . . a beautiful place, a place I want to stay for the rest of my life. I didn’t get 15 steps from my house until that odor knocked me literally to my knees. It’s just like you’ve been sprayed in the nostrils with ether. It knocked me down. I crawled to my door. The wife and I both stayed in the house three days with air conditioning

25. Author’s Rigmaiden Interview, *supra* note 17.

26. Knight’s Rigmaiden Interview, *supra* note 18 (explaining further that his own health improved after he quit drinking water from the well).

27. Schneider, *supra* note 3, at 35.

28. *Id.*

29. Heroes & Horrors, *supra* note 13, at 31–32.

30. *See id.* at 32.

31. *Id.*

32. PIONEERS, *supra* note 4, at 47 (interview with Ruth Shepherd).

33. Deposition of Charles Bergeron at 40, *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, No. 80-6185 (14th Judicial Dist. Ct., Calcasieu Parish, Oct. 16, 1989) (on file with author & Loyola Law Review).

constantly going.³⁴

His wife said the same.³⁵ Herbert Rigmaiden said “even the livestock was coughing.”³⁶ Mary Ellender and Peggy Frankland, visiting the community once its problems surfaced, came to Gentry Vincent’s house and found his wife sitting silently by the wood stove with a bloody handkerchief in her hand.³⁷ Even inside, they reported, the smell was foul.³⁸ In a subsequent house-to-house survey, they found “not a home that didn’t have some kind of illness or respiratory problem.”³⁹

Some had air conditioning.⁴⁰ Most did not.⁴¹ Miller said that the only member of his family who had not come down sick had moved to a trailer park near Lake Charles.⁴² Which is what Mabel Rigmaiden did too after suffering up on the ridge for many years,⁴³ but not before she struck the match that lit the fire. This was in the 1960s, before the public dramas of *Erin Brockovich*⁴⁴ and *A Civil Action*,⁴⁵ and it was unfolding in the far reaches of rural Louisiana, which was itself at the far reaches of the rest of the United States, one of the last places in the country to enact environmental protection laws⁴⁶ and not all that eager to do

34. Deposition of J.W. Bartlett at 59, *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, No. 80-6185 (14th Judicial Dist. Ct., Calcasieu Parish, Oct. 16, 1989) (on file with author & *Loyola Law Review*).

35. See Deposition of Roselma Bartlett at 28, *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, No. 80-6185 (14th Judicial Dist. Ct., Calcasieu Parish, Apr. 19, 1993) (on file with author & *Loyola Law Review*).

36. Knight’s Rigmaiden Interview, *supra* note 18.

37. See *PIONEERS*, *supra* note 4, at XVII.

38. See *id.* at 46 (interview with Ruth Shepherd); see also Knight’s Rigmaiden Interview, *supra* note 18.

39. *PIONEERS*, *supra* note 4, at 104 (interview with Mary Ellender) (“In 1983, Peggy Frankland, a concerned housewife and mother who lived [in the] area, called me [and] we went to the people around the immediate site [Willow Springs] . . .”).

40. *Id.* at XVI.

41. *Id.* (“I also noticed that many of the small wooden-frame houses had open windows and no air-conditioning units.”).

42. Schneider, *supra* note 3, at 35 (“The only member of his family who is not sick, says Miller, is his 30-year old son who moved away years ago . . .”).

43. See Schmidt, *supra* note 2.

44. *ERIN BROCKOVICH* (Universal Pictures 2000).

45. *JONATHAN HARR, A CIVIL ACTION* (Vintage Publ’ns 1996); *A CIVIL ACTION* (Touchstone Pictures Dec. 25, 1998).

46. See Schneider, *supra* note 3, at 33; see also Oliver A. Houck, *This Side of Heresy: Conditioning Louisiana’s Ten-Year Industrial Tax Exemption Upon Compliance with Environmental Laws*, 61 *TUL. L. REV.* 289, 292 (1986) (“The ten-year industrial tax exemption is the closest thing to a sacred cow in Louisiana. Embodied in the state constitution since before World War II, the program currently

anything with them.⁴⁷ For years the state would take a pass.⁴⁸

Whatever happened here was going to be up to the Millers, Martins, and the rest of them, poor blacks and poor whites, the most powerless tranche in America. Mabel Jones and Ruth Shepherd, with no models to follow, would organize and raise hell.⁴⁹ Herbert Rigmaiden would go to testify in Washington, D.C., his first time on an airplane.⁵⁰ Reverend Bartlett and Gentry Vincent, chosen for the lead, would file a lawsuit.⁵¹ For all of them, this was *terra nova*.

2. THE IMPERIAL PARISH OF CALCASIEU

What happened at Willow Springs was little different from what was happening to the east along the Mississippi River, times ten, and jammed onto a postage stamp.⁵² From the time of its founding the Pelican State, as it is called (despite losing the state bird to chemicals two separate times),⁵³ was a dumping ground for misfits and a haven for criminals on the run.⁵⁴ New

exempts up to two billion dollars' worth of property per annum from local taxes, at a time when both the state and local governments face severe revenue shortfalls. The first legislative proposal to condition the exemption on compliance with environmental laws by then-representative Ben Bagert of New Orleans in 1982, met with strong opposition from industry lobbyists and died quickly in committee.”)

47. See Snyder, Special Report, *The Poisoned Land: Louisiana Lags in Fighting Abuse of Environment*, TIMES-PICAYUNE, Sept. 13, 1985, at A1. See generally Houck, *supra* note 46 (documenting the volume of toxic pollution produced by Louisiana industries, and the failure of state laws and enforcement).

48. Houck, *supra* note 46, at 292.

49. See Section 3, *infra* notes 81–150.

50. PIONEERS, *supra* note 4, at XVIII–XIX.

51. See Section 9, *infra* notes 374–452.

52. See U.S. ENVTL. PROT. AGENCY, INDUSTRIAL POLLUTION OF THE LOWER MISSISSIPPI RIVER IN LOUISIANA, Abstract (1972) (“Waste waters from 60 industries discharging to the Mississippi River from the Baton Rouge area to its mouth have been analyzed and found to contain organic chemicals and toxic metals in high concentrations Fish exposed to the river water developed objectionable tastes within seventy-two hours. Violations of taste and odor criteria in the river and in fish flesh were identified.”).

53. The implicated chemicals, DDT and Endrin, were subsequently banned, opening the door for a twelve-year restoration program and recovery. See *Brown Pelican*, CORNELL LABORATORY OF ORNITHOLOGY, https://www.allaboutbirds.org/guide/brown_pelican/id (last visited Sept. 9, 2016).

54. See HERBERT ASBURY, THE FRENCH QUARTER: AN INFORMAL HISTORY OF THE NEW ORLEANS UNDERWORLD 9–36 (Basic Books 2003) (citations omitted) (“The [French] government went boldly to the task of ransacking the jails and hospitals. Disorderly soldiers, black sheep of distinguished families, paupers, prostitutes, political suspects, friendless strangers, unsophisticated peasants straying into Paris, all were kidnapped, herded, and shipped under guard to fill the emptiness of

Orleans and church officials so deplored the character and license of the immigrants sent their way that they begged their respective crowns for better material.⁵⁵ By the eighteenth century the city had become the murder capital of the United States,⁵⁶ a dark honor it has found difficult to shed.⁵⁷ The lower Mississippi attracted the world to its wharves, warts and all, and the petro-chemical industry would follow.

Two hundred miles to the west lay another river called Rio Hondo by the Spanish, but the Atakapa name Quelqueshue (“Crying Eagle”) prevailed, today’s “Imperial Parish of Calcasieu.”⁵⁸ If eighteenth-century New Orleans sent mixed messages of culture and violence, there was no ambiguity about the lands beyond the Rio Hondo, “filled with desperados from the eastern states until it became a notorious refuge for outlaws.”⁵⁹ Military adventurers added to the chaos, ex-confederate soldiers accustomed to life and death by the gun.⁶⁰ Like New Orleans, Calcasieu even hosted the pirate Jean Lafitte, whose base on Ghost Island along the aptly-named Contraband Bayou was safe from government authorities to the east and west.⁶¹ Lafitte’s

Louisiana.”); LAWRENCE N. POWELL, *THE ACCIDENTAL CITY: IMPROVISING NEW ORLEANS* 68–70, 99–104 (Harvard Univ. Press) (describing smuggling and violence).

55. See ASBURY, *supra* note 54, at 11–12, 28, 30 (citations omitted) (quoting a letter from Jean-Baptiste Le Moyne de Bienville to Paris: “I neglect nothing to turn the attention of the inhabitants to agricultural pursuits, but in general they are worthless, lazy, dissolute, and most of them recoil from the labors necessary to improve the lands”).

56. See *id.* at 315–17; Richard A. Webster & Jonathan Bullington, *Why Does New Orleans Have More Murders Than Similar Cities? Experts Search for Answers*, *TIMES-PICAYUNE* (May 11, 2016, 12:02 PM), http://www.nola.com/crime/index.ssf/2016/05/new_orleans_murder_homicide_ra.html (“Between 1857 and 1859, New Orleans had an average annual murder rate of 35 killings per 100,000, much higher than the annual homicide rate of 3.6 per 100,000 in Philadelphia and 7.5 in Boston. Only 21% of all New Orleans murders resulted in a conviction because witnesses were afraid to come forward and people were too scared to serve on juries . . .”).

57. See Brendan McCarthy, *N.O. Killing Rate Leads the Nation*, *TIMES-PICAYUNE*, June 2, 2009 at A1.

58. See *Calcasieu Parish: Louisiana Genealogy*, https://familysearch.org/wiki/en/Calcasieu_Parish,_Louisiana_Genealogy (last visited Aug. 20, 2016).

59. Allie Ellender, *A Brief History of Calcasieu Parish*, at 1 (May 2000) available at <http://ereserves.mcneese.edu/depts/archive/FTBooks/ellender%20history.htm>.

60. See Heroes & Horrors, *supra* note 13, at 1; Ellender, *supra* note 59.

61. Heroes & Horrors, *supra* note 13, at 78–79. Indeed, Calcasieu still celebrates its “pirate mentality” with an annual festival called “Contraband Day,” to which the African-American community there, many of them slave descendants, have at times objected. See Interview with Michael Tritico, in Willow Springs, La. (Feb. 12, 2012)

main enterprise, a slave market, was just upstream.⁶² You could do whatever you wanted to do here, a mindset that seeped into the gene pool.

The twentieth-century transformation of south Louisiana by the petrochemical industry brought prosperity, and a new violence of its own.⁶³ Giant facilities lit the skies like street lamps and pumped nation-leading levels of pollution into the water and air.⁶⁴ Studies soon linked them to adverse health effects and more fearsomely to cancer,⁶⁵ but these findings were strongly resisted. Any increase in illnesses was said to derive from the “Louisiana lifestyle,” chain smoking and fast food.⁶⁶

[hereinafter Author’s Tritico Interview] (on file with author & Loyola Law Review).

62. Heroes & Horrors, *supra* note 13, at 78–79.

63. See John McQuaid, *Transforming the Land*, TIMES-PICAYUNE (May 21, 2000) available at <http://www.nola.com/speced/unwelcome/index.ssf?/speced/unwelcome/stories/0521transforming.html>; see also Barbara L. Allen, *Cradle of a Revolution? The Industrial Transformation of Louisiana’s Lower Mississippi River*, 47 TECH. & CULTURE 112, 114 (2006) (“When Standard Oil laid a \$2-million pipeline from the northern Louisiana oil fields to its new refinery in Baton Rouge in 1909, the company imported all of the skilled labor, materials, tools, and equipment, hiring only unskilled labor locally. Furthermore, because they controlled the transportation network, the oil companies were able to freeze out all but the largest producers, concentrating the industry in the state in a few corporate hands.”); Craig E. Colton, *An Incomplete Solution: Oil and Water in Louisiana*, 99 J. AM. HIST. (OIL & AM. HISTORY: SPECIAL ISSUE) 94 (2012) (“A by-product of the growth in [petrochemical] production was a corresponding rise in industrial accidents.”).

64. See Houck, *supra* note 46, at 310–329 (discussing air, water, soil, and subsurface discharges); see also PAT COSTNER ET AL., *WE ALL LIVE DOWNSTREAM: THE MISSISSIPPI RIVER AND THE NATIONAL TOXICS CRISIS* (Greenpeace USA 1989) (“The 150-mile stretch of river from Baton Rouge to New Orleans is the nation’s toxic hotspot: it has the highest concentration of manufacturers, users, and disposers of toxic chemicals in the entire United States. Here, the banks of the Mississippi are lined with at least 136 major industries. The majority of these industries are petrochemical plants . . . which have located in the corridor to take advantage of the area’s low taxes and vast resources of oil, gas, brine, and surface water.”).

65. Schneider, *supra* note 3, at 31 (citing separate studies by the Environmental Defense Fund, the National Cancer Institute and researchers at Tulane University, and further noting that Mississippi corridor parishes also ranked in the top ten percent of counties with the highest death rates from bladder cancer). Significantly, Louisiana leads the nation in colon and rectal cancer, and has one of the highest cancer-mortality rates in the nation. See LSU HEALTH SCI. CTR., *CANCER IN LOUISIANA: 2001–2005*, 23 *CANCER IN LA.*, Fig. 3 (2008) (“For all race-sex groups, Louisiana incidence and mortality rates [of colorectal cancer] exceed national rates.”) (on file with author & Loyola Law Review); LA. CANCER RESEARCH CONSORTIUM, *CANCER IN LA*, (2008) available at <http://www.louisianacancercenter.org/cancer-in-louisiana/>.

66. Schneider, *supra* note 3, at 32 (describing how state officials downplayed the use of epidemiological studies: “The only thing [such studies] do, they said, is frighten people,” and quoting statement of Louisiana Department of Environmental

When several researchers pointed out that Louisianans with those same lifestyles residing far from the chemical corridor experienced no such dramatic rise in illnesses,⁶⁷ they lost their funding.⁶⁸ State employees who dared make the same point lost their jobs.⁶⁹ The first Secretary of the Louisiana Department of Environmental Quality, serving at the time when Willow Springs was coming to a boil, stated later, much later, “There has been a long tendency to ignore and suppress critical environmental reports . . . the state has been guilty of not attempting to address these issues honestly and of not attempting to educate the public.”⁷⁰ This admission was, of course, of little use to the residents of Willow Springs.

By the late 1980s, Louisiana industry led the nation in toxic

Quality (DEQ) official William Deville: “So what do these people have in common that might contribute to a cancer problem. Is it scotch?”); see *Prosperity in Paradise? Louisiana’s Chemical Legacy: Industry, Cancer Link Unproved*, MORNING ADVOCATE (SUPPLEMENT) Apr. 25, 1985, at 8 (quoting statement of Louisiana Chemical Association President Fred Loy: “I’m tired of having to address the issue of cancer and the chemical industry, when there is no evidence that they are related”).

67. John McQuaid, ‘Cancer Alley:’ *Myth or Fact?*, TIMES-PICAYUNE (May, 24 2000), www.nola.com/politics/index.ssf/2000/05/cancer_alley_myth_or_fact.html. Studies by Dr. Marise Gottlieb, Tulane University School of Medicine, and Dr. Pelayo Correya, LSU School of Medicine, showed rectal cancers at more than twice the normal rate for those living along the Mississippi River, and a 60% greater chance of lung cancer. See *Prosperity in Paradise? Louisiana’s Petrochemical Legacy: Cancer Risk Higher From Drinking River Water, Study Shows*, MORNING ADVOCATE (SUPPLEMENT) Apr. 25, 1985, at 10 (citing a “soon to be published” study by Dr. Gottlieb). According to Dr. Gottlieb, the only factor in common among members of the high cancer group was the Mississippi drinking water. See Houck, *supra* note 46, at 316 n.151 (citing Telephone Interview with Dr. Marise Gottlieb, Tul. Univ. (Apr. 2, 1986)).

68. Schneider, *supra* note 3, at 34–35 (recounting the case of State Planning Office editor Lawrence Lynch; the agency suppressed his 72-page report documenting the relationship between pollution and public health, and then fired him). Funding for Dr. Marise Gottlieb of Tulane, whose studies revealed the connection between chemical discharges and Mississippi drinking water, was likewise terminated. See Houck, *supra* note 46, at 316 n.151 (citing Telephone Interview with Dr. Marise Gottlieb, Tul. Univ. (Apr. 2, 1986)); see also GERALD MARKOWITZ & DAVID ROSNER, *DECEIT AND DENIAL: THE DEADLY POLITICS OF INDUSTRIAL POLLUTION* 255–62 (Univ. of Cal. Press 2003) (describing the disingenuous state and university responses).

69. See Schneider, *supra* note 3, at 34–35 (describing the case of LSU researcher Eugene Senat, who lost his job because he released a report criticizing state oversight of toxic waste injection, which then led to a vigorous state denial).

70. See *id.* at 35; see also MARKOWITZ & ROSNER, *supra* note 68, at 252–53 (describing the state environmental chief’s “amazement” at the power wielded in Louisiana political circles by chemical and oil interests: the chief recalled actually fearing for his safety when he challenged the industry).

water discharges, ranked second in toxic underground injection, second in discharge of carcinogens, second in overall toxins, second again, in the import of hazardous wastes, and fourth in the discharge of air toxins.⁷¹ At the other end of the spectrum, it ranked forty-fifth in public health and forty-sixth in state environmental programs.⁷² These bills had only started to come in.

Meanwhile, the width of south Louisiana away, the Calcasieu River estuary was experiencing the same chemical boom within a dramatically smaller Petri dish. To travel along the Mississippi is to pass from one large complex towards another as if between towns, separated by woods, fields, and farms. To drive through the industrial complex bordering Lake Charles is to pass plants separated only by chain link fences, forming in effect one giant source of the same toxins found along the Mississippi in a single cloud. Of Calcasieu's fifty-three major facilities, some forty are crowded into a ten-mile circle, including such major leaguers as Citgo, Firestone, and PPG (an exit from the interstate leads to "PPG Drive").⁷³ Access to salt domes, hence sodium chloride, made Calcasieu the epicenter of chlorine-based production in America with particularly nasty derivatives.⁷⁴ All those wastes had to go somewhere.

The ideal place to unload them would be close-by but sparsely unpopulated, at least by white people; at least by white people with means. Ideally, it would be a site already impacted by oil and gas operations, already a little blasted and under lease. As it happened, there was one such site just five miles away from the Lake Charles complex, at Willow Springs.⁷⁵ The fact that it rested on layers of sand and was connected to the surface and ground waters of the region apparently did not come to mind.

71. See James O'Bryne & Mark Schleifstein, *The Chemical Industry's Toxic Toll: LA. Pays for Plants' Success*, TIMES-PICAYUNE, Feb. 17, 1991, at A1.

72. See *id.*

73. MOSSVILLE ENVTL. ACTION NOW, INC., ET AL., BREATHING POISON: THE TOXIC COSTS OF INDUSTRIES IN CALCASIEU PARISH, LOUISIANA 2-3 (1998) available at <http://www.mapcruzin.com/mossville/reportondioxin.htm> [hereinafter BREATHING POISON] (comparing *inter alia*, Mississippi River and Lake Charles facilities). The report stated that state environmental enforcement in the region has been notoriously lax, with no fines assessed for some 40% of violations, and only a third of those assessed paid in full. *Id.* at 4. A random sample from some 15,000 violations between the mid-1980s and the mid-1990s failed to find records for a third of the cases at all. *Id.*

74. See *id.* at 2, 11 (citing EPA Toxic Release Inventory [TRI] data).

75. See Schmidt, *supra* note 2.

When much later it did occur, the state and industry officials claimed the strata to be impermeable,⁷⁶ leading observers to joke about the “magic fence” that changed the sand layers to clay.⁷⁷ When later pressed by incontrovertible data to acknowledge contamination in the local waters, the Louisiana Department of Health and Hospitals (DHH) sent out a representative “to show the proper method of cooking fish caught in hazardous waters”: you were not to stand over the frying pan where you would inhale the volatiles.⁷⁸ Watching the presentation on the news, Mary Ellender concluded, “They were actually nuts, I do believe.”⁷⁹ Michael Tritico saw the presentation in person, thinking, “How can the Health Department stand there with a straight face and tell us how to cook poison fish?”⁸⁰

3. THE AWAKENING

Freed slaves settled on the Willow Springs ridge in the late 1800s.⁸¹ One dirt road and out of harm’s way. Gus Anderson owned a grocery and hardware store in nearby Westlake.⁸²

76. Heroes & Horrors, *supra* note 13, at 63 (“[T]he well we got drilled just outside the Willow Springs fenceline showed that the Chicot Aquifer came up all the way to the surface without any significant clay layer aquacludes, which confirmed that the company’s version of stratigraphy was wrong.”).

77. *Id.*

78. Interview by Jennifer Abraham with Mary Ellender (Nov. 2000) (on file with author & Loyola Law Review).

79. *Id.*

80. July 2012 Letter, *supra* note 7. The Louisiana Department of Health and Human Resources (DHH) seemed perpetually confounded in its role in toxic contamination and the public health. William Fontenot, formerly of the Louisiana Attorney General’s Office, recalls learning about three years of department studies showing high levels of toxins in the water column, aquatic life and sediments of the Calcasieu River widely used by recreational boaters, swimmers, and fishermen. *See* Interview by Lara Richards with Willie Fontenot, Baton Rouge, La. (Mar. 5, 2011) (on file with author & Loyola Law Review). Fontenot wrote a letter to the secretary of the DHH explaining that the river was contaminated, and that the contamination could easily spread. *Id.* Of course, Fontenot’s letter “set off a firestorm” of complaints from the agencies conducting the studies, seemingly without regard to the health consequences of what the Department had found. *See id.* (“I got calls from those agencies . . . saying, ‘Willie, how could you do this to us? We’re doing this project, this really important project to see how toxins move in an estuary’ The problem in the estuary was nothing new The government had known for years that there were major contamination issues there.”). Fontenot was formerly the ombudsman for the Office of the Louisiana Attorney General, and acted as liaison between the AG’s office and the Louisiana environmental community. *See* Amanda Little, *Louisiana Environmental Advocate Forced out of Job by State Attorney General*, GRIST (Apr. 29, 2005), <http://grist.org/article/little-louisiana/>.

81. PIONEERS, *supra* note 4, at XVI.

82. *Id.* at 47 (interview with Ruth Shepherd).

According to Ruth Shepherd who lived in the community, a lot of colored people traded at Anderson's and when they couldn't pay the bills he would take their property in return, including the forty acres where the dumping began.⁸³ He would later lease it for oil.⁸⁴

In the late 1950s, an exploration well drilled by the W.W.F. Oil Company produced a blowout of gas instead and was abandoned, along with old storage pits, pieces of pipe, the usual.⁸⁵ Ten years later Anderson leased the site to an outfit called Mud Movers which began trucking in wastes (euphemistically called "drilling muds") from nearby oil and gas fields,⁸⁶ some of it toxic (although the industry would later exempt them from hazardous waste laws).⁸⁷ Mud Movers held off the neighbors for some time, assuring them that the wastes were harmless and that the site would be made into a local amenity, but the odors and the parade of trucks were increasingly hard to ignore.⁸⁸

Mabel Rigmaiden Jones started collecting signatures on a petition to stop the dumping.⁸⁹ The fumes rose from open pits to attack, as the wind shifted, everyone on the ridge.⁹⁰ The pits also overflowed in heavy rains, tainting the wells and the Little River below.⁹¹ Children swimming in the west fork of the Calcasieu

83. See PIONEERS, *supra* note 4, at 47 (interview with Ruth Shepherd).

84. See *id.*

85. See Author's Tritico Interview, *supra* note 61; see also Letter from W.D. Frazell, W.W.F. Oil Co., to Arsene P. Edwards, Dist. Dir., La. Dep't of Conservation (Dec. 22, 1959) (on file with Loyola Law Review); E-mail from Michael Tritico to author (Aug. 31, 2016, 7:28 PM CST) (on file with author & Loyola Law Review) (discussing W.W.F. Oil Company).

86. See *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 1 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1320; Author's Tritico Interview, *supra* note 61.

87. PIONEERS, *supra* note 4, at 47 (interview with Ruth Shepherd). For the noxious contents of oilfield drilling wastes, see MICHAEL R. ROBICHAUX, M.D., REPORT TO THE DEPARTMENT OF NATURAL RESOURCES OIL FIELD WASTE ADVISORY COMMITTEE 8-12 (Feb. 27, 1998) available at <http://senate.legis.state.la.us/senators/archives/1999/Robichaux/topics/oilfield.pdf>. For the exemption of these wastes, see James R. Cox, *Revisiting RCRA's Oilfield Waste Exception as to Certain Hazardous Oilfield Exploration and Production Wastes*, 14 VILL. ENVTL. L.J. 1 (2003).

88. See PIONEERS, *supra* note 4, at 46 (interview with Ruth Shepherd) ("[W]hen the company moved into the area, they told the citizens they were building them a resort and a fishpond.").

89. *Heroes & Horrors*, *supra* note 13, at 23.

90. See *id.*

91. *Id.* at 23.

just downstream broke out in rashes.⁹² In 1968, Jones presented a petition with over 500 signatures to the parish police jury, which later claimed to have lost it, so she had to recollect the signatures.⁹³ Which she did. To no effect.⁹⁴

Meanwhile, Ruth Shepherd and her husband, Leo, a retired railway engineer, had moved in from Missouri.⁹⁵ They could not believe the stench coming to them through the woods, so Ruth set out to find out where it was coming from.⁹⁶ She almost drove into the first waste pit because there was no fence or warning.⁹⁷ There were many more pits, for acres around.⁹⁸ She went to a nearby house, which happened to be where Herbert Rigmaiden lived, and he told her what had happened and was happening in turn to them.⁹⁹ Shepherd had done environmental battle once before, in Missouri, against an animal feeding operation, and it had not been a pleasant experience.¹⁰⁰ But it had taught her how to stand up.

Shepherd went back to the site the next day and started counting the trucks coming in.¹⁰¹ They would take a hose from the back of the truck and pump its contents into a pit.¹⁰² Another day she saw a bulldozer dig a hole for a load of chemicals that began “leaking out at the bottom and running onto the ground.”¹⁰³ She observed this “more than once.”¹⁰⁴ She continued the truck count.¹⁰⁵ The drivers were not happy to see her.¹⁰⁶ One of them

92. Heroes & Horrors, *supra* note 13, at 23.

93. *Id.*; see Interview by Jamal Knight with Michael Tritico, in Lake Charles, La. (Mar. 12, 2012) [hereinafter Knight’s Tritico Interview] (on file with author & Loyola Law Review) (describing the number of signatures on Mabel Rigmaiden’s petition).

94. Heroes & Horrors, *supra* note 13, at 23; see Knight’s Tritico Interview, *supra* note 93.

95. See PIONEERS, *supra* note 4, at 45 (interview with Ruth Shepherd).

96. See *id.* at 46.

97. Interview with Peggy Frankland, in Willow Springs, La. (Feb. 21, 2012) [hereinafter Frankland Interview] (on file with author & Loyola Law Review).

98. See PIONEERS, *supra* note 4, at 46 (interview with Ruth Shepherd).

99. See Frankland Interview, *supra* note 97.

100. Heroes & Horrors, *supra* note 13, at 23. Both Tritico and Frankland describe Shepherd as a warrior with tenacity and humor. See Author’s Tritico Interview, *supra* note 61; Frankland Interview, *supra* note 97.

101. PIONEERS, *supra* note 4, at 46 (interview with Ruth Shepherd) (describing her second visit to Willow Springs, and contact with Mike Tritico).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. PIONEERS, *supra* note 4, at 46 (interview with Ruth Shepherd).

threatened her; he was “in a big high truck and his engine was running,” so she moved to the main road and kept on counting.¹⁰⁷ One day she heard a man on the radio talking about pollution in the area.¹⁰⁸ He was Michael Tritico, and he would become a spark plug for environmental action in Calcasieu Parish for the next thirty years.¹⁰⁹

Tritico was a native, a scientist, and trained in several crucibles including the just-then-breaking discovery of multiple toxins in the New Orleans drinking water system.¹¹⁰ He was a maven for facts with the ability to penetrate the jargon of science, retain quantities of data, and express himself in ways that were memorable, even lyrical, in order to illuminate a problem or shame an unwilling official.¹¹¹ Of small and unassuming stature, the antithesis of well-dressed, Tritico had a flair for drama as well, showing up at a discharge permit hearing with a fish tank of minnows into which he proposed to mix the chemicals in the same concentrations proposed to be permitted.¹¹² When admonished by the hearing examiner that this would be “animal cruelty,” Tritico paused, smiled broadly, and then replied “exactly!”¹¹³ A man with perhaps more enemies among Lake Charles industrialists than any other (a favorite saying: “In Louisiana we have traded the old life for new ways of death”),¹¹⁴ perhaps the definitive word on him came from newswoman Theresa Schmidt who covered the Willow Springs controversy for KPLC-TV: “I never heard Michael Tritico

107. PIONEERS, *supra* note 4, at 46 (interview with Ruth Shepherd).

108. Heroes & Horrors, *supra* note 13, at 22 (“After one of my radio shows in the seventies, I got a call from a lady named Ruth Shepherd.”).

109. *See id.*

110. For a detailed account of Tritico’s education and training, see *id.* at 1–16. For an assessment of Tritico’s qualities, see Frankland Interview, *supra* note 97; see also Telephone Interview with Willie Fontenot (Aug. 16, 2016) (on file with author & Loyola Law Review); Telephone Interview with Theresa Schmidt, KPLC, (June 25, 2012) (on file with author & Loyola Law Review).

111. See Frankland Interview, *supra* note 97; Telephone Interview with Willie Fontenot (Aug. 16, 2016) (on file with author & Loyola Law Review) (stating that Tritico was “right on the money with his facts and his science . . . [but he] could sure piss people off”).

112. Heroes & Horrors, *supra* note 13, at 83.

113. See *id.*; see also Letter from Michael Tritico, Biologist, President of Restore Explicit Symmetry to Our Ravaged Earth (RESTORE), to author (Feb. 20, 2012) [hereinafter Feb. 2012 Letter] (on file with author & Loyola Law Review) (noting that Tritico then added, “Animal cruelty in the Calcasieu River every day from now on because of your official action as Hearing Officer today!”).

114. Heroes & Horrors, *supra* note 13, at 16. Another nettlesome saying: “We have more confidence in free enterprise and true capitalism than these people who are demanding another layer of corporate welfare.” *Id.*

state anything as a fact that did not have a basis in fact.”¹¹⁵

Tritico’s outspokenness cost him dearly. Working as a lab technician for a New Orleans research firm studying Mississippi River toxins, when it turned out that his findings corroborated evidence of unacceptably high levels he was told to change them or find other employment.¹¹⁶ Instead, he leaked a draft of the report to a city weekly run by a former reporter from Lake Charles who had been fired by a newspaper there for investigating fumes from the Olin Chemical plant, that, according to Tritico, “would peel paint off cars” passing by on misty days.¹¹⁷ Tritico soon resigned from the research group and returned to LSU for graduate studies.¹¹⁸ One weekend several students from the Marine Sciences Department went down to Cameron Parish, below Calcasieu, to testify against a wetland-dredging project.¹¹⁹ It was a rough venue.¹²⁰ During the hearing, one opponent was “slammed against the wall in a hallway and threatened.”¹²¹ Back in Baton Rouge, angry Cameron officials had the legislature cut the department’s budget.¹²² Returning to Calcasieu, Tritico was employed briefly by the parish’s new coastal management program until he was told, unhappily, by the program’s administrator that the governing board simply wouldn’t stand for it.¹²³ Faced with the choice of leaving the area or staying to fight, he stayed.¹²⁴

He would need an organization, but the one he had in mind was now in decline, the Calcasieu Rod and Gun Club, which had embraced the rivers and marshes of the area.¹²⁵ Tritico shared

115. Telephone Interview with Theresa Schmidt, *supra* note 110 (“While I don’t think anyone is 100% right on everything, I never knew Michael to say something as a fact that did not have a basis in fact. He did not make things up. He had his own interpretations on which others could differ, but his factual statements were always grounded on things that were true.”).

116. *Heroes & Horrors*, *supra* note 13, at 4–7 (describing his work at the research firm).

117. *See* Author’s Tritico Interview, *supra* note 61.

118. *Heroes & Horrors*, *supra* note 13, at 8.

119. *Id.*

120. *See id.*

121. *Id.*

122. *Id.*

123. *Heroes & Horrors*, *supra* note 13, at 15.

124. *Id.* at 16.

125. *Id.* at 3, 12. For the decline of the Club, see July 2012 Letter, *supra* note 7 (“At the time I was doing my swamp research . . . the last remaining members of the Club were still alive and still trying to stand up for fish and game habitat. I would

the fever. Out on a research project in a nearby swamp one spring, he described the onset of the green canopy “as if the swamp were growing its own sunglasses.”¹²⁶ A horde of caterpillars above him was devouring the tupelo gum leaves so quickly he thought “the place was going to go bald.”¹²⁷ Suddenly, he saw “a giant black wheel” of birds descend on the trees and, as the front of the wheel flew down to feed, the rear end, “already having depleted their feast,” rose up and leapfrogged their fellows, “screeching and landing ahead” for more.¹²⁸ The “eye of the earth had been renourished.”¹²⁹ We could be reading John Muir.¹³⁰

Tritico hesitated to affiliate with the Sierra Club or other newly active environmental groups in the state, for fear of alienating the constituencies he wanted to reach.¹³¹ Instead, he fashioned the name RESTORE from a nearly unpronounceable collection of words (Restore Explicit Symmetry to Our Ravaged Earth), and, with several allies launched an organization that would be outspoken activist but scrupulously factual, a public service.¹³² No office in the parish provided environmental information, and Baton Rouge was three hours away. He had no financial resources.¹³³ At times he was reduced to eating a concoction of lentils and oatmeal.¹³⁴ RESTORE had no office, and would meet at a local bar called Gus’s Lounge,¹³⁵ which would play its own role for Willow Springs.

RESTORE’s mission required data, however, and here Tritico relied on another “gift from the Creator,” because he is a religious man in a deeply believing corner of the

say that there might be one or two still alive . . .”).

126. Heroes & Horrors, *supra* note 13, at 14.

127. *Id.*

128. *Id.*

129. *Id.*

130. The Muir reference is coincidental; earlier in life Tritico worked as a Ranger-Naturalist at Yellowstone National Park and found himself using Muir’s “old chair and desk . . . to do [his] paperwork.” July 2012 Letter, *supra* note 7.

131. Heroes & Horrors, *supra* note 13, at 14.

132. *Id.* at 12, 16 (“RESTORE has always stayed ‘within the system.’”). One measure of this faith in public service was Tritico’s run for the state legislature, with no funds and against an entrenched incumbent; he won 25% of the vote. *Id.* at 18–19.

133. *Id.* at 17.

134. Author’s Tritico Interview, *supra* note 61 (shrugging off the experience by saying that “[y]ou get used to it”).

135. Heroes & Horrors, *supra* note 13, at 20.

country.¹³⁶ When their fathers were away in World War II, he and his cousin Brantley were raised together.¹³⁷ Neither was expected to live long. Brantley had a severe case of cerebral palsy and young Michael suffered from a wasting disease that left him gaunt and skeletal.¹³⁸ Refusing to hospitalize either one, Brantley's mother instead took them outdoors as often as possible, her son draped over the saddle and Michael in a sled behind.¹³⁹ It worked. They went on to graduate from public schools as indelible friends, and Brantley took two masters degrees in library science, which brought him home to McNeese State University at Lake Charles, which then became a Federal Documents Depository, which meant, before the days of computers, instant access to every report issued to or by the federal government, a treasure of information on sponsored studies and industry reports.¹⁴⁰ Tritico would call it his "ammunition dump."¹⁴¹ He would call Brantley "God-sent."¹⁴²

One evening at Gus' Lounge—it was just this coincidental—the keyboard player for a combo called Xebra asked Tritico if he'd like to do a radio show at a local station where the player happened to work.¹⁴³ When Tritico replied that RESTORE had no money to pay, his friend told him that the government required some airtime for public service.¹⁴⁴ The station owner agreed.¹⁴⁵ Thus, remarkably, with no preparation, Tritico began broadcasting every Sunday morning to the Lake Charles region,

136. Tritico's manuscript is replete with references to "the Creator" and divine intervention. *See, e.g.*, *Heroes & Horrors*, *supra* note 13, at 17 ("I stayed broke and somewhat broken but the Creator used me step-by-step. . . . It seemed like every time a neighborhood became assaulted by some legalized violence such as hazardous waste pits or injection wells or incinerations the Creator would raise up one or two neighborhood leaders and then send me in to back them up. It became my job to help them with the science, to go through whatever official files might apply. . . ."); *Id.* at 75 ("Naturally, prayer should precede all other efforts. We all started our Willow Springs meetings with prayer."). As for the region: when the author visited Willow Springs years later and parked in the Mt. Hope Baptist Church parking lot to wait for Frankland and Tritico, a man in a pickup truck approached and said, "What church you go to?" It was not exactly a question.

137. *Id.* at 17.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Heroes & Horrors*, *supra* note 13, at 18.

142. *Id.*

143. *Id.* at 20.

144. *Id.*

145. *Id.* at 21.

and what he knew and what he talked about was environmental protection.¹⁴⁶

One Sunday morning, as coincidentally, Tritico took a telephone call from a listener to his broadcast.¹⁴⁷ The woman said, that if he wanted to talk about pollution he “ought to come up here and see what’s happening to us.”¹⁴⁸ This was 1975, and the caller was Ruth Shepherd from Willow Springs.¹⁴⁹ He went the next day.¹⁵⁰

4. DIGGING IN

Over at the Springs, the ante had gone up. In 1972 the waste operation had been purchased by Browning-Ferris Industries, Inc. (BFI),¹⁵¹ which along with Chemical Waste Management, dominated the field.¹⁵² The big money those days, however, was not in handling domestic waste from cash-strapped municipalities but from industrial wastes just now coming under public scrutiny. Early air and water laws were beginning to clamp down on direct emissions.¹⁵³ Land disposal was the last free-fire zone and the chemical industry in particular had high volumes of serious things to get rid of, and the revenues to pay for it. BFI would get rid of it for them.¹⁵⁴ The Willow Springs purchase was a natural. It was already in operation and apparently the state required no permits at all.¹⁵⁵

Problem A was the method of disposal. Open waste pits were the industry standard, and they leaked.¹⁵⁶ An EPA study

146. Heroes & Horrors, *supra* note 13, at 21.

147. *Id.* at 22.

148. *Id.* at 23.

149. *Id.*

150. *See id.*

151. *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 2 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1320.

152. Barnaby J. Feder, *Browning to Drop Waste Unit*, N.Y. TIMES (Apr. 6, 1990) available at <http://www.nytimes.com/1990/04/06/business/browning-to-drop-waste-unit.html>.

153. The federal Clean Air Act, 42 U.S.C. § 7401, *et seq.*, was enacted in 1963, and the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, in 1972. Federal laws governing land disposal of chemical wastes did not appear until 1976, and were not implemented by state programs until several years following. *See* 42 U.S.C. § 6921, *et seq.* (2012).

154. *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 2 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1320.

155. REPORT ON CECOS INTERNATIONAL, INC., WILLOW SPRINGS FACILITY (Sept. 18, 1985) (on file with author & Loyola Law Review).

156. *See EPA Says All Landfills Leak, Even Those Using Best Available Liners*, 37

done soon after BFI's purchase estimated that, even with the best of technology including landfill liners, an average municipal waste site would lose up to 3,600 gallons of fluid a year.¹⁵⁷ With design flaws or poor maintenance, hardly unusual conditions, all bets were off.¹⁵⁸ The bets were even worse for toxic chemicals, some of which ate through landfill liners "like corn through a goose."¹⁵⁹

This is before one came to the particulars of the Willow Springs location. For Paul Jones, a Baton Rouge geologist who had appeared frequently as an expert on subsurface issues in the Lake Charles area, the siting was a jolt.¹⁶⁰ "When I found out it was being used as a dump site for chemical wastes, I was aghast," he recalls.¹⁶¹ "It's the last place you would want to put hazardous waste."¹⁶² For one, the site flooded in heavy rains, washing out whatever was on or near the surface.¹⁶³ But the real hazard was below ground. "It's a recharge area where surface waters meet the aquifer,"¹⁶⁴ speaking of the Chicot Aquifer on which Lake Charles and the region depend. Even layers of clay "break down and become a slurry," changing in composition with the nature of the wastes.¹⁶⁵ Jones concluded, "I could pick better sites blindfolded."¹⁶⁶ The picking, though, had been done long before.

RACHEL'S HAZARDOUS WASTE NEWS 1 (News & Res. for Env'tl. Justice) (Aug. 10, 1987) available at <http://www.ejnet.org/rachel/rhwn037.htm>; see also *Decade-Old Study Revealed the Polluting Effects of Landfills*, 71 RACHEL'S HAZARDOUS WASTE NEWS 1 (News & Res. for Env'tl. Justice) (Apr. 4, 1988) available at <http://www.ejnet.org/rachel/rhwn071.htm>; *Analyzing Why All Landfills Leak*, 116 RACHEL'S HAZARDOUS WASTE NEWS 1 (News & Res. for Env'tl. Justice) (Feb. 14, 1989) available at <http://www.ejnet.org/rachel/rhwn116.htm>; *Leachate Collection Systems: The Achilles' Heel of Landfills*, 119 RACHEL'S HAZARDOUS WASTE NEWS 2 (News & Res. for Env'tl. Justice) (Mar. 7, 1989) available at <http://www.ejnet.org/rachel/rhwn119.htm> (citing JEFFERY BASS, *AVOIDING FAILURE OF LEACHATE COLLECTION AND CAP DRAINAGE SYSTEMS* (1986)).

157. *Analyzing Why All Landfills Leak*, 116 RACHEL'S HAZARDOUS WASTE NEWS 2 (Feb. 14, 1989) available at <http://www.ejnet.org/rachel/rhwn116.htm>.

158. *Id.*

159. See Author's Triticco Interview, *supra* note 61 (explaining that the contaminants were used to "dissolve sands for the injection operations").

160. David Snyder, Special Report, *The Poisoned Land: Deadly Leaks: Geologists Call Them Inevitable*, *TIMES-PICAYUNE*, Sept. 12, 1985, at A20.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. Snyder, *supra* at note 160.

166. *Id.*

Nor was the problem eliminated when BFI switched from land pits to deep well injection via the old oil and gas exploration hole.¹⁶⁷ A study by the Louisiana Geological Survey, characterized the site as a “zone of fractures” laid onto a seismic fault.¹⁶⁸ The injection discharges migrated up to within 2,000 feet of the surface.¹⁶⁹ The Chicot Aquifer lay above like a water balloon at the 1,400 foot level, sandwiched between the wastes injected below and the pits leaking down from above, some at 300 feet and beyond.¹⁷⁰ The Survey’s recommendation against additional injection was not well received.¹⁷¹ An independent study by the chair of the Ohio University Department of Geological Sciences warned that the pressure from the 1.2 million tons of hazardous waste already sent down the well could create more fractures.¹⁷² It was “only a matter of time.”¹⁷³

Meanwhile, BFI itself was experiencing disposal problems seemingly wherever it operated. Between 1977 and 1988 the company reported 146 cases of waste disposal violations in sixteen states.¹⁷⁴ It would be fined in Massachusetts for unpermitted dumping,¹⁷⁵ and again for its management of a landfill near New Orleans.¹⁷⁶ In Minnesota it petitioned to expand a dumpsite that had been already found to have polluted the groundwater and leaked methane gas; the site is now on the federal Superfund list for cleanup.¹⁷⁷ Two BFI subsidiaries—one of which, CECOS, continues to operate the Willow Springs site—were fined \$2.5 million for waste practices in Livingston, Louisiana, the EPA noting 1,400 violations as serious as failure to

167. See *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 2 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1320. (“In the late 70s, a deep injection well was put into operation at the site. Waste was disposed of by injecting it into the well.”).

168. See Snyder, *supra* at note 160.

169. See *id.*

170. See *id.*

171. See *id.*

172. See *id.*

173. See Snyder, *supra* at note 160.

174. GREENPEACE GRPS., BROWNING-FERRIS INDUSTRIES, INC. (BFI) GREENWASH SNAPSHOT #15: A CASE STUDY IN WASTE DISPOSAL 3 (1992) [hereinafter GREENPEACE SNAPSHOT], available at <http://www.skeptictank.org/treasure/GP1/BFI.TXT> (citing Brian Lipset, *BFI: The Sludge of the Waste Industry*, 11 MULTINATIONAL MONITOR 26, 27 (June 1990) (on file with Loyola Law Review)).

175. *Id.*

176. *Id.*

177. *Id.*

maintain disposal pits and to conduct inspections.¹⁷⁸ A year later the EPA sought over \$15 million from CECOS for the illegal disposal of toxic sludge in New York.¹⁷⁹ At the same time, in Ohio, CECOS was assessed \$3.5 million in civil fines and an additional criminal penalty for dumping toxic wastes into a drinking water supply.¹⁸⁰ Back at Willow Springs, CECOS agreed to pay another \$1.5 million in 1990 for numerous violations.¹⁸¹ The BFI/CECOS compliance records for water discharges showed intermittent state remedial orders honored largely in the breach.¹⁸² Significantly, noted a federal report at the time, “no fines have been assessed.”¹⁸³ It must be granted, “managing” toxic wastes is a risky proposition—whether it is even an achievable one over long periods of time has yet to be proven—but this is precisely what BFI was contracting to do. Its failures and penalties (in states that imposed them) would show up on the corporation’s balance sheets as a cost of doing business.¹⁸⁴ Where they would show up more obliquely was in the communities where these sites were located, largely out of sight and out of mind.

Mike Tritico’s first reaction on visiting the Willow Springs site with Ruth Shepherd was that these were not ordinary drilling muds.¹⁸⁵ He had been around oilfield waste pits, but the smells were unlike anything he had experienced; they were “nauseating.”¹⁸⁶ He and his brother Frank met Ruth at the

178. GREENPEACE SNAPSHOT, *supra* note 174, at 4 (citing *Two Browning Units Will Pay \$2.5 Million in Settlement of Suits*, WALL ST. J., Aug. 15, 1988; Bob Anderson, *CECOS Agrees to Penalty of \$86,000 for Discharges*, MORNING ADVOCATE, Dec. 19, 1991, at A18).

179. *Id.* at 4 (citing Paul MacClennan, *Landfill Addition Blocked by DEC*, BUFFALO NEWS, Mar. 14, 1990, at A1; *EPA Seeks \$35.4 Million from GM, Two Landfills*, WALL ST. J., Mar. 19, 1991, at C14).

180. *Id.* at 5 (citing Barnaby Feder, *Browning to Drop Waste Unit*, N.Y. TIMES, Apr. 6, 1990, at D4).

181. *See id.* at 4 (citing *EPA Says Two Units of Browning-Ferris Fined \$1.55 Million*, WALL ST. J., Mar. 9, 1990, at C13 (“The agency said it had found 1,400 violations at a facility . . . in Calcasieu Parish in southwestern Louisiana.”)).

182. REPORT ON CECOS INTERNATIONAL, INC., *supra* note 155, at 2.

183. *Id.*

184. *See* Lipset, *supra* note 174 (“[BFI’s CEO] explained the CECOS sales decision by saying that . . . BFI’s hazardous waste disposal operations have posted losses for the last two years and accounted for only 2 percent of total revenue The disappointing profits may be a result of the large fines the company has been forced to pay.”).

185. *See* Author’s Tritico Interview, *supra* note 61.

186. *See id.*

gate.¹⁸⁷ The company had put up a fence and a guard shack.¹⁸⁸ Mike climbed to the top of the truck cab to take some photographs when a guard bolted out of the shack yelling “no pictures” and “get the hell out of here!”¹⁸⁹ They beat a hasty retreat, followed by Ruth Shepherd, and when she caught up with them Mike said, “I thought you said that was a public road.”¹⁹⁰ Smiling broadly, she replied, “[g]uess I was mistaken.”¹⁹¹ He would have to get his evidence another way.

One look, though, was enough to put the game in motion. Shepherd and Tritico pulled the neighbors together for a meeting at the nearby Willow Springs Baptist Church.¹⁹² Two hundred people showed up.¹⁹³ They formed the High Hope Road Committee, a mixed-race group (Rev. Bartlett was white, Gentry Vincent was black) dedicated to closing the dump at Willow Springs.¹⁹⁴ Tritico’s assignment was to find out exactly what was going into the pits.¹⁹⁵ No one seemed to know. The State Department of Natural Resources (DNR) denied any responsibility, and suggested that it might be managed by state health officials as municipal waste,¹⁹⁶ which was like imagining that ships still came up the Calcasieu under sail. Tritico sounded out the EPA office in Dallas, and his questions seemed to stump them as well.¹⁹⁷ He persuaded the Agency to come over for some tests and to help unearth files from the local Louisiana Department of Health and Hospitals (DHH) office, one of which contained a surprising memorandum to the then-head of the Louisiana Stream Control Commission, the only entity faintly resembling a state environmental agency at the time.¹⁹⁸ As Tritico recalls, it asked the commission president how DHH was expected “to rebuild the public trust, when the manager of the Willow Springs facility says you told him to go ahead and discharge the overflow into the Little River, but only to do it at night, and that you weren’t going to give him an official permit

187. Heroes & Horrors, *supra* note 13, at 24–25.

188. *Id.* at 24.

189. *Id.* at 25.

190. *Id.*

191. *Id.*

192. PIONEERS, *supra* note 4, at 47 (interview with Ruth Shepherd).

193. *Id.*

194. *See id.*

195. Heroes & Horrors, *supra* note 13, at 23.

196. *See id.*

197. *Id.* at 24.

198. *See id.*

because there is too much public scrutiny right now.”¹⁹⁹ The meeting was quickly adjourned.²⁰⁰ The Commission was not going to be much help.

Nor, for the moment, was the EPA, which did proceed to take samples from Gentry Vincent’s hog pond where many had died.²⁰¹ Inexplicably, it tested as pristine as the control from the Westlake drinking water system.²⁰² It was not until well over a decade later, the Willow Springs litigation come and gone, that, visiting the site again, Vincent told Tritico “didn’t you know that the company came and pumped out my pond and brought in trucks of good water and filled it back up before that man from Dallas came and got the samples.”²⁰³ They thought everyone knew.

Meanwhile, Ruth Shepherd was on his case constantly, he recalled.²⁰⁴ “Mike,” she would tell him forcefully, “we ain’t got time to wait for Dallas!”²⁰⁵ So Tritico decided to take another tack. His uncle Joseph Tritico was a prominent attorney in the region and something of a benevolent kingmaker.²⁰⁶ According to Michael, his uncle kept the parish sheriff out of legal troubles emanating from his “tolerance for gambling” and scrutiny from the Internal Revenue Service, services that the sheriff would recognize on occasion, this being one of them.²⁰⁷ The sheriff’s office had an investigator on staff, and a chem. lab.²⁰⁸ The investigator came up, took samples and found numerous toxins on EPA’s Priority List.²⁰⁹ When the main Lake Charles newspaper refused to cover the story, Tritico took it to a smaller rival, which made it a full spread.²¹⁰ Then Ruth Shepherd called the first paper, berating it for failure to do its reporting duty.²¹¹

199. Heroes & Horrors, *supra* note 13, at 28.

200. *Id.* at 29.

201. *Id.* at 25.

202. *Id.* at 26.

203. *Id.*

204. See Author’s Tritico Interview, *supra* note 61.

205. See *id.*

206. See July 2012 Letter, *supra* note 7 (adding “. . . although other people were of an opposite opinion”); Author’s Tritico Interview, *supra* note 61 (“Uncle Joe [was] a big time lawyer and politico.”).

207. See July 2012 Letter, *supra* note 7.

208. Heroes & Horrors, *supra* note 13, at 25.

209. See *id.*

210. See *id.*

211. See *id.*

The issue began to attract press.

Buffeted by the exposure and by a growing national sensitivity to open dumping, BFI announced its intention to close the pits at Willow Springs but continued to inject the wastes down the old gas well instead.²¹² The parades of heavy trucks, the fumes from offloading them, the tainted wells, and the threat to the adjacent rivers and the Chicot Aquifer remained. Toxic waste was still pouring into Willow Springs; it was just destined to go farther out of sight.

BFI, meanwhile, made a contribution to the High Hope Baptist Church, said to have been \$200.²¹³ In turn, the church terminated the High Hope Road Committee's meetings there.²¹⁴ The Committee reconvened at the Houston River Baptist Church.²¹⁵ The community was beginning to feel the strain.

5. EARLY MOVEMENT

In 1977, BFI received something like approval from DNR's Office of Conservation which, given the oil and gas mandate of these departments and their political appointees, was like receiving a hamburger from McDonald's.²¹⁶ The letter stated that the Office of Conservation had reviewed the operation "from a geological standpoint" and "the Police Jury of Calcasieu Parish has offered no objection."²¹⁷ Whether this left-handed document was in fact a permit, whether it had any geological basis, and whether anyone at all examined the underlying health complaints, would be the subject of the first legal battle to follow, but for the moment it sufficed. BFI had the cover it needed.

Back at the site the trucks continued to roll in. When the traffic got heavy Mr. Keys, six-foot-five in his stocking feet, would stand on top of his car to count them.²¹⁸ The High Hope Road

212. See *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 2 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1320.

213. PIONEERS, *supra* note 4, at 47 (interview with Ruth Shepherd).

214. *Id.*

215. See *Heroes & Horrors*, *supra* note 13, at 54.

216. For the close connection between the petrochemical industry and DNR permitting, see Oliver A. Houck, *The Reckoning: Oil and Gas Development in the Louisiana Coastal Zone*, 28 TUL. ENVTL L.J. 185, 221-240 (2015); see also MARKOWITZ & ROSNER, *supra* note 68.

217. *Env'tl. Control Comm'n v. Browning-Ferris Indust., Chem. Servs., Inc.*, 450 So. 2d 1292, 1301 n.1 (La. 1984) (Watson, J., dissenting).

218. Peggy Frankland, "Do Not Tear Up My Earth": The Communities of Women Who Made the Louisiana Environmental Movement 16 (original manuscript for

Committee was still in business. Then in 1978, the Louisiana hazardous waste disposal business received a jolt of its own. About 100 miles to the east at the edge of the Atchafalaya swamp, Kirtley Jackson, a local boy and waste truck operator opened the cock to dump his load near Bayou Sorrel and died before he could escape the fumes.²¹⁹ There was no hiding it. This stuff was not just toxic in a chemistry book; it actually killed. It also drew state and national attention.²²⁰ One television program featured a reenactment.²²¹

The Willow Springs community felt “terrorized” by the trucks.²²² These were the same fumes they were breathing every day. Some folks took their guns down off the wall.²²³ Tritico heard two men talking about blowing up the injection well with dynamite, and had difficulty talking them out of it.²²⁴ Herbert Rigmaiden’s mother scared off an oncoming truck with a pistol and had to be walked inside by her son to calm down.²²⁵ (Years later, on a visit by the famed Love Canal activist Lois Gibbs, Mrs. Rigmaiden is photographed sitting demurely in her rocker, a corn

PIONEERS, *supra* note 4) (on file with author & Loyola Law Review).

219. See *Rollins Env'tl. Servs. of La. v. Iberville Parish Police Jury*, 371 So. 2d 1127, 1129 (La. 1979) (describing Jackson’s death); see also *History of the Department*, DEQ LA., <http://www.deq.louisiana.gov/portal/ABOUT/HistoryoftheDepartment.aspx> (last visited Sept. 12, 2016) (“It was not until 1978, following the unfortunate death of Kirtley Maurice Jackson at the Bayou Sorrel Hazardous Waste Pit, that legislation concerning hazardous waste management was passed . . .”).

220. For a local television program covering the incident, see *Louisiana: The State We’re In*, LA. PUB. BROADCASTING (Oct. 27, 1978) available at http://ladigitalmedia.org/video_v2/asset-detail/LSWI-0258; see also Telephone Interview with Willie Fontenot (Aug. 16, 2016) (describing PBS special that covered Kirtley Jackson’s death: “All the media covered it, and it produced an environmental upheaval.”). For a sample of national coverage, see also *Dangers Seep in to Awareness: Toxic Wastes Come Home to Roost*, CHICAGO TRIBUNE, Sept. 9, 1979, at V6 (opening with Jackson’s death at Bayou Sorrel).

221. Telephone Interview with Steve Irving, Private Attorney (Aug. 11, 2016) (on file with author & Loyola Law Review) (explaining that a local television program “opened with a re-enactment of the death, an actor parking the truck, opening the cock valve, and falling down from the fumes”). Irving represented local residents attempting to close the Bayou Sorrel site, and followed the coverage of Jackson’s death closely. *Id.*

222. *Heroes & Horrors*, *supra* note 13, at 53.

223. See *id.*; see also Feb. 2012 Letter, *supra* note 113 (“At one of the community meetings we were holding . . . two men took me outside and said they were going to put a stop to the truck problem, they were going to use their deer rifles to shoot out enough tires that there would be a long string of trucks disabled on Anthony Ferry Road and that would get the attention of the national news.”).

224. *Heroes & Horrors*, *supra* note 13, at 54.

225. Author’s Rigmaiden Interview, *supra* note 17.

cob pipe in her lap).²²⁶ In an act of solidarity, Shepherd, Tritico, Rigmaiden, and others took a delegation to Bayou Sorrel for a community meeting with the waste company involved: Rollins.²²⁷ It too, threatened to turn ugly, this time for the Rollins people.²²⁸ When Rigmaiden began telling the audience about his cows he was yelled at by an angry crowd, “[W]e’re talking about people!”²²⁹ Tritico interrupted them shouting, “Herbert is trying to be nice. It killed his father!”²³⁰ A woman from Willow Springs stood up to say that her babies were sick, too, just as “some of you ladies are crying about your children. We *are* in this together.”²³¹ Rigmaiden then pleaded, “[I]t won’t do no good to hurt these men, we got to all work together.”²³² Under that cover, the Rollins team, viewing the scene with growing anxiety, made its exit.²³³ But the two communities stayed to join forces.²³⁴ Among other things, Willow Springs agreed to hold its own funeral for Kirtley Jackson.²³⁵

Which became another wild affair.²³⁶ The procession, with a donated coffin, was to proceed from the City Center of Lake Charles to the BFI operation at Willow Springs.²³⁷ It went peacefully enough until they turned onto the narrow, no-exit Willow Springs road, to be met by a phalanx of police cars, headlights flashing in broad daylight, hood lights looping circles of red against the trees.²³⁸ The police began to move toward them.²³⁹ Some residents reached into the glove compartments for weapons. Others left the caravan for whatever was to be found in their homes. On one side were armed police, and on the other an

226. Author’s Rigmaiden Interview, *supra* note 17.

227. Heroes & Horrors, *supra* note 13, at 26.

228. *See id.* (writing that “[t]he tension was very high”); *see also* Feb. 2012 Letter, *supra* note 113 (“The meeting turned out to be an ambush of the Rollins executives who had come to ‘calm things down.’ The crowd was in no mood to hear any excuses.”).

229. Heroes & Horrors, *supra* note 13, at 26.

230. *Id.*

231. Feb. 2012 Letter, *supra* note 113 (emphasis in original).

232. Author’s Rigmaiden Interview, *supra* note 17.

233. *See* Author’s Tritico Interview, *supra* note 61; *see also* Feb. 2012 Letter, *supra* note 113.

234. Author’s Tritico Interview, *supra* note 61.

235. *Id.*

236. *See* PIONEERS, *supra* note 4, at 48 (interview with Ruth Shepherd); Heroes & Horrors, *supra* note 13, at 55.

237. Heroes & Horrors, *supra* note 13, at 55.

238. *Id.*

239. Knight’s Rigmaiden Interview, *supra* note 18.

angry crowd chanting “no more dumping, no more waste.”²⁴⁰ It was the Bayou Sorrel confrontation all over again, this time with weapons. All that was needed was a spark.

What happened next was what could be the finest hour in Reverend Bartlett’s, by all reports, very fine life. A tall man and an eloquent preacher, in a region of eloquent preaching, he climbed on the hood of a farm truck and held up his hands, high and wide, as if reaching for the heavens, a tableau, in silence.²⁴¹ When the restless movement of the column ceased, he began to speak. “Violence,” he proclaimed, “would be the road to the Devil!”²⁴² Herbert Rigmaiden says, “I can’t remember all the details, but I’ll never forget how it ended. . . . The Reverend said, ‘It’s a crying shame that good people have to consider doing bad things to save their children’s lives.’”²⁴³ Instead, they prayed.

The following year, the Jackson death still reverberating and a new federal hazardous waste law breathing down its neck, Louisiana finally enacted its own hazardous waste program.²⁴⁴ The legislature was doubtless responding to citizen pressure, but it was also doubtless trying to protect its franchise in licensing waste operations, with all the emoluments that stemmed from the exercise of that power. The devil as always would be in the details of the new program, and RESTORE and the Willow Springs community had their own ideas about them.

Quixotically, in retrospect, Ruth Shepherd and other activists made an appointment to see Governor Edwin Edwards, now leaving office, and suggest rules for the program and for the closure of the BFI facility.²⁴⁵ It is a testament to the eternal optimism of human beings that they hoped for a positive outcome. Through eight years of governing Edwards had exhibited little interest in environmental protection.²⁴⁶ Why now, at the end of his second term, would he change?

He did not change. Indeed, he outdid himself, interrupting

240. Knight’s Rigmaiden Interview, *supra* note 18.

241. See Author’s Rigmaiden Interview, *supra* note 17.

242. *Id.*

243. Knight’s Rigmaiden Interview, *supra* note 18.

244. See LA. STAT. ANN § 30:2171, *et seq.*, (2000) (“This Chapter may be cited as the ‘Louisiana Hazardous Waste Control Law.’”).

245. PIONEERS, *supra* note 4, at 47 (interview with Ruth Shepherd).

246. See Houck, *supra* note 46, at 290 n.1 (1986) (citing Anderson, *DEQ Says Rollins PCB Burn Off Until Review Completed*, MORNING ADVOCATE, Dec. 13, 1984, at 1A (detailing the Edwards Administration’s environmental stance)).

the small delegation at the outset by taking a ring off of his finger and tossing it to a friend who had arranged the meeting.²⁴⁷ The friend happened to be a jeweler. According to Shepherd, the Governor asked him, in front of them all, “What will you give me for this?” The ring was then passed around “for all of us to admire,” Shepherd continues. “I couldn’t believe what I was seeing. . . . We had traveled 152 miles one way, and after the ring incident we were dismissed and that was the end of any communication.” Their visit was, of course, Mission Impossible. Returning to office four years later, Edwards would make the expansion of Louisiana’s hazardous waste disposal business a centerpiece of his administration.²⁴⁸

Returning home, discouraged, the High Hope Committee had about exhausted its remedies. The following year Bartlett and Vincent would be lead plaintiffs in a last-resort lawsuit to shut BFI down. The case would not come on for trial, however, for another thirteen years. Meanwhile, the tanker trucks kept coming, BFI continued injecting, and the issue bubbled up in yet new venues.

6. WILLOW SPRINGS I: ENVIRONMENTAL CONTROL COMMISSION V. BROWNING-FERRIS INDUSTRIES

The end of the 1970s saw strange things in Lake Charles, Louisiana, new faces, some of them green. Perhaps the most surprising was a young lawyer named Leonard Knapp who had experience in government and was entering the race for district attorney.²⁴⁹ He and other aspirants were up against an entrenched incumbent, one of the most powerful men in the parish and, by a coincidence that reveals the close-knit nature of the region, a cousin of Michael Tritico.²⁵⁰ RESTORE invited the candidates to a public forum but the incumbent did not appear,

247. PIONEERS, *supra* note 4, at 47–48 (interview with Ruth Shepherd).

248. See Oliver A. Houck, *Save Ourselves: The Environmental Case That Changed Louisiana*, 72 LA. L. REV. 409, 410 n.3 (2012) (citing Sonny Albarado & Penny Perkins, *Waste Unit Set on Site for Airport*, MORNING ADVOCATE, Oct. 18, 1979, at 1B (“Ascension Parish Police Jury President Vincent ‘Cy’ Tortorich responded with a shocked ‘What!’ when told Wednesday that property his parish and East Baton Rouge Parish were considering for an airport location will be used instead for the world’s largest chemical waste treatment complex.”) (emphasis added)).

249. Interview by Jamal Knight with Leonard Knapp, in Baton Rouge, La. (March 11, 2012) [hereinafter Knapp Interview] (on file with author & Loyola Law Review).

250. Heroes & Horrors, *supra* note 13, at 27 (“The incumbent was one of my arrogant cousins, Frank Salter. He was the second most powerful man in the parish and a rival to [Sheriff] Reid, not for the office but for the power.”).

perhaps sensing difficult questions about Willow Springs, about which he had done nothing.²⁵¹ The press played up his absence with candidate-refuses-to-meet-public headlines, and the incumbent began to falter in the polls. He ultimately lost, and Knapp won.²⁵²

One of Knapp's first initiatives was a new offensive against the BFI operation. Like Tritico, he believed in facts, science, and orderly systems, a faith that would be sorely tested. His target was BFI's application for a permit under the new state waste program, to be decided by another newly created entity called the Environmental Control Commission (ECC).²⁵³ BFI had not only applied to legitimize its operation; it wanted to expand it to "contiguous lands."²⁵⁴ It was still very much in the go-go phase of the hazardous waste business.

Knapp brought together the Willow Springs group with another community almost identically impacted by a Chemical Waste Management dump in the nearby town of Carlyss.²⁵⁵ Convening leaders of both groups in his office, they formed a Citizens Scientific Study Committee dedicated to investigating the sites, testing wells, interviewing residents, examining medical records . . . it was a Tritico dream come true.²⁵⁶ Genuinely believing that this group's findings could affect the outcome of the commission's hearings, they agreed to stay the ECC proceedings pending their report.²⁵⁷

Here things went awry, for the best of reasons. Another delegation from Willow Springs went to meet incoming Governor, David Treen, who seemed sympathetic to their plight.²⁵⁸ All they wanted, they said, was an independent report on their situation. The Governor offered to provide \$150,000 to pursue it.²⁵⁹ At

251. Heroes & Horrors, *supra* note 13, at 27 ("Salter ignored the invitation but all the other attorneys showed up.").

252. *Id.* ("Salter came off looking like he considered himself above even the voting public. He lost and Lenn Knapp won.").

253. *See id.* at 62.

254. *Env'tl. Control Comm'n v. Browning-Ferris Indus., Chem. Servs., Inc.*, 450 So. 2d 1292, 1295 (La. 1984).

255. *See* Knight's Tritico Interview, *supra* note 93; Heroes & Horrors, *supra* note 13, at 62.

256. *See* Heroes & Horrors, *supra* note 13, at 62.

257. *See id.*

258. *Id.*

259. Knight's Tritico Interview, *supra* note 93 ("Governor Treen had the idea to give us \$150,000."). A Carlyss resident, Marvin Harger, apparently had access to the

which point, whether at the direction of the Governor or from a sincere attempt to bring parties together, Knapp agreed to a DNR-led oversight committee for the study.²⁶⁰ The concept was not a bad one—state participation could have provided expert support and credibility—but under Deputy Secretary Porter’s influence it was dominated from the outset by representatives of the familiar industries, including Olin chemical and the ubiquitous PPG.²⁶¹ In the resulting investigation, in Tritico’s words, “all the health stuff immediately went haywire” and the data were ultimately found to be “inconclusive.”²⁶² To Tritico, they were looking at all the wrong things.²⁶³ “We wanted tissue sampling. We didn’t get our tissue sampling.”²⁶⁴

They did, however, get monitoring wells installed at the perimeter of both the Carlyss and Willow Springs sites.²⁶⁵ The Willow Springs monitor showed that the Chicot Aquifer came all the way up to the surface without significant impediment, belying BFI’s assurances of an impermeable clay barrier; the Carlyss well showed a direct conduit from waste pits to water wells and a nearby stream.²⁶⁶ Both provided fuel for the hearings, which were about to recommence.²⁶⁷

A curious proceeding followed, which went all the way to the

new Governor, while Mary Ellender and Peggy Frankland produced a petition with 4,389 signatures against the operations. See PIONEERS, *supra* note 4, at XVI; Heroes & Horrors, *supra* note 13, at 62.

260. Knight’s Tritico Interview, *supra* note 93 (“However, there was a catch. A derailment catch. Knapp decided to assign an oversight committee for us. That oversight committee was a bad idea. It was all industry folk.”).

261. See Heroes & Horrors, *supra* note 13, at 62 (“Jim Porter . . . got the state representative and senator from our district to object and to convince Treen that citizens could not be given money that way, that it would have to through Porter’s hands.”). Porter went on to head the oil and gas industry lobby. See *Panelist Bio: Jim Porter, President of the Louisiana Mid Continental Oil and Gas Association*, LA. PUB. SQUARE, http://beta.lpb.org/index.php/publicsquare/lps_bio/jim_porter (last visited Sept. 9, 2016).

262. Knight’s Tritico Interview, *supra* note 93.

263. *Id.*

264. *Id.* (“Instead we got people sampling stuff that they knew would lead to inconclusive results. That was the effect of having industry act as oversight for our Citizens Committee. Could’ve been great. Instead, it was exactly what it was, a derailment mission disguised as a genuine attempt by the state to satisfy our concerns for good science.”).

265. Heroes & Horrors, *supra* note 13, at 63.

266. *Id.*

267. *Env’tl. Control Comm’n v. Browning-Ferris Indus., Chem. Servs., Inc.*, 450 So. 2d 1292, 1295 (La. 1984) (“In March, 1983 the [ECC] reconvened the public hearings on the reported contamination.”).

Louisiana Supreme Court. Everyone at the hearing including Knapp, industry counsel, the State Attorney General's office, and commission members themselves seemed confused as to what was on the table.²⁶⁸ When the smoke cleared, the ECC, still part and parcel of the industry-oriented DNR, did the unimaginable: it shut down the dump.²⁶⁹ As unimaginable, the order was affirmed by the court of appeals, which ruled that BFI had in effect been rope-a-doping along for years without a proper permit and, therefore, could not legitimately complain of its revocation.²⁷⁰ The company appealed again, this time to the Louisiana Supreme Court.²⁷¹

Ominously to the Willow Springs cohort, the high court issued a stay order until the appeal could be heard.²⁷² In response, Ruth Shepherd, Peggy Frankland, and Shirley Goldsmith of the newly formed Lake Charles group CLEAN traveled to the Supreme Court building in New Orleans with a champagne bottle of "Willow Springs Sparkling Water," drawn

268. *Envtl. Control Comm'n*, 450 So. 2d at 1296–97 ("The hearings were conducted without strict adherence to any formalities. The order of the presentations each day was determined by the convenience of some of the parties. No burden of proof ever was established, no witnesses were sworn, no formal discovery techniques were used, and no rules of evidence were followed It is helpful to determine first what the commission sought to accomplish through its series of public hearings However, on the last day of the hearings it was still not settled whether the commission could [actually] close the [Willow Springs] facility.").

269. *Id.* ("The [ECC] is the enforcement arm of the [DNR] in matters dealing with the environment [The ECC] ordered . . . that BFI would cease and desist the receipt of all hazardous waste materials by *December 31, 1983* for landfill cells and immediately initiate the closure of all such cells") (emphasis in original) (internal quotations omitted). For some notion of just how surprising this ECC action was, see Mary Ellender's description of an ECC hearing on a similar hazardous waste permit: "There was one elderly man on the committee and he used the time to take a nap. The other committee members would come and go and drink coffee, and you felt like you were talking to a brick wall, and in some ways we were." PIONEERS, *supra* note 4, at 103–04 (interview with Mary Ellender).

270. *Envtl. Control Comm'n v. Browning-Ferris Indus., Chem. Servs., Inc.*, 446 So. 2d 755, 759 (La. App. 1 Cir. 1983) ("It is admitted that a schedule of compliance was issued on December 30, 1980. After this date, the permit issued by the prior agency was no longer effective. The order of May 12, 1983, therefore was the amendment of an existing schedule . . . or the issuance of a replacing one. We find no bar to that action, especially since BFI had neither a permit nor a pending application for one. The requirements of the statutes and regulations governing the revocation of a permit, therefore, are not relevant.").

271. *Envtl. Control Comm'n*, 450 So. 2d at 1292.

272. *Envtl. Control Comm'n v. Browning-Ferris Indus., Chem. Servs., Inc.*, 444 So. 2d 1213 (La. 1983) ("Execution of . . . the May 12, 1983 order of the [ECC] requiring that appellant cease the receipt of hazardous waste for land filling operations . . . is hereby stayed until further orders of this Court.").

from Rigmaiden's shallow water well, for the justices "not to drink."²⁷³ At first their gift was rejected. When they then asked, all innocence, "Well, what will we tell the media [people]?" who were standing right behind them, a clerk accepted the bottle.²⁷⁴

It was the court's last favor. Two months later it did an about face, invalidated the decision on procedural grounds, and then, on its own initiative, went on to exonerate BFI from any suggestion of serious adverse impact.²⁷⁵ The tip-off came in the second sentence of the opinion, referring casually, as if it were not the crux of the issue, to the BFI dump as a "secure" facility, accompanied by a footnote describing the clay liners, etc.²⁷⁶ No mention was made of the life span of these liners, nor of the sandy Willow Springs soils, nor of the migration of toxins already released and spreading towards the Chicot aquifer. No mention was made of the Willow Springs citizens' testimony about what the dumping was doing to their lives.

The decision was a blow to District Attorney Knapp, who had represented the ECC throughout. It was an even harder blow to the Willow Springs residents who, after years of fighting for closure, had every reason to believe they had won. Three dissents from the majority opinion made the court's overreaching plain.²⁷⁷ If the procedures below were wrong, the proper course was a remand to follow the right ones.²⁷⁸ An exoneration of BFI's impacts went too far.²⁷⁹ The court was not the commission.²⁸⁰

273. PIONEERS, *supra* note 4, at 48 (interview with Ruth Shepherd). The account of the water's reception that follows is taken from this source.

274. *Id.* ("That was funny. I have retained my sense of humor . . .").

275. *Env'tl. Control Comm'n*, 450 So. 2d at 1301 ("There is no proof in the record that the current operation of BFI's landfill cells cause[d] the health problems of which some witnesses complained. In fact, there is no proof that the current operations either caused or contributed to those contaminants which were found.").

276. *Id.* at 1295 n.1 ("On the facility, BFI has secure landfill cells into which BFI deposits solid wastes The secure landfill cells are designed basically as follows . . .").

277. *Id.* at 1301-03 (Dennis, J., dissenting in part; Lemmon, J., dissenting; and Watson, J., dissenting).

278. *Id.* at 1301 (Dennis, J., dissenting in part) ("The proper disposition called for is vacation of the commission's order and a remand of the case in light of this court's interpretation of the legislated law.").

279. *Id.* at 1302 (Dennis, J., dissenting in part) ("[I]t is not the proper place of this court to perform the commission's function by reviewing the evidence de novo, making findings of fact and issuing administrative orders.").

280. *Env'tl. Control Comm'n*, 450 So. 2d at 1302 (Dennis, J., dissenting in part) ("This court is not an environmental control commission.").

Justice Watson went further.²⁸¹ A court could only gainsay an agency decision if it was “arbitrary, capricious or manifestly erroneous.”²⁸² Here, none of those adjectives applied. Experts had testified that two-thirds of the site above the fifty-foot zone was contaminated.²⁸³ A state lab director testified to “an alarming level” of radioactivity.²⁸⁴ A University of Texas pharmacologist testified that chemicals were migrating from the site and penetrating the tissues of bass and catfish in local waters; “[W]hen you’ve got people that are reporting whelps on their skin, when you’ve got fish that will die,” he said, “there is a different kind of responsibility.”²⁸⁵ Dr. Jones, of Baton Rouge, whom we have heard from earlier, testified that there were two hydraulic connections between the site contamination and the 200-foot level sands of the Chicot Aquifer, the freshwater source for the entire region.²⁸⁶ Jones had concluded: “Continuing to put hazardous waste in cell # 8 would be a—an invitation, just an out right invitation to contamination of the 200’ sand.”²⁸⁷ His testimony was corroborated by an employee of the DNR itself, who had observed an earlier blowout in cell number six.²⁸⁸ What more did one need? Tritico could not have said it better.

To no avail. Another door slammed shut. If in succeeding years the remaining residents of Willow Springs continued to see the tanker trucks, smell the fumes, watch neighbors sicken and die, wonder about the health of their families, and be tempted to reach for a gun, that would have been an unlawful act but it would have not been beyond understanding.

281. *Envtl. Control Comm’n*, 450 So. 2d at 1303 (Watson, J., dissenting) (“Despite the evidence of irreparable injury from BFI’s continued operations, the majority has arbitrarily substituted its own judgment for that of the commission The majority’s result, a flagrant disregard of the legislature’s intention in passing the environmental protection legislation, is a tragic continuation of BFI’s poisonous practices.”).

282. *See Env’tl. Control Comm’n v. Browning-Ferris Indus., Chem. Servs., Inc.*, 446 So. 2d 775, 760 (La. App. 1 Cir. 1983) (“We have examined the entire record and find that the unanimous action of the Commission is supported by the record and is not arbitrary, capricious or manifestly erroneous.”).

283. *See Env’tl. Control Comm’n*, 450 So. 2d at 1302 (Watson, J., dissenting).

284. *Id.*

285. *Id.*

286. *See id.*

287. *Id.*

288. *Env’tl. Control Comm’n*, 450 So. 2d at 1302–03 (Watson, J., dissenting).

7. THE LIVINGSTON DERAILMENT

During the ECC proceedings, another notorious accident rattled the Louisiana hazardous waste world. A mile long Illinois Central Railroad freight train with forty-three tank cars of toxins derailed in the town of Livingston, about a half hour east of Baton Rouge.²⁸⁹ Fireballs of poison shot over one hundred feet in the air.²⁹⁰ The heat was so intense firefighters could not approach it, and for days the explosions rocked the area.²⁹¹ Tankers lay crumpled on the ground “like an accordion.”²⁹² More than 2,700 residents were evacuated so rapidly they carried no spare clothing with them, not even tooth brushes.²⁹³ It saved lives but their plight once again, like that of Kirtley Jackson at Bayou Sorrel a few years earlier, made state and national news.²⁹⁴ It was later determined that the train engineer was intoxicated, and that he had a female companion with him at the time.²⁹⁵ Indeed, she was at the controls.²⁹⁶ So far it was a rather classic, local Louisiana screw up.²⁹⁷ It was over two-hundred miles from Willow Springs.

Peggy Frankland, who lived in the country west of Lake

289. See MARKOWITZ & ROSNER, *supra* note 68, at 245–46; Keitha Nielson & Robb Hays, *25th Anniversary of Livingston Parish Train Derailment*, WAFB-TV, <http://www.wafb.com/global/story.asp?s=7144530> (last visited Sept. 12, 2016) (accompanying photographs show the “fireballs of poison”).

290. See Nielson & Hays, *supra* note 289.

291. See *id.*; see also Reginald Stuart, *Derailment Still Keeps 1,500 Away from Town*, N.Y. TIMES, Oct. 11, 1982, at A12 (“Over the next few days, a series of explosions occurred at the derailment site in the middle of town. The threat of more explosions, along with fires, spilled chemicals, and toxic fumes, has kept the townspeople away.”).

292. Nielson & Hays, *supra* note 289 (quoting eyewitness Wayne Henderson).

293. See PIONEERS, *supra* note 4, at XIV; Nielson & Hays, *supra* note 289; Stuart, *supra* note 291 (“Nearly all of the evacuees left their homes with only the clothes they were wearing, without money or valuables and some without identification.”).

294. See Nielson & Hays, *supra* note 289; *Derailment Report: Engineer too Drunk to Sit Up*, LAKELAND LEDGER, Nov. 16, 1982, at 3A, available at <http://news.google.com/newspapers?nid=1346&dat=19821116&id=G5MsAAAAIABAJ&sjid=nPsAAAIABAJ&pg=5811,12845>.

295. *Derailment Report: Engineer Too Drunk to Sit Up*, *supra* note 294; *3 Arrests Made In Train Accident*, N.Y. TIMES, Oct. 15, 1982.

296. *Derailment Report: Engineer Too Drunk to Sit Up*, *supra* note 294 (noting that Janet Byrd, a railroad clerk, claimed that she was forced to take control of the train when it was apparent the driver was “too drunk to sit up”).

297. For a hauntingly similar incident involving a derelict Louisiana tugboat captain, see Jen DeGregorio, *Tug’s Pilot Jumped Ship to Visit Girlfriend at Time of Mississippi River Oil Spill*, TIMES-PICAYUNE, (Oct. 22, 2008, 8:00 AM), http://www.nola.com/news/index.ssf/2008/10/tugs_pilot_not_on_board_when_o.html.

Charles, remembers seeing the mayhem on television and thinking, too bad, but it is a long way away.²⁹⁸ A few weeks later the headline of the Lake Charles newspaper read, “BFI, ICG PASS DUMPING BUCK.”²⁹⁹ To her horror she read that the poisoned soil from Livingston was being trucked all the way across South Louisiana to the BFI landfill at Willow Springs.³⁰⁰ Apparently the state was allowing the trucks to run almost 20,000 pounds overload to facilitate the process.³⁰¹ The trucks themselves belonged to BFI and a subcontractor, who turned out to be a state representative, in on the bargain.³⁰² As for trucking the toxins to Calcasieu Parish, everyone passed the buck.³⁰³ BFI said it was the railroad’s decision. The railroad said it was BFI’s. Both said they had no choice: Livingston had banned disposal in that parish.³⁰⁴

Peggy Frankland believed in going to the source. She called the Secretary of DNR directly, reached him on the line, and was told that hazardous waste had to go somewhere and she had to accept that “it was going to be in your backyard.”³⁰⁵ She called her state representative, who treated the matter more lightly; she should see the load of “really bad stuff” they had just shipped over to Texas.³⁰⁶ The state was going to be a dead end.

298. See PIONEERS, *supra* note 4, at XIV (“It was reported as the worst train derailment accident in Louisiana’s history . . . I registered this as a problem that I could do nothing about.”).

299. *Id.*

300. *Id.*

301. *Id.* (“I also learned that allowing the trucks to overload meant substantial savings for BFI . . . State officials admitted that the trucks carrying the waste had overloads ranging from five thousand to seventeen thousand pounds.”).

302. *Id.* at XV (“It was soon revealed that the trucks hauling the waste belonged to BFI, which also owned the landfill, and a subcontractor, Strainco, Inc., which was owned at the time by State Representative Bill Strain of Abita Springs, Louisiana.”).

303. PIONEERS, *supra* note 4, at XIV–XV (“No one wanted to take responsibility for transporting the toxic waste into Calcasieu Parish . . . the BFI manager was quoted as saying that ICG made the decision to dump the waste in Calcasieu Parish, though reports indicated that BFI/Willow Springs was the highest bidder on the disposal project.”).

304. *Id.* at XV (“Jim Glasch of ICG’s corporate headquarters said the railroad had virtually no option in selecting a dump site. A day later he said that the decision to use the Calcasieu facility was made after the mayor and commissioners of Livingston passed an ordinance making it illegal for the railroad company to have the waste dumped in Livingston.”).

305. *Id.*

306. See *id.* at XV–XVI (“He told me that I was worrying too much and assured me that it was a common practice to send waste to other areas. As a matter of fact, he

Frankland had never seen Willow Springs. She got in her car and drove over; she could tell she was there by the smell. She contacted Mary Ellender, another housewife who had successfully campaigned against barging hazardous waste to Carlyss, and they decided to canvas the neighborhood, which she decided was her neighborhood too. She lived four miles away, but, in a sense, “it was another world.”³⁰⁷ She met Ruth Shepherd and her neighbor, Ruth Duhon, whom she described as even more outspoken.³⁰⁸ Frankland remembers getting telephone calls from Duhon at odd hours of the day and night.³⁰⁹ “Peggggggy,” the voice would say, as if shaking a can of gravel, “You got to get over here. They at it again!”³¹⁰

Frankland and Ellender teamed up for another petition to close the BFI facility, and collected 4,389 signatures this time.³¹¹ They also conducted a door-to-door health survey of every house on the ridge.³¹² In Ellender’s words, “[T]here was not a home that didn’t have some kind of illness or respiratory problem.”³¹³ Many of them had shallow wells.³¹⁴ “When they showed us the pots they were cooking and boiling their water in,” Ellender continues, “there was green stuff on the sides of them.”³¹⁵

None of which would have mattered, but for the fact that BFI still had an application pending before the ECC for a disposal permit. The Louisiana Supreme Court might have rejected the commission’s ban, but the company still needed state approval. A series of public meetings followed, some quite emotional. In one, an industry witness called Ruth Shepherd a “liar,” which brought her husband, a large and reticent man, down the aisle, bursting with anger, unable to say anything but, “[Y]ou called my wife a

said, ‘Just yesterday we shipped a load of really bad stuff to Texas from a local petrochemical plant in Westlake.’”)

307. PIONEERS, *supra* note 4, at XVI.

308. Frankland Interview, *supra* note 97.

309. *Id.*

310. *Id.*

311. See PIONEERS, *supra* note 4, at XVI; E-mail from Peggy Frankland to author (Sept. 2, 2016, 3:11 PM CST) (on file with author & Loyola Law Review). The first petition, years earlier, was that of Mabel Rigmaiden Jones. See discussion, *supra* note 89.

312. See PIONEERS, *supra* note 4, at 104 (interview with Mary Ellender); Ellender Interview, *supra* note 78.

313. See *id.*

314. See Ellender Interview, *supra* note 78.

315. *Id.*

liar about what she knows?”³¹⁶ He was crying.³¹⁷ On another occasion a local medical doctor, listening to a state witness defending BFI, came down the aisle, grabbed the microphone and shouted, “This is exactly what I mean about you being apologists for industry! We are not going to put up with this anymore!”³¹⁸ Feelings ran high.

The proceedings culminated in January 1985 with the largest environmental public hearing of the time. A newspaper account had 700 people at the meeting, educators, physicians, even a platoon of the Camp Fire Girls; aside from their attorneys and consultants, they were overwhelmingly opposed.³¹⁹ Carol Wascom, representing the new state environmental agency, remembers being on stage and thinking, “[W]e’re going to be here all night.”³²⁰ Leonard Knapp put on expert witnesses to testify to the current contamination and its risks.³²¹ A state senator from the area recited a series of company misrepresentations and broken promises, concluding, “[A] buzzard is still a buzzard no matter what you call it.”³²² The former manager of another disposal firm testified that wastes were routinely mishandled, and that he was unable to say so until then because he had quit the business.³²³ News photos show the Reverend Joseph Bartlett at the microphone, white-haired, dignified, a perfect gentleman.³²⁴ They also show three hearing commissioners, all from DNR which had been low-balling responses to this and other waste dumps for years.³²⁵ One of them is speaking, another is

316. Author’s Tritico Interview, *supra* note 61.

317. *Id.*

318. See Heroes & Horrors, *supra* note 13, at 66 (writing that they “thought [the doctor] was going to slug the [witness]”).

319. Ann Kidder, *Injection Well Permit Hearing Brings out Army of Protesters*, LAKE CHARLES AM. PRESS, Jan. 24, 1985, at 10.

320. Interview by Lara Richards with Carol Wascom, La. Dep’t of Env’tl. Quality, Baton Rouge, La. (2010) (on file with author & Loyola Law Review).

321. Kidder, *supra* note 319, at 10 (“The Calcasieu Parish District Attorney’s office presented three ‘expert witnesses’ on behalf of the Calcasieu Parish Police Jury and citizens groups opposed to the permitting.”).

322. *Id.* (quoting Sen. Cliff Newman).

323. *Id.* (explaining that “bootlegged waste wells routinely go unnoticed in oilfields”).

324. See *id.* (“The Rev. Joe Bartlett, who lives one mile north of the injection well, said odors from the facility have literally made him ill.”).

325. See *id.* Indeed, DNR had originally refused to designate any toxic-waste sites for cleanup under the federal Superfund program because they would tarnish the state’s image; only when it became public that DNR was thereby refusing millions in cleanup funding did the state reverse course. Telephone Interview with Willie

frowning, and the third appears terribly angry, as if he were being forced to eat the waste himself.³²⁶ Of course they would issue the permit. And they did.

Frankland, undaunted, then persuaded Herbert Rigmaiden to make his case at a congressional hearing in Washington.³²⁷ Rigmaiden had never flown in an airplane, and hid his few valuables at the house lest he not return, leaving Peggy with the key.³²⁸ As he tells it, he spent the flight admiring the small bottles of liquor handed out so freely, and the night before in his hotel room in a cold sweat, knowing that tomorrow “they will tear me to shreds.”³²⁹ It happened otherwise. The hearing featured several headline witnesses, including Lois Gibbs of Love Canal, but when it came Rigmaiden’s turn, according to Frankland, he stole the show.³³⁰ A tall black man and an obvious son of the earth, he spoke in a low, sincere voice about losing his well, about having to haul water, about losing his cattle.³³¹ Which were his exit lines. He said that he still sold cattle, and who knows where they went. “I want you to think,” he told the hearing room, “like I have to think, that when I go buy beef from my own cattle who have been eating down here, and you might be too.”³³² The room was very quiet.³³³

Actually, Rigmaiden had sworn off beef by that time.³³⁴ On a return trip to Washington, Frankland also managed to corner a Louisiana Senator and convince him to fund an alternate water supply for the residents of Willow Springs.³³⁵ The burden of hauling water began to ease.

Washington, in turn, came to Willow Springs in the form of U.S. Representative Buddy Roemer, now on an improbable road

Fontenot (Aug. 31, 2016) (on file with author & Loyola Law Review).

326. See Kidder, *supra* note 319. The angry-looking individual was Herbert Thompson, Director of the Louisiana Department of Conservation. *Id.*

327. See PIONEERS, *supra* note 4, at XVIII–XIX.

328. See Author’s Rigmaiden Interview, *supra* note 17.

329. See *id.*

330. See PIONEERS, *supra* note 4, at XIX; Frankland Interview, *supra* note 97.

331. PIONEERS, *supra* note 4, at XIX (“[Rigmaiden spoke] in a beautiful way, with an African American, Louisiana accent, in a voice that was strong, humorous, eloquent, and evocative of a way of life we knew.”).

332. Author’s Rigmaiden Interview, *supra* note 17.

333. Frankland Interview, *supra* note 97 (“When he stopped, you could have heard a pin drop.”).

334. Author’s Rigmaiden Interview, *supra* note 17.

335. July 2012 Letter, *supra* note 7.

to the state governorship.³³⁶ Persuaded to visit the community, he found himself at the Rigmaiden home with several residents and the press. The BFI operation of course came up. Roemer, genuinely interested, said that he was going to have to “go right now and see that dump for myself.” Which provoked smiles in the room. When asked why the amusement, Rigmaiden said “they ain’t going to let you on that place, no way,” to which the Candidate replied, “They can’t stop me, I’m a U.S. Congressman.” Which perked up the press. Sure enough, they all went over, the guards came out, and the congressman was denied entry. The paper next day featured a front-page photo with the candidate by the fence and two mean-looking guards. The headline read, “Congressman Barred From Waste Site.” Good publicity for Willow Springs. And a lasting memory for Roemer, who jumped from eleventh place in the polls to number two, and went on to become governor.³³⁷

By this juncture, the late 1980s, BFI was permitted but important restrictions followed. The open lagoons would be closed.³³⁸ All imported wastes would be stored in closed tanks until they were injected underground.³³⁹ A few years later the company, under pressure from the Roemer administration and with no appetite to engage in extensive site monitoring, agreed to stop commercial imports altogether, limiting the traffic to wastes from their own facilities.³⁴⁰ What impact this continuing injection and the contamination already radiating from the site would have on local waters and the Chicot Aquifer remained in doubt, but at least, barring upsets not uncommon to this business, the direct and daily exposures to the Willow Springs community were a thing of the past.

Nonetheless, the facility remained in operation, they wanted it closed, and they had suffered a great deal. Their last weapon was the civil lawsuit filed in 1980 and looming in the distance like a cloud.

336. Heroes & Horrors, *supra* note 13, at 54–55; Author’s Tritico Interview, *supra* note 61. The account of Roemer’s visit that follows is taken from these sources.

337. See Heroes & Horrors, *supra* note 13, at 55.

338. Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc., 96-218, p. 2 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1320.

339. *Id.* (“By 1988, all waste coming into the site was put into a tank system.”).

340. See Knapp Interview, *supra* note 249.

8. THE LONG WAIT

The Willow Springs case still hangs over Lake Charles like a storm that never broke, a wound not yet healed. The verdict was not a loss, not technically, but it felt like one. Tritico, who had been advocating peaceful assembly, science, and the rule of law, felt it like a heart attack.³⁴¹ Rigmaiden to this day feels betrayed.³⁴² Vincent died shortly thereafter.³⁴³ Bartlett followed.³⁴⁴ What in the world happened?

For one thing, the passage of time. Civil actions like this one and public law actions like the ECC's attempt to close the BFI operation treat similar problems—industrial pollution—in very different ways. In years past, indeed for the life of the law up to the 1960s, public law cases enjoining environmental injuries were practically non-existent because the public laws did not exist either. Civil claims for damages were the remedy, similar to those from an automobile accident or a slip and fall.³⁴⁵ As America went industrial, however, environmental damage claims did not fit the bill.³⁴⁶ For one, they were frustratingly difficult to prove: there were often multiple causes of multiple illnesses that might not appear until a decade or more down the line.³⁴⁷ They were also frustratingly ineffective; no mother of a cancer patient is going to be made whole by money. Just ask her.

For these reasons, starting in the 1970s, Congress enacted a spate of regulatory laws that did two important things: they eliminated proof of causation and harm—the unlawful discharge

341. Knight's Tritico Interview, *supra* note 93 (explaining that he felt "as though he had been knocked in the head with a sledgehammer" when he heard the verdict).

342. Author's Rigmaiden Interview, *supra* note 17 (explaining that he feels "very bitter over the trial outcome," and that he was "betrayed by the lawyers").

343. *Id.*

344. *Id.* ("Both Vincent and Bartlett died shortly afterwards, Vincent from illness [that Rigmaiden] feels sure [was] related to BFI, Bartlett from cancer, like so many others.").

345. Nuisance actions, private and public, were also available but with significant limitations. See *generally* GERALD W. BOSTON & M. STUART MADDEN, LAW OF ENVIRONMENTAL AND TOXIC TORTS 38–92 (West 1994).

346. See JOSEPH L. SAX, *Preface* to CLIFFORD RECHTSCHAFFEN & DENISE ANTOLINI, CREATIVE COMMON LAW STRATEGIES FOR PROTECTING THE ENVIRONMENT xvii–xxii (2007) ("Nearly 40 years ago, when environmental law was in its infancy, there was at least one thing that everyone understood: the traditional common law remedies were utterly inadequate to deal with contemporary environmental problems, and a whole new body of law—indeed a new conception of law—was needed."); BOSTON & MADDEN, *supra* note 345, at 3–20.

347. For a classic illustration of these difficulties, see HARR, *supra* note 45.

itself was prohibited—and they were proactive, preventing harm instead of waiting for it to happen.³⁴⁸ Once on the books, these new laws seemed to be the solution. Civil remedies were passé.

Then reality intervened. Public laws, including those regulating waste dumping, were only as good as the government agencies that executed them, which were in turn under heavy pressure from affected industries to find escape valves and, when things went wrong, simply look the other way.³⁴⁹ (Over time, particularly with hazardous wastes, industries would go one better and have Congress absolve them entirely.)³⁵⁰ The public law machine began to sputter. Further, even if one were to violate a public law, so what? At worst, one could pay a fine and keep on trucking. Perhaps, instead of a fine, there would be only a compliance order to do better next time, which became standard practice in Louisiana.³⁵¹ It was called working with stakeholders.

348. See SAX, *supra* note 346 (“The late 1960s through the early 1970s was an extraordinary period of public awakening, not only to the need for environmental protection, but to the urgency of far-reaching and fundamental legal reform.”). The federal air, water, and waste laws first enacted in the 1970s made unpermitted discharges unlawful, and then based standards for permits on thresholds of best technology and human and environmental harm. See, e.g., 33 U.S.C. §§ 1311–17 (2012). While harm-based standards have tended to raise the same causation and proof problems faced by civil lawsuits, the technology standards have reduced industrial pollution significantly. See U.S. ENVTL. PROT. AGENCY, WATER QUALITY IMPROVEMENT STUDY (1989) (showing dramatic reductions in industrial discharges and over 20% improvement in receiving water quality from the initial round of technology standards). That said, discharges of toxins in some industrial categories remain impressively high, particularly in Louisiana. For example, while national air toxic emissions decreased by 8% from 2010–11, Louisiana emissions increased by 1.2%; the same discrepancy occurred with toxic discharges to water. See *Toxic Release Inventory for 2011*, LA. ENVTL. ACTION NETWORK (Jan. 17, 2013), <http://leanweb.org/our-work/community/public-health/toxic-release-inventory-for-2011>. For the nature, volume, and effect of these discharges along the Calcasieu, see BREATHING POISON, *supra* note 73, at 2–3.

349. For the notorious record of environmental-law enforcement in Louisiana, see discussion *infra*, notes 351 and 476; Houck, *supra* note 46. For the federal record in the early 1980s, see JONATHAN LASH ET AL., A SEASON OF SPOILS: THE REAGAN ADMINISTRATION’S ATTACK ON THE ENVIRONMENT 45–54 (1984) (discussing enforcement during the 1980s, and quoting EPA Enforcement Counsel, “Every case you refer to Headquarters will be a black mark against you”).

350. See Cox, *supra* note 87 (discussing oilfield waste exemption); Energy Policy Act of 2005, Pub. L. No. 109-58, tit. 3C, § 322, 119 Stat. 594, 694 (2006) (exempting hydraulic fracking process from federal regulation).

351. For a common example of a consent-order-in-lieu-of-penalty, see La. Env’tl. Action Network v. Sun Drilling Prods. Corp., 716 F. Supp. 2d 476, 477–78 (E.D. La. 2010) (“In May of 2008, the [LDEQ] began an investigation of Sun Drilling for alleged violations of clean water regulations in Louisiana. The matter was turned over to the enforcement department of the LDEQ on February 26, 2009. Following the procedure

It meant pollution for free.

Re-enter private civil law. Starting in the 1970s, injured parties launched major lawsuits against high-profile industries that had proven to be untouchable by legislation and regulatory agencies. They involved asbestos, mercury, dioxins from pulp and paper mills, and most notoriously cancer from the tobacco industry and they produced large, in some cases unprecedented, damage awards.³⁵² The Exxon Valdez oil spill in Alaska led to a federal criminal penalty of \$100 million;³⁵³ the jury award in the subsequent civil case was \$6 billion.³⁵⁴ It is not hard to imagine which verdict more shaped subsequent corporate behavior.

So it was in Louisiana where the petrochemical business over the years had little to fear from state regulators, most of whom considered industry to be their clients and were reluctant to pull the trigger.³⁵⁵ What industry feared more were ordinary

of the [Clean Water Act], Plaintiff filed its notice of intent to sue on July 23, 2009. The [LDEQ] issued a compliance order on September 9, 2009. The compliance order did not include any civil penalties.”). For contemporary enforcement in Louisiana, see *infra* note 482. Moreover, the Louisiana judiciary has been less than eager to sanction pollution-law violators. See Keith Goldberg, *Citgo’s 2006 Oil Spill Penalty Boosted to \$81M*, LAW360 (Dec. 23, 2015, 3:24 PM), <http://www.law360.com/articles/741774/citgo-s-2006-oil-spill-penalty-boosted-to-81m> (“In imposing the original penalty—which totaled \$9 million and included \$3 million to cover state law violations—back in 2011, U.S. District Judge Richard T. Haik Sr. said that evidence presented at trial did not support a finding of gross negligence or willful misconduct against Citgo for failing to prevent a rain-induced leak at its Lake Charles refinery that led to a June 2006 oil spill. However, he was persuaded to change his tune after the Fifth Circuit ordered him to reassess the penalty and re-examine the possibility of gross negligence on Citgo’s part due to its history of past environmental violations.”).

352. See Troyen A. Brennan, *Environmental Torts*, 46 VAND. L. REV. 1–3 (1993) (“Over the last two decades, a new class of torts has emerged that targets personal injuries caused by toxic substances in the environment While comprehensive evidence on the number and average severity of environmental tort claims nationwide is not available, published cases would suggest both are at unprecedented high levels.”). For examples of environmental and toxic tort cases, see *id.* at 2 n.1, 6 n.16, 28 n.80 (discussing pollutants such as asbestos, mercury, dioxin, and pesticides, among other substances).

353. See Exxon Valdez Oil Spill Tr. Council, *Oil Spill Facts: Settlement*, <http://www.evostc.state.ak.us/index.cfm?FA=facts.settlement> (last visited Sept. 12, 2016). Exxon settled for an additional \$900 million in civil fines. *Id.*

354. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 514 (2008) (announcing new rules for punitive damages, the Supreme Court reduced the original jury award of \$6 billion to \$507.5 million).

355. See Snyder, Special Report, *supra* note 1; see also Schneider, *supra* note 3, at 26 (“Unwilling during the last quarter-century to upset industrial expansion and anger the state’s \$20-billion-a-year petroleum and chemical bloc, Louisiana’s elected officials and civil servants allowed the petrochemical industry to operate

people living in fence-line and down-stream communities who might not win, but if they did could produce large damage awards and like harm to public image and investments. Civil cases, then, became a relatively infrequent (they were hellaciously expensive to assemble and prove) but important partner to public law in the environmental compliance game.³⁵⁶ As in other walks of life, the mere prospect of civil litigation changed behavior.³⁵⁷ Willow Springs was Louisiana's first of several cases to focus on the hazardous waste disposal industry.³⁵⁸ The plaintiff's problem was that, by the time it came on, BFI's behavior had already been substantially changed. For one thing, it was no longer selling waste services on High Hope Road.³⁵⁹

The 1980 pleadings asked for personal and property damages suffered by some 400 Willow Springs residents, and for an injunction closing the site.³⁶⁰ Thirteen years earlier the injunction claim had real legs. The harm was imminent, indeed it came on a daily basis and state authorities were nowhere to be found. Either the judicial branch addressed it or no one would. By 1993, however, even if this case were to produce a closure order it is doubtful it would survive an appeal. The state had become the regulator, the site was under significant restrictions, and the Louisiana Supreme Court had made clear that it saw no emergency here.³⁶¹ If it had already rejected an injunction from the ECC, the official state environmental agency, an ad hoc civil court injunction was also unlikely to stick. Effectively, then, the plea for Reverend Bartlett and Guidry Vincent was reduced to money damages.

After all this time, however, proving damages was a challenge of its own. People had died.³⁶² Others like Mabel Jones had moved away ("Everyone was dying of cancer. And so I said,

unfettered . . .").

356. J. Michael Veron, *Oilfield Contamination Litigation in Louisiana: Property Rights on Trial*, 25 TUL. ENVTL. L.J. 1, 14–15 (2011).

357. Consider, for example, the effect of potential liability on the behavior of motorists.

358. For a discussion of subsequent cases see Houck, *supra* note 248, at 421–24.

359. See discussion *supra* notes 339–40.

360. See *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 3 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1321; Knapp Interview, *supra* note 249. The plaintiffs were not grouped into a class action because their exposures and injuries differed, but they were grouped into 125–130 claims for trial, with Bartlett and Vincent taking the lead. Knapp Interview, *supra* note 249.

361. See discussion, *supra* notes 271–76.

362. See discussion, *supra* notes 343–44.

well, if I'm not affected by cancer, maybe I need to move. So I moved. Because I just couldn't take it no more.”³⁶³ Newcomers had moved in, with no idea of how it used to be. The fresh water springs had long been closed.³⁶⁴ There were fewer farm animals, and they were now behind fences.³⁶⁵ Absent a slip-up in off-loading or an accident on the site, the fumes were only occasional, tolerable.³⁶⁶ Perhaps worst of all the remaining long-term residents had become resigned to the injury. Their memories had faded, names, dates, what they were thinking, what they had experienced, what they had feared. The incidents at issue had first washed over them in the 1960s, a quarter century ago.

It is hard to blame plaintiffs for the delay. They could have brought the case to trial sooner but they had good reason to hope that the government would shut BFI down, which was the main objective. By the time of trial, damages were more about vindicating their hardships from an industry that had ignored and dismissed them than money in the bank.³⁶⁷ Their lawyers also experienced serious difficulty in discovering BFI information, and in defending their clients from endless rounds of depositions, each costly and time consuming, wearing them down.³⁶⁸ BFI counsel sent multiple-page discovery requests, replete with technical and highly sophisticated questions, to every named individual. Several of them could not read or write. Many were eliminated for failure to reply. Although the first case to trial involved Bartlett and Vincent only, to the plaintiff team their most credible and effective parties, BFI put on a scorched-earth defense at every step, fearing that a win would bring down the rest of the house.³⁶⁹

After several mini-trials over access to documents, BFI

363. Schmidt, *supra* note 2.

364. Frankland Interview, *supra* note 97.

365. *Id.*

366. *See id.*

367. *See* Author's Rigmaiden Interview, *supra* note 17; *see also* Knight's Rigmaiden Interview, *supra* note 18 (stating that all the money involved in the political and judicial process “allowed [the petrochemical] industry to run over everyone”).

368. Interview by Jamal Knight with Don McKnight, in Lake Charles, La. (Mar. 12, 2012) [hereinafter McKnight Interview] (on file with author & Loyola Law Review). The description of the discovery difficulties that follows is taken from this source.

369. *See id.* A related difficulty was identifying the multiple corporate structures through which BFI shielded itself from the operation. Discovery and motions on this issue took months to resolve, and added yet more complexity to the trial. *Id.*

finally opened the vault and released a mountain of material, which required a herculean effort to assimilate and make useful.³⁷⁰ Tritico proved invaluable here, this was his meat, as did the wife of one trial team member.³⁷¹ Computers were just coming of age at this time, and much of the work was done by hand.³⁷² The question then became what to do with it.

Public and private actions are different creatures. In public cases one wants to saturate the record with evidence and extract the most salient parts later in briefs and arguments. The hearing is to make the record. Knapp, who had by this time retired as district attorney and joined the plaintiff team, was used to this approach; he had among other things represented the ECC in its ill-fated attempt to close the dump.³⁷³ The BFI documents, once released, must have been mesmerizing. All those waste manifests with individual numbers, all this nasty stuff going to Willow Springs, load by load, all of the nasty things that these particular chemicals did to living things, the studies, the tests. They had struck a mother lode, but they were presenting it to a lay jury, not a lawyer judge. It overwhelmed their case.

9. WILLOW SPRINGS II: *BARTLETT V. BROWNING-FERRIS INDUSTRIES*

Thirteen years in the making, the trial was a six-week marathon built on written pleadings and disputed motions that swelled to six volumes, some indexed from A to V.³⁷⁴ Now came thirty-three listed witnesses.³⁷⁵ When his time came, well into the trial, in an unfamiliar setting, Vincent told his story compellingly, dead chickens and all, as did Reverend Bartlett.³⁷⁶ But there were problems. Very few of the plaintiffs had seen doctors, for example, and the fact that most of them lacked money

370. McKnight Interview, *supra* note 368 (stating that the plaintiff's team spent "thousands of hours" going through reports and files from BFI).

371. See Author's Tritico Interview, *supra* note 61.

372. *Id.*; McKnight Interview, *supra* note 368.

373. See discussion, *supra* note 253–262.

374. See Knapp Interview, *supra* note 249; "First Set of Documents: Pre-Trial Litigation" summary (on file with author).

375. Trial Witness List, Trial Summary Report, *Bartlett v. Browning-Ferris Investors*, Civ. No. 80-6185 (14th Judicial Dist. Ct., Calcasieu Parish, La.) (on file with author).

376. See Knapp Interview, *supra* note 249; Author's Tritico Interview, *supra* note 61. The trial judge was also impressed by their testimony. See Interview by Jamal Knight with Judge Fred Godwin (Mar. 12, 2012) [hereinafter Godwin Interview] (on file with author & Loyola Law Review).

for doctors, some even transportation to doctors, and no habit of seeing doctors seemed casual, unconvincing.³⁷⁷ Out of pride, perhaps, some even denied fearing cancer, saying instead cautious things like, “[C]an’t say I did and can’t say I didn’t,” on the spot, under adverse questioning, head tucked in.³⁷⁸ One went so far as to say that he didn’t know what to fear, but that the fumes burned through his barbed wire within a year and he’d never seen anything like that.³⁷⁹ The defense of course played up the “inconclusive” nature of the science and the importance of the chemical industry to the region—an industry that, in one way or another, provided livelihoods for most of the jurors—and painted the plaintiffs as simply seeking free money.³⁸⁰ Who knew what a big verdict might do to the region. As the trial judge recalled later, “[T]here was no bombshell.”³⁸¹

The verdict, though, was a bombshell. No one involved, including the judge, seemed to have anticipated it.³⁸² The jury found that the waste operation was not “ultrahazardous” and so strict liability, without fault, did not apply.³⁸³ It also found that, despite the fumes and leakage, BFI did not operate negligently.³⁸⁴

377. See Knapp Interview, *supra* note 249 (indicating that some residents were afraid to show weakness by fearing cancer, and did not help their case); see also Deposition of Alan Alexander at 26–28, *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, No. 80-6185 (14th Judicial Dist. Ct., Calcasieu Parish, Oct. 16, 1989) (did not see veterinarian for livestock illnesses; did not see a doctor for throat cysts and other symptoms); Deposition of Charles Bergeron, *supra* note 33, at 32–33, (did not see doctor). Bartlett, for his part, did see doctors but was told that nothing could be proven. See Deposition of J.W. Bartlett, *supra* note 34, at 59.

378. Deposition of Alan Alexander, *supra* note 377, at 27 (“I’ve had a couple of cysts grow on my throat and it’s been . . . I was around 15 years of age. And I’ve had it checked out by several different doctors and they really don’t know what caused these cysts to grow there. In fact, I just give up going, honestly. I don’t know if it’s related to this site here or if it’s not, really.”); Deposition of Sam Keys, *supra* note 5, at 20 (stating that he had some tumors removed, others “getting a lot worse on my back. And I say again, I don’t know whether that’s from BFI or not”).

379. Deposition of Sam Keys, *supra* note 5, at 41.

380. See Interview by Jamal Knight with Ernie Colonna, in Lake Charles, La. (Mar. 11, 2012) [hereinafter Colonna Interview] (on file with author & Loyola Law Review) (stating that the defense attorneys made the plaintiffs look “money hungry”). Colonna, a Lake Charles resident, also attended the trial regularly. *Id.*; see *Heroes & Horrors*, *supra* note 13, at 61–62.

381. See Godwin Interview, *supra* note 376.

382. *Id.*

383. See *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 5 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1322 (“The record here contains no evidence that a hazardous waste disposal facility cannot be safely operated or can cause harm even where due care is exercised.”).

384. *Id.* at pp. 6–7; 683 So. 2d at 1323.

It did find, however, that the activity, even done properly, constituted a “nuisance,” an actionable wrong, but then the second shoe dropped: no one in the community, not even Vincent with his family illnesses and dead chickens at the fence line, nor Bartlett who was knocked to his knees one morning by the fumes (corroborated by his wife), had suffered compensable harm.³⁸⁵ Not a single penny was awarded in damages.³⁸⁶ Plaintiffs had in effect won the battle and lost the war. How, even granting all of the above, could this have happened?

Everyone has reasons, and they may all be correct. But in this case, the verdict was so extraordinary, so different from what was anticipated, and so internally inconsistent, that one must try to understand them. To the plaintiff team, it started with the presiding magistrate. At an early stage of the actual trial it learned that the judge’s law partner had represented the hazardous waste industry before state agencies and the legislature, and BFI in particular.³⁸⁷ Indeed, claims Raleigh Newman who brought the original case and took the lead at trial, the partner had helped BFI secure its Willow Springs permit.³⁸⁸ Presented with the potential conflict, the judge claimed to have no knowledge of his former partner’s involvement but, with the attorneys in the room, called him up on the telephone, where it was confirmed.³⁸⁹ The judge nonetheless refused to recuse himself, as Newman asked him to do, but referred the issue to another judge to rule on the conflict issue.³⁹⁰

The outcome was entirely foreseeable. As the trial judge more recently acknowledged, his recusal would have meant dumping this complex proceeding, one of the first of its kind, ten years in preliminary motions and discovery, onto the desk of another judge who would then have to start from zero; no one

385. See *Bartlett*, at pp. 3–4, 10; 683 So. 2d at 1321, 1324 (“A review of the record reveals that, based on the evidence therein, the jury could reasonably have concluded that while the site did constitute a nuisance, the plaintiffs proved no damage beyond inconvenience.”).

386. *Id.* at pp. 10–11; 683 So. 2d 1319, 1325.

387. See Telephone Interview with Raleigh Newman (May 10, 2012) [hereinafter Newman Interview] (“The judge’s conflict was plain. His law firm had represented BFI . . . before the state legislature and agencies . . .”) (on file with author & Loyola Law Review); McKnight Interview, *supra* note 368 (“Judge Godwin was a former law partner with an individual who had been the chief lobbyist for BFI.”); Godwin Interview, *supra* note 376.

388. Newman Interview, *supra* note 387.

389. See *id.*; Godwin Interview, *supra* note 376.

390. Godwin Interview, *supra* note 376.

would want that.³⁹¹ Left unsaid was also obvious: one judge does not gainsay a colleague on as sensitive an issue as recusal (can he be “fair?”) unless the provocation is extreme. On the other hand, Newman and Knapp argued, the standard for recusal is not the fact of a conflict but its appearance.³⁹² Would people up on the Willow Springs ridge think they were receiving a fair trial from a man whose business partner represented BFI? Knapp, to this day, cannot see why the appearance problem was not evident.³⁹³

It is harder to assess, at this remove, the impact of the judge’s predilections, if such there were, on the case. Newman thought them lethal. He had considered the lawsuit “a lay-down winner” until the judge began ruling on jurors, allegedly dismissing some for cause, *sua sponte*, and thereby relieving the defense of having to use up its limited ration of strikes.³⁹⁴ According to Donald McKnight, second-chairing for Newman, the defense was removing black jurors as their names were called, and all who lived close to the site.³⁹⁵ With a decent jury, Newman contends, “[W]e’d have won hands down.”³⁹⁶ The court also ruled out key testimony, in his opinion, by way of example about a young worker at the mixing pits on site who became “very ill,” one “very hot day,” from a very “bad load.”³⁹⁷ The adverse rulings, per Newman, were so numerous that other attorneys, sitting in court, would ask him during a break, “[W]hat’s with the judge?”³⁹⁸

Tritico, in the spectators’ section, saw problems with the jury foreman, who raised his eyes skeptically each time Newman or a colleague was speaking, and occasionally joined a few near him in

391. Godwin Interview, *supra* note 376.

392. See AM. BAR ASSOC., MODEL CODE OF JUDICIAL CONDUCT, RULES 1.2, 2.3 (2007) (“A judge shall avoid all the appearance of impropriety and conduct conveying on appearance of bias or prejudice.”); LOUISIANA CODE OF JUDICIAL CONDUCT, CANON TWO, available at <https://www.lasc.org/rules/supreme/cjc.asp> (“A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.”); *but see* Slaughter v. Bd. of Supervisors of S. Univ. & Agric. & Mech. Coll., 10-1049, pp. 41–44 (La. App. 1 Cir. 8/2/2011); 76 So. 3d 438, 462–463 (holding that “appearance” alone is not a basis for recusal, which rather emasculates the Canon).

393. Knapp Interview, *supra* note 249.

394. Newman Interview, *supra* note 387.

395. McKnight Interview, *supra* note 368.

396. Newman Interview, *supra* note 387.

397. *Id.* See Trial Transcript, at 9627, Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc., 96-218 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319 (No. 80-6185) [hereinafter Testimony of Arabie] (on file with author & Loyola Law Review).

398. Newman Interview, *supra* note 387.

snickering at their statements.³⁹⁹ He was a rail tank inspector for cargoes of hazardous waste and other materials serving plants in the region,⁴⁰⁰ and to Tritico it was a mistake to keep him in the pool.⁴⁰¹ Of all the mysteries of trial work, jury selection, done in this era without the aid of jury pool surveys, psychological profiles, mock trials and other big-trial devices, were mostly guesswork and intuition. As a tactical matter, plaintiff counsel chose to exercise few strikes, which could have worked, exhibiting his confidence in the panel's fair-mindedness.⁴⁰² As became clear at the end, however, it didn't work.

Then there was the trial itself. Raleigh Newman was an experienced plaintiff lawyer.⁴⁰³ He came into the case because he knew the Bartlett family and had met the Vincents, "all honorable people."⁴⁰⁴ Newman's *modus operandi* had been to open his case by examining the lead defendant right out of the gate, the first thing the jury would see and hear.⁴⁰⁵ His purpose was to pin the defense down, eliminate "the wiggle room"; there would be no changing stories based on what the plaintiffs and their witnesses would say.⁴⁰⁶ "You don't try to win points at this point," he later explained, "you don't try to look good."⁴⁰⁷ Not trying to look good, of course, before a jury, was a risk.

As it turned out, the BFI witness, the manager of the Willow Springs site, knew his way around hazardous waste. Indeed, he had worked for the state's nascent and laissez-faire hazardous waste program before signing up with BFI.⁴⁰⁸ He was a tough nut to crack, evasive, deflective, calm. Asked about leaks into the river, he replied that people had been putting things in rivers since the 1800s.⁴⁰⁹ No, he didn't test the fish but the state had found pollution even worse upstream of the site.⁴¹⁰ Yes, there

399. See Knight's Tritico Interview, *supra* note 93.

400. Author's Tritico Interview, *supra* note 61.

401. See *id.*; Heroes & Horrors, *supra* note 13, at 62.

402. See Newman Interview, *supra* note 387.

403. *Id.*

404. *Id.* (explaining that he was not a "died-in-the-wool environmentalist, but he believed that when people got hurt they ought to be compensated for it").

405. *Id.*

406. *Id.*

407. Newman Interview, *supra* note 387.

408. Testimony of Arabie, *supra* note 397, at 9492.

409. *Id.* at 9496.

410. *Id.* at 9534. Tritico would later claim that the contamination was carried upstream by tidal pulses. Author's Tritico Interview, *supra* note 61 ("[Regardless] it contaminated wherever it went.").

were some odors, but no worse than other industrial sites,⁴¹¹ in fact they controlled odors by mixing the liquids with solids and burying them.⁴¹² No, they didn't keep a log of complaints,⁴¹³ if a problem came up with a particular shipment he'd call Houston and they'd alert the shipper.⁴¹⁴ There was always a reason for what was and was not done.

Were this the sum of the testimony, it might have been over in half a day. It was not, because the plaintiffs had succeeded in unearthing a ton of information about every load that went into the Willow Springs site for nearly two decades.⁴¹⁵ They had spent months simply cataloguing it, pulling out the worst ones, a massive record of toxic wastes.⁴¹⁶ Armed with these documents, Newman began questioning the BFI manager about each shipment, one by one, manifest by manifest, i.d. number by i.d. number, chemical by chemical.⁴¹⁷

A summary file of this interrogation, in single space type, on 24" paper, runs over sixty pages.⁴¹⁸ It went on for hours. It went on for three full days.⁴¹⁹ The jury, having to sit and listen to all this, apparently went quietly crazy. According to the judge, when Newman finally announced at the end of the third day that he had no more questions for the witness, the jury broke out in spontaneous applause.⁴²⁰ The judge had never seen anything like it before or since. He admonished the jury, but the damage was done. By the time Bartlett, Vincent, and other plaintiff witnesses took the stand to tell their stories this jury appeared more upset by what they had just been through than by whatever the Willow Springs people had gone through so many years before.⁴²¹

411. Testimony of Arabie, *supra* note 397, at 9516.

412. *Id.* at 9563.

413. *Id.* at 9546.

414. *Id.* at 9504, 9570.

415. *See* discussion *supra*, notes 370–74.

416. *See id.*

417. *See* Author's Tritico Interview, *supra* note 61; Godwin Interview, *supra* note 376.

418. *See* Testimony of Arabie, *supra* note 397.

419. *See* Godwin Interview, *supra* note 376.

420. *See id.* His responses that follow are taken from this source. McKnight acknowledges the incident, but ascribes it to the jury's active participation in the trial as a whole. *See* Telephone Interview with Don McKnight (May 30, 2012) (on file with author & Loyola Law Review).

421. *See* Godwin Interview, *supra* note 376. Observers Tritico and Colonna felt the same way, that the trial documents were a burden. Knight's Tritico Interview, *supra* note 93; Colonna Interview, *supra* note 380 ("All the paper—seemed to me that all

Hindsight is easy. In another context this approach could have been a winner. Withal, it established that in one ten-day period in 1980, 125 trucks unloaded twenty tons *each* of “Denka,” a liquid waste with a particularly strong odor.⁴²² Even as it was, at the close of testimony the plaintiffs had, according to another member of the trial team, three jurors firmly on their side.⁴²³ They also had three jurors adamantly against them, however, three white males including the dominant foreman, opposing any finding of responsibility and any monetary award.⁴²⁴ The other six jurors remained uncommitted throughout the deliberations, until the end.⁴²⁵ The conditions were bad. They had been through six full weeks of trial. Now, for their deliberations, they were sequestered,⁴²⁶ a fate worse than house arrest, confined to a single small room until let go, supervised, to the hotel for the night. For three more full days.⁴²⁷ The bailiff outside the jury room door reported yelling and screaming going on, often.⁴²⁸ Finally the middle could no longer hold. They reported a verdict. It was 9-3.⁴²⁹

Not without additional drama. Only eleven members of the jury came back to report their verdict.⁴³⁰ One holdout for the plaintiffs, a young black schoolteacher, remained in the jury room, crying.⁴³¹ She finally came into the courtroom, obviously

those witnesses would have done better if Raleigh would’ve just asked them simple questions as opposed to have them read papers they may or may not have seen and signed years ago.”)

422. Testimony of Arabie, *supra* note 397, at 9603.

423. McKnight Interview, *supra* note 368 (stating that three jurors were so strongly in favor of the plaintiffs that “they didn’t even want to enter the courtroom to deliver the verdict”).

424. *See id.*

425. *Id.*

426. Godwin Interview, *supra* note 376.

427. *Id.*

428. McKnight Interview, *supra* note 368 (describing very “passionate and heated discussions” during the deliberations).

429. *See* Memorandum from Jamal Knight to author (Feb. 15, 2012) [hereinafter Knight Memo] (describing the verdict, and quoting Judge Godwin: “Now that’s not to say that [the verdict] was not hotly debated, because we know there were three dissenters So [the jurors] were obviously very emotionally involved in this [case] and very earnest. And those three people, despite all the hollering that went on, they voted their convictions and the other [nine] voted theirs”) (on file with author & Loyola Law Review).

430. *See id.*

431. *See id.* (“And I also remember that they were . . . coming back to give their jury verdict [and] there was one juror in particular . . . she was the black school teacher She was delayed, she was the last one to come in, she was very upset.

distraught.⁴³² Two jurors in the majority also broke out crying when they learned that they would have to confirm their votes in open court.⁴³³ But the deed was done.

The plaintiffs had one last hope and it was a long shot. The very finding of nuisance-but-no-harm made no sense in the law—an activity could not be a nuisance if it was not harmful⁴³⁴—and inconsistent with the evidence.⁴³⁵ They asked the court to overrule the jury, which put the judge in a bind.⁴³⁶ He believed personally that Bartlett, Vincent et al. had proven damages, if not to their properties (the evidence showed most homes on the Willow Springs ridge selling in the same range as before, he later said), then to their persons.⁴³⁷ Doubtless, the smells alone were awful. On the other hand, he noted, this had been an “attentive jury.”⁴³⁸ They came back with good questions on the applicable law, which was a “very intentional pursuit of things.”⁴³⁹ They followed the testimony so closely that when defense counsel mistakenly located a spot on the map they corrected him.⁴⁴⁰ And they had said “about as clear as anybody could make it” that

She was delayed in all for a good—it seemed like hours . . . but it was a good three or four minutes that she couldn’t even compose herself to come in and sit down. She was one of those who voted no.”); Heroes & Horrors, *supra* note 13, at 62.

432. Godwin Interview, *supra* note 376.

433. Heroes & Horrors, *supra* note 13, at 62 (“I knew something was not right, especially when the judge polled the jury and two of them started crying because they had to admit that they had voted for the company.”).

434. See Restatement (Third) of Torts § 20 (2010) (“The defendant’s activity is a private nuisance if the activity both intentionally causes harm and is ‘unreasonable.’”); see also *Absolute Nuisance*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Interference for which a defendant is held strictly liable for the resulting harm, esp. in the nature of pollution.”); *Qualified Nuisance*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“A condition that, though lawful in itself, is so negligently permitted to exist that it creates an unreasonable risk of harm and, in due course, actually results in injury to another. It involves neither an intentional act nor a hazardous activity.”).

435. See Knight Memo, *supra* note 429 (quoting the argument of Don McKnight: “I think the evidence fully supports and is very convincing that there [were] significant odors . . . and some damages caused by this site. And we just simply feel that the jury was wrong and that their answers are inconsistent in not awarding any damages”).

436. See Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc., 96-218, p. 4 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1321 (“Plaintiffs allege that the trial court erred in failing to grant their motion for directed verdict”); see also Godwin Interview, *supra* note 376.

437. See Godwin Interview, *supra* note 376.

438. *Id.*

439. See Knight Memo, *supra* note 429 (quoting Judge Godwin as describing “how unusual this jury was in their apparent dedication to the case”).

440. Godwin Interview, *supra* note 376.

“they didn’t think these people deserved to recover any money.”⁴⁴¹ What was he to do in such a situation, he explained to counsel.⁴⁴² Perhaps there needed to be a change in the law, “I just don’t know.”⁴⁴³ Motion denied.⁴⁴⁴

A recourse to the appellate court led to the same kind of split that had characterized the ECC case some years before. The panel majority found that the record was “completely lacking in evidence of any physical injury caused to any of the plaintiffs by any activity of the facility,” a remarkably sweeping conclusion.⁴⁴⁵ The dissent, as in the ECC appeal, actually addressed the record and found abundant injury: regular exposure to noxious fumes dating back to the 1970s, corroborated by a litany of citizen complaints from BFI’s own records.⁴⁴⁶ Vincent had testified that he would “wake up dizzy every morning.”⁴⁴⁷ Mrs. Bartlett to eye and throat irritations, and of course the Reverend Bartlett’s dramatic fall to his knees.⁴⁴⁸ These impacts also impacted Vincent’s fence line property values, and Bartlett’s, down by more than 30%.⁴⁴⁹ To the dissent, the jury’s findings seemed as irrational as those of the panel majority.⁴⁵⁰ As can be seen, this was not really a “legal” question at all, any more than the high court’s earlier decision on the Commission’s ban had been. It was, rather, two very different take-homes from a story. Sociologists use the term “emotional intelligence”⁴⁵¹ to describe the ability not only to receive information but to actually

441. Knight Memo, *supra* note 429.

442. *See id.*

443. *Id.*

444. *Id.* (“I’m going to deny the motion for mistrial And the costs on this will be taxed to the plaintiffs.”).

445. *Bartlett v. Browning-Ferris Indust., Chem. Servs., Inc.*, 96-218, p. 6 (La. App. 3 Cir. 11/6/96); 683 So. 2d 1319, 1322.

446. *Id.* at p. 2; 683 So. 2d at 1325 (Amy, J., dissenting) (“In this case, the jury found that the defendants’ facility was a nuisance or legal abuse of right *and* that it was the legal cause of damages. Despite finding that the plaintiffs had been damaged, the jury failed to assign a monetary award for these damages.”) (emphasis in original).

447. *Id.*

448. *Id.*

449. *Id.* at p. 3; 683 So. 2d at 1325.

450. *Bartlett*, 96-218, p. 2; 683 So. 2d at 1325 (“Therefore, due to the jury’s finding of damages and the clear evidence in the record for finding and assessing damages, I conclude that the jury’s failure to assign a monetary value for the plaintiff’s damages was not only inconsistent, but, clearly wrong. Appropriate damages should be awarded.”).

451. *See generally* DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* (Bantam Books 2005).

assimilate it. In both Willow Springs cases, some people saw the action in 3-D. Others missed it completely.

Of course, the dissents in neither case ultimately mattered. The majority wins. From the Willow Springs community point of view, however, the justice system had failed them, massively, twice.⁴⁵²

10. AFTERSHOCKS

Everything about Willow Springs was a split decision. The case itself and the controversy behind it was the first real divide in a region hard-wired to the petrochemical industry. Even away from Lake Charles, up on the ridge, BFI managed to peel off the High Hope Baptist Church and others with dribs and drabs;⁴⁵³ one vocal resident was mollified with a new water line to his house.⁴⁵⁴ And there was always the suspicion, cultivated by industry proponents, that these folks were just out for a free ride. The ECC's attempt to close the site ended in two decisions differing widely on the facts. The jury verdict in the Bartlett case was likewise divided, the acrimony in the jury room spilling beyond the walls. The appeal of this decision, likewise, was split in two. To this day, several surviving plaintiffs remain bitter, Tritico perplexed, the plaintiff lawyers somber, the defense team still prohibited by their client from talking about the case at all.⁴⁵⁵ Perhaps that is a good strategy. Even BFI, a huge and hugely profitable corporation, could not feel proud about gassing a few hundred poor people with noxious fumes for more than a decade and then stiffing them on any damages at all.

Perhaps for this reason, perhaps for another, with several hundred other plaintiffs remaining in the wings, the company hired a mediator and engaged in settlement discussions.⁴⁵⁶ It was too late for Vincent and Bartlett who, paradoxically because they had strong cases and had shouldered the agony of trial, missed out on the process. BFI could probably have gotten away with refusing to settle with any of the other residents, confident that

452. See Colonna Interview, *supra* note 380 (describing the litigation as “a gesture to the people of Willow Springs that they didn’t matter People trusted a system and it failed them”).

453. PIONEERS, *supra* note 4, at 46–48 (interview with Ruth Shepherd).

454. *Id.* at XVIII.

455. Attempts to interview attorneys representing BFI for this article met with courteous declines, at the request of their client.

456. See McKnight Interview, *supra* note 368.

neither this plaintiff lawyer team nor any other would want to go back to court, given the first outcome. To its credit, BFI didn't. It was perhaps no coincidence that given the many such stories arising around the country from poorly managed BFI hazardous waste sites, it had recruited a former and highly respected Administrator of the EPA to lead the company.⁴⁵⁷ One of his first moves was to take BFI out of the toxics disposal business entirely, which was, in his words, "20 percent of our revenue, none of our earnings, and most of our headaches."⁴⁵⁸

Working with both BFI and plaintiff attorneys, an elaborate settlement matrix was developed centering mainly on distance from the site and demonstrated harm.⁴⁵⁹ The awards were not large, a few thousand dollars a household,⁴⁶⁰ barely a blip on the company's bottom line, nothing to "send a message" to the industry as the action originally intended, nor anything to erase the loss of a loved one or the awful sting of being told by a jury that they had not suffered at all. At least the awards acknowledged harm.

On the other hand, by hard work and hassle, meetings, surveys, studies, fundraisers, media events and public hearings, they had managed to educate the press, move government off of the sidelines, shake up the political establishment of Lake Charles, and most important to them, do what they had really wanted to do all along: close the dump. This they won. It was not a total victory: the site is still operating on a limited basis, the Little River remains polluted,⁴⁶¹ local wells are shot, subsurface contamination remains a threat to the Chicot Aquifer,⁴⁶² some would say a catastrophe waiting to happen, but up on the Willow Springs ridge the elephantine lines of trucks, the dead animals

457. GREENPEACE SNAPSHOT, *supra* note 174, at 1. In 1988 William Ruckleshaus, EPA Administrator from 1970 to 1973 and 1983 to 1985, was appointed CEO of BFI. *Id.* The company then "sold off its hazardous waste disposal affiliate, embraced recycling, and joined the Business Council for Sustainable Development." *Id.*

458. *Id.* (citing Jeff Bailey, *Trash Troubles: Browning-Ferris Fails to Boost Its Business by Hiring 'Mr. Clean,'* WALL ST. J., May 14, 1991).

459. McKnight Interview, *supra* note 368.

460. *Id.* Some settlements, which have not been made public, ranged up to \$50,000 or more; most were considerably smaller. *See id.*

461. *See* RESTORE, COMMENTS ON PROPOSED DISCHARGE PERMIT FOR CECOS INTERNATIONAL, INC., CALCASIEU FACILITY AT 918 WILLOW SPRINGS ROAD 1, 5 (2012) (on file with author & Loyola Law Review).

462. *See* E-mail from Michael Tritico to Colleen Snow, La. Dep't of Env'tl. Quality (July 2, 2012, 4:15 PM CST) (on file with author & Loyola Law Review) (describing contamination threat and lack of monitoring).

and the overpowering fumes are gone. And with them, the feeling of helplessness and spirit-killing fear.

Beyond the ridge, the Willow Springs resistance movement, because that is what it was, produced a yet bigger bang. Its example—disenfranchised people, white and black, many of them women, many of them well on in years (Ruth Shepherd: “I am a 62 year old woman, and old women shouldn’t have to do things like this”),⁴⁶³ standing up to a domineering industry, making it an issue, staying firm under fire, year after year—this was all new stuff to Louisiana at the time and it became a model for similar movements across the state.

CLEAN arose in Lake Charles and added an affluent, professional cadre to the dialogue.⁴⁶⁴ Greenpeace came in with a campaign against vinyl chloride.⁴⁶⁵ Groups like the High Hope Steering Committee united with similar movements to form LEAN (the Louisiana Environmental Action Network), a statewide umbrella for them all.⁴⁶⁶ Meanwhile, back at Lake Charles, a stone’s throw away from Willow Springs, the Mossville community rose up with Mossville Environmental Action Now (MEAN) to file civil damage actions against two giant plants on their fence line, Conoco and Condea Vista.⁴⁶⁷ The settlements

463. PIONEERS, *supra* note 4, at 48 (interview with Ruth Shepherd).

464. For the rise and early effectiveness of CLEAN under the leadership of yet another housewife turned activist, Shirley Goldsmith, see Schneider, *supra* note 3, at 33–34; Heroes & Horrors, *supra* note 13, at 56–57, 64–66.

465. See *Greenpeace, Inc. v. Dow Chem. Co.*, 808 F. Supp. 2d 262, 265 (D.D.C. 2011) (“During the relevant period, Greenpeace was involved in campaigns that targeted . . . vinyl chloride production, which allegedly emitted toxic chemicals into the Lake Charles region of Louisiana”); Greenpeace, *Global and Regional Detox Campaigns*, <http://www.greenpeace.org/international/en/campaigns/toxics> (last visited Sept. 14, 2016).

466. *About Us*, LA. ENVTL. ACTION NETWORK, <http://www.leanweb.org/about-us/about-us> (last visited Sept. 14, 2016). LEAN was founded in 1986 to organize environmental groups across the state attempting to combat pollution and pollution producing facilities. *Id.*

467. See BREATHING POISON, *supra* note 73, at 2, 11; MOSSVILLE ENVTL. ACTION NOW, INC., ET AL., INDUSTRIAL SOURCES OF DIOXIN POISONING IN MOSSVILLE, LOUISIANA: A REPORT BASED ON THE GOVERNMENT’S OWN DATA, (revised ed. July 2007) available at <http://www.loe.org/images/content/100423/mossville.pdf>. For the litigation and settlement, see Mossville Env’tl. Action Now, Inc., Mossville Basics 1 [hereinafter Mossville Basics] (unpublished report) (on file with author & Loyola Law Review). MEAN has also lodged a complaint against chemical pollution before the Inter-American Commission on Human Rights (IACHR), which was accepted on March 29, 2010. See Letter from Elizabeth Abi-Mershed, Assistant Executive Secretary: Inter-Am. Comm’n on Human Rights (Mar. 29, 2010) available at http://www.ehumanrights.org/docs/IACHR_Ruling-Mossville_petition_admissible.pdf.

came in at \$15 million apiece.⁴⁶⁸ These and other groups have been trying to get the Calcasieu estuary cleaned up for the past twenty-five years.⁴⁶⁹ A list of their initiatives is beyond the scope of this and perhaps any history, but they have altered the game. From High Hope and RESTORE, to CLEAN, to LEAN, to MEAN . . . the ripples from Willow Springs continue to wash ashore.

Lake Charles of course remains what it has chosen to be, certainly what the chemical industry has chosen for it to be, a heavy petrochemical complex and thanks for the jobs. In this respect it is little different from the Mississippi chemical corridor, or for that matter, Azerbaijan; here is where the plants are, poor people living at the fence line, wealthy people more safely distant, corporate owners and stockholders even continents away. Pollution exposure around this industrial cluster remains daunting,⁴⁷⁰ some from chronic violators,⁴⁷¹ putting it in the top

468. Mossville Basics, *supra* note 467, at 1.

469. See Knapp Interview, *supra* note 249; Heroes & Horrors, *supra* note 13, at 66–68. Tritico discusses the running saga of Calcasieu River issues in the Lake Charles area, including the establishment of a Calcasieu River Remedial Action Plan Task Force which, for its effectiveness, Tritico promptly dubbed the “CRRAP Task Force.” Heroes & Horrors, *supra* note 13, at 84.

470. Industry-reported toxic releases in Calcasieu Parish, dominated by the Lake Charles area, have ranged from 13 million to 16.6 million pounds per year for the past decade. See, e.g., U.S. ENVTL. PROT. AGENCY, TOXIC RELEASE INVENTORY, RELEASES: CHEMICAL REPORT FOR CALCASIEU COUNTY LOUISIANA (2004) (reporting 16.6 million pounds); U.S. ENVTL. PROT. AGENCY, TOXIC RELEASE INVENTORY, RELEASES: CHEMICAL REPORT FOR CALCASIEU COUNTY LOUISIANA (2007) (reporting 13 million pounds); U.S. ENVTL. PROT. AGENCY, TOXIC RELEASE INVENTORY, RELEASES: CHEMICAL REPORT FOR CALCASIEU COUNTY LOUISIANA (2012) (reporting 14.8 million pounds). Added to these discharges are chronic levels of accidental releases and by-passes. See *Accidental Releases Continue to Be Business as Usual*, LA. ENVTL. ACTION NETWORK (June 26, 2012), <https://leanweb.org/uncategorized/accidental-spills-and-releases-part-of-doing-business/> (noting that the U.S. National Response Center had received over 600 incident reports in 2011 regarding spills or leaks at Exxon Mobil’s facilities in the Baton Rouge area alone). For a record of accidental chemical releases from five plants in Lake Charles, see WILMA SUBRA, WORKSHOP FOR MOSSVILLE COMMUNITY MEMBERS AND INTERESTED CITIZENS (Dec. 21, 2012) available at <http://meannow.files.wordpress.com/2013/12/mean-december-2012-presentatoin-wp.pdf>. The recurrence is frightening.

471. The EPA’s Environmental Compliance Analysis lists four Lake Charles plants as chronic water act violators, including Certainteed Corporation (out of compliance for twelve quarters), Chemical Waste Management (for four quarters), PPG Industries (for six quarters, including trichlorethane, chloroethane, and tetrachloroethylene), and Conoco Phillips (multiple violations, two formal enforcement actions). CITGO Petroleum and Pelican Refinery led the list for air violations and Olin and PPG (again) led for hazardous waste. *Facility Search-Enforcement & Compliance Data*, U.S. ENVTL. PROT. AGENCY, <https://>

echelon of America for carcinogens, mutagens, and reproductive toxins.⁴⁷² Fires, leaks, and accidental releases in Louisiana also continue, indeed they have increased.⁴⁷³ USA Today lists five local elementary schools as “negatively impacted” by a single Westlake plant.⁴⁷⁴ In December 2013, one of them exploded, sending a toxic fireball towards Mossville that led to lockdowns at local schools and the closure, once again, of Interstate-10.⁴⁷⁵

The ante is now rising. The state has recently approved yet another chemical plant to be constructed within a stone’s throw of

echo.epa.gov/facilities/facility-search/ (search under Calcasieu Parish, Louisiana; find above mentioned facilities).

472. See BREATHING POISON, *supra* note 73, at 3.

473. See Mark Schleifstein, *Louisiana Refineries and Associated Chemical Plants Had Higher Air Emissions from Accidents in 2012, New Report Says*, TIMES-PICAYUNE (Nov. 12, 2013, 9:40 AM), http://www.nola.com/environment/index.ssf/2013/11/louisiana_refineries_and_assoc.html; see also *Explosion and Chemical Release at PVC Plant in Geismar, La.*, LA. ENVTL. ACTION NETWORK (Mar. 23, 2012), <http://leanweb.org/our-work/air/explosion-and-chemical-release-at-pvc-plant-in-geismar-la>; *ExxonMobil Won't Admit Baton Rouge Plants Had Safety Violations*, LA. WEEKLY (Jan. 20, 2014) http://www.huffingtonpost.com/susan-buchanan/exxonmobil-wont-admit-bat_b_4641376.html (“The final agreement contains more than 40 pages of violations for chemical releases and spills and operational infractions dating to 2008. Back-to-back incidents occurred at times. Unauthorized refinery discharges reported by ExxonMobil, for instance, were almost monthly in some years, and were especially frequent in 2008—when they totaled at least six in May alone.”); *No One Injured as Explosion Rocks New Iberia Chemical Plant*, TIMES-PICAYUNE (June 14, 2011, 9:00 PM), http://www.nola.com/news/index.ssf/2011/06/explosion_rocks_new_iberia_che.html; *Two Fatal Chemical Explosions in Two Days Plants OK'd for Expansion Despite Failure to Maintain Facilities*, Press Release, LA. BUCKET BRIGADE (June 15, 2013), <http://www.labucketbrigade.org/blog/two-fatal-chemical-explosions-two-days-plants-ok%E2%80%99d-expansion-despite-failure-maintain>; David J. Mitchell, *Jurors Watch Videos of Gas Leaks at Burnside Acid Plant in Whistleblower Lawsuit Against Dupont*, NEW ORLEANS ADVOCATE (Jan. 21, 2015, 3:12 AM), http://www.theadvocate.com/new_orleans/news/communities/article_57ddd451-f74f-5ccb-88bc-82d3f2481f10.html (describing a gas cloud composed of sulfur trioxide leaking from the Burnside facility).

474. Special Report, *The Smokestack Effect: Toxic Air and America’s Schools*, USA TODAY, <http://content.usatoday.com/news/nation/environment/smokestack/polluter/38623> (last visited Sept. 14, 2016). The plant in question was Lyondell Chemicals of Westlake Louisiana.

475. See News Release, *Toxic Fumes Engulf Mossville Community; Axiall Explosion and Fire Worse than Reported*, WORKGROUP FOR PUB. POLY REFORM, <http://smartpolicyreform.org/for-the-media/news-items/toxic-fumes-engulf-mossville-community-axiall-explosion-and-fire-worse-than-reported> (last visited Sept. 14, 2016) (“Although Axiall corporate and local government officials announced the ‘all clear’ for Friday’s fire at the Axiall plant in Westlake, Louisiana, nearby residents say that the toxic smoke from the fire was overwhelming, threatening, and that contamination in the community goes beyond short term smoke in the area.”); Frank DiCesare, *Axiall Blast Injury Total at 27*, AM. PRESS (Dec. 30, 2013, 12:35 PM), <http://www.americanpress.com/Axiall-injuries-increase>.

both Mossville and Willow Springs, said to be “the largest ever foreign direct investment manufacturing project in the country.”⁴⁷⁶ Among other pollutants Sasol’s plant will emit over 10 million tons per year of greenhouse gases, 1.7 thousand tons of acid rain precursors, and 500 tons of air toxins, including several carcinogens.⁴⁷⁷ One of Sasol’s existing plants experienced major explosions in 2004, 2005, and 2011.⁴⁷⁸ The region is also slated for at least six new chemical blending, natural gas, and export terminal facilities, making Southwest Louisiana, in the words of a news commentator, the “Buckle in the Nation’s Energy Belt.”⁴⁷⁹ The Louisiana Chemical Association has called it (with no apparent irony) a “tsunami.”⁴⁸⁰ Meanwhile, the state Department of Environmental Quality has continued the tradition of accommodating its corporate clientele; “We’re not here to zap industry,” the head of its inactive sites division had said at the time the Willow Springs controversy was raging, apparently confusing his enforcement responsibilities with assassination,⁴⁸¹

476. Theresa Schmidt, *Officials: Sasol Expansion to Create 7,000 Direct and Indirect Jobs*, KPLC (Dec. 3, 2012), <http://www.kplctv.com/story/20245983/officials-sasol-expansion-to-create-7000-direct-and-indirect-jobs>. Among other inducements the state is providing a \$20 million “training center,” and of course a ten-year industrial exception relieving the company of local taxes for schools and public services. *See id.*; *see also* Houck, *supra* note 46. Despite these significant subsidies, a Sasol official declared that America’s “free market economics” would allow a company to succeed or fail. Eric Cormier, *Sasol Expansion Project Has Nation’s Attention*, <http://www.americanpress.com/Sasol-expansion-project-has-nation-s-attention> (last modified Apr. 18, 2013, 6:40 PM).

477. E-mail from Michael Tritico to author (Mar. 17, 2014, 2:53 PM CST) (on file with author & Loyola Law Review).

478. *Sasol Plant Explodes Again*, SOUTH AFRICAN HISTORY ONLINE (Sept. 1, 2004), <http://www.sahistory.org.za/dated-event/sasol-plant-explodes-again>; *Four Injured in Explosion at Sasol’s Sasolburg Plant*, ENGINEERING NEWS (June 2, 2005), <http://www.engineeringnews.co.za/print-version/four-injured-in-explosion-at-sasol-sasolburg-plant-2005-06-02>; NEWS24 (Aug. 24, 2011, 12:52 PM), <http://www.news24.com/SouthAfrica/News/Blast-at-Sasol-plant-in-Secunda-20110824>.

479. *See* E-mail from Michael Tritico to author (Apr. 11, 2014, 9:44 AM CST) (on file with author & Loyola Law Review); Frank DiCesare, *SWLA Megaprojects Now Top \$70B*, AM. PRESS (Aug. 6, 2014, 9:12 AM), <http://www.americanpress.com/Megaprojects-70-billion>; Frank DiCesare, *The Eight Petrochemical Companies Fueling Upcoming Economic Boom*, AM. PRESS (Nov. 18, 2013, 3:19 PM), <http://www.americanpress.com/The-eight-petrochemical-companies-fueling-upcoming-economic-boom>.

480. Kelly Alexander, *Industry Advocate, Sports Announcer, Educator, Deacon: Dan Borne Has Done It All*, GREATER BATON ROUGE BUS. REP. (Jan 6, 2016), <https://www.businessreport.com/business/dan-borne> (quoting LCA spokesman Dan Borne).

481. *See* Schneider, *supra* note 3 (quoting William DeVille).

and this attitude has been resistant to change.⁴⁸²

For those challenging these developments, it can be a hazardous occupation in itself. Academics have lost their funding.⁴⁸³ State employees have lost their jobs.⁴⁸⁴ The MacArthur Award winning chemist Wilma Subra, a leading expert for citizen groups on toxics issues in Louisiana, was shot at from a passing car (the bullet lodged a few feet away from where she was sitting).⁴⁸⁵ So was Marvin Hagers, an activist from Carlyss.⁴⁸⁶ On his way to his last radio show, Tritico discovered that a wheel on his car had been loosened, and fell off.⁴⁸⁷ Pam Tynes, a vocal activist in the Willow Springs community, was run over by a waste tanker, her car crushed, her head split open on

482. See Claire Taylor, *Instead of DEQ Fines, Plant Sees Tax Breaks After Explosion*, ADVERTISER (July 26, 2014, 10:26 AM), <http://www.theadvertiser.com/story/money/business/2014/07/25/multi-chem-environmental-fines-plant-blast-lenient-taxes-new-plant/13185065/> (explaining that a Halliburton plant in New Iberia “received an expedited permit” and was granted \$1.8 million in property tax exemptions, after an explosion at the plant for which DEQ, for its part, imposed no penalty, an outcome an agency spokesperson described as not “normal”). Nearly a decade after the Willow Springs decision the *Times-Picayune* published a four-part series on chemical pollution in Louisiana, highlighting a lack of progress on the issue. *Unwelcome Neighbors*, TIMES-PICAYUNE (May 21–May 24, 2000). In 2011, another decade later, the EPA Inspector General issued a report on state enforcement that placed Louisiana in the bottom quartile for both its clean air and hazardous wastes programs; despite EPA prodding, it continued, “The State’s poor performance persisted,” showing the “lowest enforcement activity levels in Region 6,” attributed *inter alia* to a “lack of resources, natural disasters and a culture in which the state agency is expected to protect industry.” U.S. ENVTL. PROT. AGENCY, OFF. OF INSPECTOR GEN., EPA MUST IMPROVE OVERSIGHT OF STATE ENFORCEMENT 16 (2011). EPA is not the only agency to note this culture; following a meeting with state and federal officials concerning spikes in carbon dioxide levels, the St. Bernard Parish Chief Administrative Officer was quoted as saying, “I got the feeling that they were more interested in appeasing industry than answering our questions.” Benjamin Alexander-Bloch, *St. Bernard Parish Officials Join Push for Better Air Quality Enforcement*, TIMES-PICAYUNE (Jan. 24, 2013, 6:09 PM), http://www.nola.com/environment/index.ssf/2013/01/st_bernard_parish_officials_jo.html.

483. See discussion, *supra* note 67–69.

484. See *id.*

485. See David S. Martin, *Environmental Warrior Takes on Industry*, CNN (May 25, 2010, 8:45 AM), <http://www.cnn.com/2010/HEALTH/05/25/wilma.subra.environment/>; Julia Cart, *A Strong Voice in Louisiana’s Cancer Alley*, L.A. TIMES (Aug. 27, 2013), <http://www.latimes.com/local/great-reads/la-me-cl-subra-enviro-20130827-dto-htlstory.html> (“Authorities never found the person who shot at her while she was working at her desk by the front window. The soft-spoken crusader’s response to the threat was to put bars on her windows, move her desk to the back of the house—and keep going.”).

486. July 2012 Letter, *supra* note 7.

487. Heroes & Horrors, *supra* note 13, at 21 (describing the car incident).

the road; there were no witnesses.⁴⁸⁸ The environmental ombudsman of the state Attorney General's Office was drummed out of office after escorting a student group to view a petrochemical facility near Baton Rouge.⁴⁸⁹ In 2008, a national magazine broke the story that several chemical companies in the Lake Charles area had carried on an undercover campaign against Greenpeace and local environmental organizations.⁴⁹⁰ Among other maneuvers, operatives allegedly broke into the offices of a Louisiana law firm representing environmentalists against a facility in Westlake.⁴⁹¹ It is not easy being green, anywhere. Southwest Louisiana simply raises the bar.

In December 2011, a Tulane law student named Jamal Knight was conducting interviews in Willow Springs and Lake Charles related to the case.⁴⁹² Driving down Anthony Ferry Road he stopped by a cemetery named for Susie V. Tanner, within feet of the BFI/CECO's gates. He walked along the fence line for a few minutes when a car pulled up and a lady said, "[H]ey sweetie, what you looking for—I hope you ain't trying to get into them grave sites!" She told Knight about how it was her grandmother, decades ago, who had sold the land to BFI. "We could have been rich if we'd just leased the land," she mused, but it made "no

488. See Colonna Interview, *supra* note 380; Heroes & Horrors, *supra* note 13, at 48 ("Pam Tynes [] had been in a bad wreck . . . run over by a hazardous waste tanker truck, no witnesses. She had been the person who had done the best job of calling in complaints to DNR and DEQ when fumes would blow in her direction. She was on a regular schedule, driving her older daughter into Lake Charles for school each day, then going back to pick her up. The afternoon of the accident she ended up on the pavement with her face destroyed and her brain partly out of its skull. The ambulance attendants thought she was dead, but since they were going to transport the little girl from the car seat to the hospital anyway, they rechecked and found a faint pulse in the mother."). Tynes died of cancer, as had the woman from whom she had bought her home. Colonna Interview, *supra* note 380.

489. See Amanda Little, *Louisiana Environmental Advocate Forced Out of Job by State Attorney General*, GRIST (Apr. 29, 2005), <http://grist.org/article/little-louisiana/> (referring to Willie Fontenot).

490. See James Ridgway, *Environmental Espionage: Inside a Chemical Company's Louisiana Spy Op*, MOTHER JONES (May 20, 2008, 3:00 AM), <http://www.motherjones.com/environment/2008/05/environmental-espionage-inside-chemical-companys-louisiana-spy-op>.

491. A federal lawsuit against the perpetrators alleging wire fraud was dismissed. *Greenpeace, Inc., v. Dow Chemical Co.*, 808 F. Supp. 2d 262, 274 (D.D.C. 2001). However, a subsequent state case based on the same facts has been allowed to proceed. See Jonathan Manning, *Judge: Corporate Spy Case Can Go On*, AM. PRESS, <http://www.americanpress.com/Judge--Corporate-spy-case-can-go-on> (last modified Sept. 13, 2014, 11:11 AM).

492. Knight Memo, *supra* note 429. The description of his encounter with Mrs. Tanner is taken from this source.

sense to worry 'bout that now." Signs around the site read: "CECOS Int-A Republic Services Co.-(337) 3215 4675," "LA D000618256-PC-1," "LA D0006188256-OP-RN-1," "Asbestos Waste Disposal Site," and "Restricted Area."

Marie Tanner, the granddaughter, said that she now lived about 300 feet from the operation, but she was "no longer worried about health, children's health." She was "pretty sure all them lawyers and state folk done they job and helped clean this place up." In fact, growing up here, her mother warned her not to go playing in the water, but she did not remember the fumes at all.

Back in the 1960s, when we knew so little about pollution, a young black woman up on the Willow Springs ridge had enough of it and rounded up a petition to close a wide-open, noxious, and dangerous operation. There was no relevant law behind her. There were no authorities behind her. There were no environmental groups within a hundred and fifty miles, and none of them did toxins. There was only disbelief and worse wherever she went for help. She did not give up. Others took up the fight. The rest is still evolving.