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David vs. Goliath Battle of the Environmental Justice Movement: How Citizens Against Nuclear Trash (CANT) Defeated the Louisiana Energy Services

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ABSTRACT

The environmental justice movement was a movement in the late 20th century fighting against environmental racism/discrimination. This paper examines the stages of environmentalism preceding the environmental justice movement for contextualization. The catalyst of the movement at the protest in Warren County, NC, is examined in detail. The focus of this paper is the most significant legal battle during the environmental justice movement, Citizens Against Nuclear Trash (CANT) against the Louisiana Energy Services' results and its impacts. Many notable leaders in fighting for environmental justice, such as Dr. Robert D. Bullard and Dorceta E. Taylor, are referenced. The central argument of this paper is that the CANT vs. LES' legal battle played a pivotal role in altering the trajectory of the movement. CANT, a local grassroots organization without much funding, defeating the federal-backed NRC in a lawsuit demonstrates that the justice system has finally realized the issue of environmental discrimination.

KEYWORDS: *environmental justice, environmental justice movement, environmentalism, Citizens Against Nuclear Trash.*

INTRODUCTION

The illegal dumping of 32,000 cubic yards of PCB (polychlorinated biphenyls) contaminated soil along the road crossing 14 minority counties in North Carolina sparked a grassroots response in Warren County, NC which led to national protests for environmental justice. In response, new studies were conducted, laws were passed, and environmental organizations were formed after decades of protest by activists, groundbreaking lawsuit victories as well.

The environmental justice movement officially began following the Warren County protest in 1982. Two studies on environmental racism were done by the United States General Accounting Office and the United Church of Christ respectively in 1983 and 1987. The First National People of Color Environmental Justice Summit was held in Washington D.C. in response to the two studies in 1991 when activists planned the nationwide environmental justice protests. CANT's groundbreaking legal victory over Louisiana Energy Services took place in 1997.

The environmental justice movement originated from the four phases of environmentalism: conservation/preservation, modern, mainstream, and grassroots. Environmentalism started with the wealthy preserving natural spaces for recreational purposes then shifted toward the fight against pollution in modern environmentalism. Government environmental regulations were instituted during mainstream environmentalism and broader public involvement started with grassroots environmentalism. The environmental justice movement emerged during the grassroots phase and reflected the convergence of nonviolent protest strategies borrowed from the civil rights movement and an altered legal landscape.

Many historians and activists published scholarly works on the environmental justice movement. Dr. Robert D. Bullard, known to many as "the father of environmental justice"(Bullard), researched the issue deeply, participated in protests during the movement, and testified in many court cases as an expert witness. *Dumping in Dixie* (1990), one of his most notable works covering the movement, addresses the racial and socio-economic demographics of hazardous site locations. Bullard argues that "environmental discrimination is unfair, unethical, and immoral" (2000, p. xiii). In later versions (2000, 2003), he includes case studies that contributed to the movement. Bullard, as an African-American scholar himself, believes that minorities should not be exploited by industry, waste management corporations, or public utilities. As the leading spokesperson for the environmental justice movement, he pushed for

an end to environmental racism, which he defines as "any policy, practice, or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups, or communities based on race or color (Bullard, 2000, p. 98).

Another respected scholar of the environmental justice movement is sociologist Dorceta E. Taylor, currently a Professor of Environmental Justice at Yale's School of Environment. Her 2014 book, *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility*, in which she discusses discriminatory siting and racial zoning, is considered the "standard-bearer" scholarship in the field of environmental justice (Mock, 2014). Taylor argued for racial equality during both the environmental movement and the environmental justice movement through her scholarly works. She also published works such as *The Rise of the American Conservation Movement* covering the history of the environmental movement.

Of all protests and struggles during the environmental justice movement, the citizen-formed organization CANT's legal victory over the NRC-backed Louisiana Energy Service significantly advanced the movement by escalating the public's awareness of environmental racism, thus gaining more nationwide support for the movement.

ENVIRONMENTALISM AND THE START OF THE ENVIRONMENTAL JUSTICE MOVEMENT

The environmental justice movement differed from mainstream environmentalism because it layered issues of race and inequality on top of the goal of a clean environment.

The American environmental movement started in the early 20th century. Due to the increasingly popular westward expansion, urbanization, and industrialization in the late nineteenth century resources became scarcer in the west. Environmental organizations such as the Sierra Club (1892) were created to solve this problem through conservation and preservation. Conservation focused on the efficient use of resources to combat "inefficient land management". Preservation focused on the protection of the wilderness from human use. This early era of environmentalism was an attempt to preserve areas for outdoor recreation by the wealthier class; therefore, the less privileged and minorities did not participate (Silveira, 2001, p. 499-502).

Rachel Carson, also known as the "godmother of modern environmentalism" (Silveira, 2001, p. 503), drew attention to the damage brought by the widespread use of pesticides in her 1962 book *Silent Spring*. She pointed out that pesticide also kills animals such as birds that feed on the insects, goes through the food chain, and are eventually consumed by humans, causing generational defects. *Silent Spring*'s publishing is often "cited as the catalyst that inspired the environmental movement that began in the 1960s" (Bishop, 2012). Carson's argument eventually led to a national ban on the domestic use of Dichlorodiphenyltrichloroethane (DDT), a chemical used in pesticides (Bishop, 2012).

The second phase, modern environmentalism, started in the early 1960s following a series of environmental disasters throughout the United States. Unlike early environmentalism where only the most privileged participated, modern environmentalism had the support of the common citizens. By the end of the decade, a series of dramatic environmental catastrophes such as the 1965 garbage strikes in New York City and the 1969 Santa Barbara oil spill sparked the transition from modern environmentalism to mainstream environmentalism (Silveira, 2001, p. 503-506).

The third phase, Mainstream environmentalism, started following the inaugural Earth Day celebration in 1970 when millions of Americans gathered and marched throughout the country to learn more about the environmental movement. The idea of fighting against the harmful effects of industry on the environment gained traction following the first Earth Day celebration. Toxic chemicals such as PCB wastes abandoned in the Hudson River and chemical contamination in the Cuyahoga River and smog from auto emissions began gathering the attention of the protesters. An energy crisis also took place during the winter of 1973 when the Arab oil embargo forced the United States, facing shortages and higher prices at the pump, to implement gas rationing (Silveira, 2001, p. 507-511). In response to the public concerns about these environmental disasters and Carson's *Silent Spring*, President Nixon proposed the Environmental Protection Agency (EPA), a new bureaucracy dedicated to protecting the environment and reducing pollution. The formation of the EPA was approved, and William Ruckelshaus became its first administrator on December 4, 1970 ("The Origins of EPA").

The EPA was created as "a strong, independent agency (Lewis, 1985)" according to President Nixon. He wanted the agency to establish and enforce environmental protection standards and conduct environmental research. The EPA was initially created with various programs of other departments. The Department of Health, Education, and Welfare gave EPA control over their National Air Pollution Control Administration, Bureaus of Water Hygiene and Solid Waste Management, and Bureau of Radiological Health; the Food and Drug Administration of the Department of Health, Education, and Welfare gave EPA control over pesticide tolerance levels (Lewis, 1985). Essentially, the EPA controlled all the environment-related concerns in the United States but it could only issue recommendations, it had no enforcement powers.

The fourth phase, grassroots environmentalism, encouraged "citizen participation in environmental decision making." This phase led to the start of many citizen-formed environmental

organizations and encouraged people of all races and socio-economic classes to join the movement (Silveira, 2001, p. 511-518). As Bullard has noted, various environmental organizations broadened "their base of support to include blacks and other minorities, the poor, and working-class persons (Bullard, 2000, p. 1).

The catalyst of the environmental justice movement was the protest against PCB dumping in Warren County, North Carolina in 1982. Robert Burns and his two sons, who were hired by Robert Ward of the Ward Transformer Company in Raleigh, North Carolina (approximately 60 miles away from Warren County) dumped 12,850 gallons of PCB on the roadside near Fort Bragg Military Reservation, covering 210 miles of road (*United States v. Ward*, 1985). Burns was arrested after confessing to the dumping. Miscarriages, birth defects, and other health issues increased for the population living near the PCB contaminated roads in the years following the dumping; the breast milk of twelve women was found to be contaminated with the same kind of PCB (Department of Health Behavior and Health Education [DHBHE], 2006). Due to the health threats brought to the citizens by the roadside PCBs, North Carolina decided to develop a landfill in the state to safely store the PCBs (U.S. General Accounting Office [GAO], 1983).

The EPA required the site to meet multiple criteria, the most significant being that it must be: at least 50 feet above the groundwater, and the site was supposed to have "thick, relatively impermeable formations such as large-area clay pans" (Labalme, 1987, as cited in DHBHE, 2006). North Carolina evaluated 90 sites before choosing Afton, a small town in Warren County, as the site of the PCB dump. According to the General Accounting Office study published on June 1st, 1983, 66% of the Warren County population and 90% of the population below the poverty level were Black (GAO,1983). Afton, specifically, had the highest percentage of Black residents at 84% and was in the 92nd percentile for median family income in 1980 (Bullard, 2000, p. 30). North Carolina approved the site location in Afton despite it not meeting some of the EPA requirements in December of 1978. The citizens were not pleased with this outcome and voiced their concerns about the safety of the dumps after the EPA approved the waiver. A scientific advisor to the EPA then responded to them, claiming that the requirement – having 50 feet between the dump and groundwater – was unnecessary because the landfill would not leak (Labalme, 1987, as cited in DHBHE, 2006). North Carolina did further soil testing following the residents' complaints, submitted the results to EPA, and got the Warren County site approved. The residents did not trust this process, however. They hired their own soil consultant, Dr. Charles Mulchi, and discovered that the Warren County site soil did not meet the compaction criteria and was therefore not able to be safely compressed without a strong enough protective layer to prevent leakage (DHBHE, 2006).

Concerned about the dumping site, members of the community relied on the law to challenge the site selection. One lawsuit was filed by Henry F. Twitty, who lived next to the dumping site, against the state of North Carolina in 1981. Twitty alleged that the state of North Carolina approved the dumping by waiving three necessary requirements; the dumping not only violated the county's local ordinances (Warren County passed a law on August 21, 1978 banning the disposal of PCB), the state "takes" [took] his property without paying him compensation, and failed to provide an environmental impact statement required by 42 U.S.C. § 4332(2) (C) (*Twitty v. State of* NC, 1981). The second lawsuit (*Warren County v. State of NC*, 1981), also against the state of North Carolina, was filed by the Warren County Board of Commissioners and made similar allegations. These two lawsuits did not succeed in preventing the dumping site from being located in Warren County, but they led to the lawsuit that shifted the legal landscape in favor of future grassroots challenges to environmental racism. The NAACP filed a lawsuit that linked racial bias with the choice of site locations for storing hazardous wastes because Afton's population was predominantly black (However, District Court Judge W. Earl Britt ruled against the NAACP because "There is not one shred of evidence that race has at any time been a motivating factor for any decision taken by any official—state, federal or local—in this long saga" (*NAACP v. Gorsuch*, 1982).

The significance of the Warren County response cannot be understated: it was the first time citizens protested PCB dumping by labeling it discriminatory and relating it to racism. This was the message picked up and disseminated by the media in 1982. The residents of Warren County organized themselves into an environmental justice group, *Warren County Citizens Concerned About PCB,* in 1982 and adopted the nonviolent tactics of the civil rights movement. Jenny Labalme, a documentary photography student at Duke University at the time of the protest, took many revealing photos during the Warren County protests and published them in *A Road to Walk*. Labalme's photos show that protesters wore chest and arm badges, held signs, and protested peacefully. Blacks, whites, and people of all ages protested. When trucks carrying PCBs drove toward the dumping site, protesters lay face up on the road to prevent the truck from passing. Labalme also captures photographs of the police arresting people of all ages. Doolie Burwell, the vice president of *Warren County Citizens Concerned About PCB,* said that her 10-year-old daughter cried after Burwell was arrested not because of her fear of the police, but due to the realization that everybody in Warren County risked getting cancer if the protest failed (Labalme).

The residents failed to stop the dumping despite their collective action. The Warren County protests, however, were not a total failure. The protest encouraged many to dive deeper into the matter of environmental racism. Two

important studies were conducted after the protests: the General Accounting Office study in 1983 and the United Church of Christ Commission for Racial Justice study in 1987. These studies are widely cited throughout the development of the environmental justice movement. The protests also sparked media attention throughout the United States, and the residents organized at the grassroots level and used the law as a weapon to fight against environmental injustices. The strategy of using the law and grassroots organizing to fight against environmental racism became a model for future environmental justice fights such as CANT's battle against LES and the NRC.

LEGAL ASPECTS AND THE EMERGENCE OF ENVIRONMENTAL JUSTICE ORGANIZATIONS

Environmental Justice organizations reflected the convergence of two movements–the social justice/civil rights movement and the environmental movement–which saw the law as a tool for change.

Following the Warren County protests, other environmental justice movements attempted to use existing laws as tools to fight against environmental discrimination. One major legal tool the environmental justice advocates used was Title IV of the Civil Rights Act of 1964. Title IV states that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (1964). In other words, anything that is funded by any federal agencies–including the EPA–cannot have any racial/demographic biases when making decisions. Title VI was first directly referenced in a courtroom in a lawsuit(*Chester Residents for Quality Living v.* Seif, 1996) filed by *Chester Residents Concerned for Quality Living* (CRCQL)—a grassroots-formed environmental justice organization in the mostly African-American city of Chester—against the Pennsylvania Department of Environmental Protection. Because the Pennsylvania Department of Environmental Protection was actively receiving EPA grant funds, they were subject to the provisions of Title VI. However, the case was dismissed due to CRCQL's failure to prove intentional discrimination on the part of the Pennsylvania Department of Environmental Protection (Kearns, 1998).

By 1970, other legal tools existed for the environmental justice movement. President Richard Nixon signed the National Environmental Policy Act (NEPA) on January 1, 1970, the same year of the EPA's creation. It is considered the first environmental law and is often referred to as the "Magna Carta " of Federal environmental laws in the United States ("NEPA: National"). NEPA requires all federal agencies to consider the possible environmental consequences of their proposed decisions. This was a major step toward all kinds of environmental movements, not only environmental justice. With a combination of the Civil Rights Acts, specifically Title VI, and NEPA, more laws focused on environmental discrimination passed: such as the Executive Order 12898.

The mass media reports on the Warren County protests led to several key investigations into environmental racism. In 1983, the United States General Accounting Office published a report on the correlation between the locations of hazardous waste sites and the racial and socio-economic makeup of the area at the request of Walter E. Fauntroy, a member of the U.S. House of Representatives. The research was conducted in EPA's Region IV, which consists of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. Four hazardous waste landfills are located in this region: the Chemical Waste Management plant located in western Alabama, SCA Services located in Calhoun Counties, North Carolina, the Industrial Chemical Company plant located in Lancaster County, South Carolina, and the Warren County PCB landfill. The report found that the population of three out of the four locations was predominantly Black and at least 26% of the population in all four locations lived below the poverty level (GAO, 1983). The GAO study found a strong correlation between minority communities and hazardous waste sites, proving that the location of toxic dumps was not randomly chosen (Bullard, 2000, p. 35).

The United Church of Christ published *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* in 1987. This study analyzed hazardous waste sites across the United States, unlike the General Accounting Office study which only studied EPA Region IV. The study found that "race proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities" (United Church of Christ, 1987). It also accounted for the demographic characteristics of communities located near toxic waste sites, documenting that "three out of every five Black and Hispanic Americans lived in communities with uncontrolled toxic waste sites," and more than 15 million Blacks, 8 million Hispanics, and over half a million Asian/Pacific Islanders or American Indians "lived in communities with one or more controlled toxic toxic waste sites" (United Church of Christ, 1987). The demographic data provided in this study proved The United Church of Christ's claim that race and socio-economic factors influenced the location of hazardous waste.

Collectively, the two studies published by GAO and UCC got a lot of traction among environmental justice activists. Determined to use the data to spark change, twenty researchers and activists met in Detroit in 1990 to discuss the recent studies and their documented patterns of environmental racism (Borunda, 2021). The next year, over 500 culturally diverse researchers, activists, and reformers attended the *First National People of Color Environmental*

Justice Summit in Washington D.C. in October 1991. It was led by the Reverend Ben Chavis, a civil rights movement veteran and pastor at the United Church of Christ, which was a major sponsor of the summit. The adoption of the seventeen "Principles of Environmental Justice" was the most significant outcome of the Summit. The seventeen principles called for equal access to economic and political rights to all people as well as universal protection from hazardous substances and declared that environmental racism was a violation of international law ("Principles of Environmental Justice", 1991). Following the summit, activists and leaders returned to their respective communities and organized the fight for environmental justice (Hennessey, 2008).

Some scholarly activists who attended the Summit later met with President Clinton to discuss the issue of environmental justice. After considering their suggestions and complaints, President Clinton issued Executive Order 12898 on February 11, 1994. It directed all federal agencies "to avoid disproportionately high and adverse human health or environmental effects on low-income and minority populations ("Executive Order 12898", 2022). The Executive Order also created a *Working Group* to "provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations." It was also responsible for collecting data on environmental justice and holding public meetings to receive public feedback and recommendations on environmental justice (Exec. Order No. 12898, 1994). Louisiana Energy Services' violation of Executive Order 12898 was a key allegation made by CANT and will be discussed in a later section.

Following the start of the environmental justice movement, many new and existing environmental organizations joined the movement, and Earthjustice, formerly the Sierra Club Legal Defense Fund, was one of them. The Sierra Club Legal Defense Fund was founded in 1965, during the heyday of modern environmentalism, to assist the Sierra Club with a lawsuit against Walt Disney's proposed construction of a ski resort in Mineral King, a subalpine glacial valley located in the southern part of Sequoia National Park. By 1997, in the aftermath of Executive Order 12898 and the growth of the environmental justice movement, the Sierra Club Legal Defense Fund split from the Sierra Club, rebranding itself as Earthjustice–a progressive law firm. In 2020, Sierra Club publicly apologized for their racist history and their founder John Muir's racist views following the murder of George Floyd ("Sierra Club apologizes", 2020). Executive Director Michael Brune wrote that Muir (the Sierra Club founder and president from 1892 to his death in 1914) was affected by the racist behaviors of the early advocates for nature preservation. Muir made many derogatory comments about African-Americans and Indigenous peoples and perpetuated many racist stereotypes. Other past Sierra Club leaders such as Dr. Joseph LeConte and David Starr Jordan were advocates for white supremacy. This history illuminates the Sierra Club Legal Defense Fund's rebranding and split from its parent organization in the 1990s (Brune, 2020).

The truth about the Sierra Club is that they never intended to support the environmental justice movement until the late 1990s, years after the GAO study, UCC study, and the conference held in Washington D.C. Members of the Sierra Club Legal Defense Fund who attended the conference wanted to join the fight for environmental justice but the Sierra Club did not want to take part in this movement, which is not surprising knowing their racist history. Leaders and active members of the Sierra Club Legal Defense Fund decided to change their name to Earthjustice because they supported the goals of the environmental justice movement and other organizations that participated in it (such as CANT) instead of only the Sierra Club ("Our Clients").

The environmental justice movement had matured and the stage had been set for environmental justice activists around the nation by the mid 1990s. Laws existed which they could use as weapons to challenge environmental injustice. The founders of Earthjustice used "laws like the National Environmental Policy Act to ensure [their] allies' voices are heard in court" and "laws such as Title VI of the Civil Rights Act to challenge siting decisions that impose a disproportionate pollution burden on communities of color. ("Build a Justice-centered").

CANT'S BATTLE AGAINST LOUISIANA ENERGY SERVICES

CANT's legal victory against LES proved that it was possible, even for the poorest citizens of color, to organize politically and defeat a polluter in court, thus positively changing the direction of the ongoing environmental justice movement. It was a highwater mark for the environmental justice movement and one which clearly reflected the legacy of the 1982 Warren County protests.

On June 9, 1989, Senator J. Bennett Johnston (Democrat, Louisiana) proudly announced the building of a new "chemical plant" that would raise tax revenue and provide new job opportunities for local residents. The location of the plant was not specified in the announcement but was later revealed to be situated between Center Springs and Forest Grove, two small African-American communities. Senator Johnson failed to mention, however, that the plant was a uranium-enrichment facility that would bring devastating environmental and health impacts. The uranium enrichment process generates extensive amounts of radioactive wastes that cannot be easily removed. Johnson also misrepresented the tax benefits and the new jobs, misleading the crowd: there would be little to no tax money returned to the residents for the first decade, and the jobs required skills that hardly any of the residents possessed (Turner).

Citizens started to worry after the news spread around the communities. A meeting was held in Forest Grove Church, and they organized themselves into Citizens Against Nuclear Trash (CANT). CANT got in touch with Michael Mariotte of the Nuclear Information Resources Service in Washington, D.C. With the help of Mariotte, they were able to hire a seasoned litigator, Diane Curran, who had experience battling the Nuclear Regulatory Commission (NRC). CANT also hired Earthjustice (Sierra Club Legal Defense Fund at the time) and filed a lawsuit against LES (Turner).

In the meantime, expert witnesses and activists wrote letters to the NRC requesting that it reject LES' proposal to build the plant between Center Springs and Forest Grove. The letters were mostly sent to NRC's chairman at the time, Ivan Selin. Dr. Santokh Singh Khalsa, Suraj Kaur Khalsa, and Cathy Zheutlin sent identical letters to Selin arguing that LES' power plants "should not be constructed (Khalsa, 1993). They said that the process of converting natural uranium into fuel (U-235) for power reactors would create more than 4,000 tons of radioactive U-238 waste, which remains hazardous for millions of years, each year. If the radioactive wastes were stored on the sites, they would leak into Lake Clairborne, thus polluting the local water source. If an accident occurred and Uranium hexafluoride was released, it would react with air and create deadly hydrogen fluoride clouds. The experts also argued against the necessity of the plant: NRC could be producing enriched uranium elsewhere for a lower cost and an existing overcapacity for producing enriched uranium. Lastly, they referred to the United Church of Christ 1987 report and accused LES of environmental racism (Khalsa, 1993). Theresa M. Smith, an expert witness, stated that a new power plant was not necessary because the current plants were only operating at 50% capacity. She also mentioned the citizens' opposition to power plants and environmental racism (Smith, 1993).

Rebecca Meriwether of Cheyenne Mountain Eco-Defense Club also wrote to Selin making similar arguments (Meriwether, 1993). Sandra S. Phillips wrote to the president of NRC W. Howard Arnold; she cited the 1993 Environmental Almanac which identified Louisiana as the state with the most toxic discharges on surface water with 100 million pounds annually (Phillips, 1994). Citizen activists also reached out to the NRC. A citizen of Forest Grove, Brenda G. Willis, expressed her outrage at the proposal by arguing that none of the African-American citizens wanted to lose "part of [their] lives to a uranium plant that has the potential of offering the United States ***nothing***." She also stated the fact that the communities of Center Springs and Forest Grove were left out of the Draft Environmental Impact Statement (DEIS) impact statement and expressed her dissatisfaction with that (Willis, 1993).

The lawsuit dragged on for eight years until May 1, 1997, when a "three-judge panel of the Nuclear Regulatory Commission Atomic Safety and Licensing Board issued a final initial decision on the case (Bullard, 2004). In the case's final decision document, CANT and Earthjustice's initial environmental justice contentions against NRC and LES are listed under Section I Environmental Justice Contentions as "Contention J.9." CANT argued that LES' Applicant's Environmental Report required by the NEPA did not clearly state and weigh many "environmental, social, and economic impacts and costs of operating the CEC [(Claiborne Enrichment Center, the name of the nuclear enrichment site that LES proposed)] (45 NRC 367, 1997). CANT claimed that LES' Environmental Report's benefit-cost analysis was slanted heavily toward the benefits of the project, in other words, they reported to the NRC that the benefits of this project outweighed the harms. The Environmental Report also virtually ignored the significant impacts on the environment and community despite the arguments made by CANT.

CANT argued that the dump would negatively impact the economic and sociological dynamic of Center Spring and Forest Grove. Most notably, the building of the dump would force the closure of Forest Grove Road, a vital artery connecting the two communities. Families who sent their students to school, residents who car-pooled to work, public school transportation, school activities, and church services that required transportation across the two communities would be greatly inconvenienced if Forest Grove Road closed (45 NRC 367, 1997). CANT further argued that the proposed site of the CEC targeted minority communities, and was therefore an example of environmental racism. Referencing the UCC's 1987 study "Toxic Wastes and Race In the United States" CANT argued that the siting followed the pattern of locating dumping sites in poor, generally powerless, communities of color. CANT further claimed that the Environmental Report "does not demonstrate any attempts to avoid or mitigate the disparate impact of the proposed plant on this minority community"(45 NRC 367, 1997).

It is not insignificant that CANT's other environmental justice contention referenced President Clinton's Executive Order 12898, which was published while the lawsuit dragged on. Executive Order 12898 technically only impacted Federal agencies and required them to consider environmental justice when making decisions and analyzing the hypothetical environmental and social effects of that decision (enforced NEPA). The NRC, however, is an independent regulatory agency which means that they were not mandatorily subject to the Executive Order 12898. Nonetheless, the NRC's Chairman wrote President Clinton and voluntarily subjected the NRC to the Executive Order (45 NRC 367, 1997). This agreement let the NRC participate in the Interagency Working Group on Environmental Justice created by the Executive Order and draft an environmental justice strategy

as required by the Executive Order. Because of the NRC's voluntary decision to follow the Executive Order, the NRC was treated no differently from other Federal agencies. Executive Order 12898, therefore, was still applicable to the LES' CEC application. Because the NRC bore the responsibility to consider environmental justice before making a decision, CANT successfully wielded the law, particularly Executive Order 12898, against the NRC and the licensing of the CEC (45 NRC 367, 1997). In this case, the law served the environmental justice movement and the Black citizens of Center Springs and Forest Grove.

One of the most interesting aspects of the case was the expert testimony of Dr. Robert D. Bullard on behalf of the intervenor (CANT). Bullard's first point, while testifying, was his testimony against the racial biases practiced during LES' CEC site-selection process. He requested that the American Civil Liberties Union (ACLU) of Virginia to perform an analysis on the Black population within a one-mile radius of 78 sites LES claimed to have seriously considered. The study found that the aggregate average percentage of the Black population within that range was 28.35%. After LES' first round of site cuts, the aggregate average percentage of the Black population rose to 36.78% on the remaining 37 sites. That percentage rose to 64.74% after the second round site cut left six potential sites. The final site selected was 97.1% Black within a one-mile radius. This gradual increase in the Black population clearly demonstrated the racist motives of LES when eliminating potential sites from their list (45 NRC 367, 1997).

Dr. Bullard's second argument was against the siting process of the final three sites. Larry Engwall, who was in charge of the site selection process, used the K-T method to determine the most favorable sites. The method scores each alternative with a ten-point scoring system that divides the site location's attributes into "must have" or "desirable" qualities. After the second round of site cuts with six sites remaining, Engwall visited all the sites and evaluated them using the K-T method. One attribute of the K-T method used to evaluate the sites was "low population." Instead of formally calculating the population, Engwall drove around the community, eyeballed them, and concluded that "there were 'maybe ten people living there at most'" (45 NRC 367, 1997). In reality, the population of Forest Grove was 150, and Center Spring was 100. Bullard argued that as a result of Engwall's careless estimate of the site's population, the K-T score for the site was higher than what it should have been and led to this site's selection (45 NRC 367, 1997).

Bullard's third argument was against one of the criteria in the first round of site cuts (Fine Screening Phase I). The criteria state that there must not be any institutions such as schools, hospitals, and nursing homes within five miles of the siting location. Bullard reasoned that this criterion demonstrated racial bias because poor/minority communities tend to not have any of these institutions. He stated that this criterion was not bad as it is beneficial to locate the site away from these institutions; however, he argued that this could not be appropriately examined without also considering the demographics of the affected population (45 NRC 367, 1997).

Bullard's fourth and final argument was the LES' process of inquiry. LES relied on the opinion of Homer, a town five miles away from the actual site location, instead of Forest Grove and Center Springs, the host communities. Bullard argued that due to this decision by the LES, citizens of Forest Grove and Center Springs were not informed of the siting decision in time to make any impact on the site selection process. It can be concluded, therefore, LES failed to recognize Forest Grove and Center Springs' existence at all and instead focused on Homer and gave citizens of Forest Grove and Center Springs little to no control over the situation (45 NRC 367, 1997).

Dr. Bullard's testimony advanced CANT's position in the ongoing lawsuit significantly. He identified four almost irrefutable arguments to back up CANT'S allegation against LES' practice of environmental racism when deciding the final site of the CEC. As a result of the lawsuit, the NRC denied LES' application for the CEC license on the grounds of environmental racism–the very reasons listed by CANT and their supporters. This marked the first legal victory which denied a license for reasons of environmental racism and the first time the NRC denied something based on the opposition of a citizen group (Turner). Moreover, CANT's influence on the communities did not stop after the conclusion of the lawsuit. CANT members became involved in local politics: Roy Madris was elected to the Claiborne Parish Police Jury and Almeter Willis was elected to the Claiborne Parish School Board. Some of the other members went on to serve on the local council and the town of Homer elected its first ever African-American mayor (Bullard, 2004).

CONCLUSION

CANT's victory against the NRC and LES was a David vs. Goliath battle. Using the law as their weapon, a grassroots group formed and prevailed over LES, who had the support of both powerful American and European nuclear companies (Bullard, 2000, p. 132). CANT's victory also demonstrated that anybody, even the poorest, can fight off environmental harm in their community by going to court. Just as the Warren County protests modeled the CANT vs. LES fight, CANT's victory against LES became a model for environmental protests for the future. In the end, CANT's victory escalated public awareness and concern for the issues of environmental justice and expanded the ranks of those participating in the environmental justice movement.

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