

TAKING THE LAW INTO THEIR OWN HANDS: FENCE LINE FIGHTING AND ENVIRONMENTAL JUSTICE FROM A JOURNALIST'S POINT OF VIEW

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ABSTRACT

An investigative journalist describes how grassroots environmental struggles in three different communities—in Oklahoma, Florida, and Louisiana—contain similarities that reveal larger patterns about the long path communities must follow to achieve environmental justice. Residents living near industry fence lines cannot depend on regulators or industry to protect them, the author concludes, but must gather their own evidence of pollution's effects. Environmental justice—in the form of reduced pollution or relocation from dangerous plants—is possible. But, as the case studies show, such resolution is achieved only after years of struggle and persistence.

TAKING THE LAW INTO THEIR OWN HANDS: FENCE LINE FIGHTING AND ENVIRONMENTAL JUSTICE FROM A JOURNALIST'S POINT OF VIEW

Ronnie Greene*

I. INTRODUCTION¹

In Ponca City, Oklahoma, black mist from a carbon plant rained on people, pets and lawns for so long,

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¹ This article is based predominantly on the author's experiences as a journalist in the field. As an investigative journalist for over twenty years, the author is able to provide a longitudinal study of the challenges confronting environmental justice communities. Although the earlier articles were published individually when written, this piece collects and analyzes overarching observations of commonalities reflected in the challenges facing environmental justice communities. It allows the author an opportunity to synthesize recurrent themes and focus the reader on systemic challenges. The earlier works inform the author and serve as the foundation for the factual observations and subsequent reflections on the whole. Ronnie Greene, *Community Coated in Black—Until Citizens Fought Back*, The Center for Public Integrity (Nov. 7, 2011), <http://www.iwatchnews.org/2011/11/07/7297/community-coated-black-mist-until-citizens-fought-back> [hereinafter Greene, *Community Coated in Black*]; Ronnie Greene, *Small-town Residents Living on Deadly Ground*, THE MIAMI HERALD (May 3, 2008) [hereinafter Greene, *Small-town Residents*]; Ronnie Greene, *Tiny Toxic Florida Town Takes on a Corporate Goliath*, THE MIAMI HERALD (Aug. 15, 2010) [hereinafter Greene, *Toxic Florida Town*]; Ronnie Greene, *Residents, Lockheed Martin on Brink of Settling Contamination Case*, THE MIAMI HERALD (Sept. 14, 2010) [hereinafter Greene, *Residents, Lockheed*]; RONNIE GREENE, NIGHT FIRE: BIG OIL, POISON AIR, AND MARGIE RICHARD'S FIGHT TO SAVE HER TOWN (2008) [hereinafter GREENE, NIGHT FIRE].

residents filed twenty binders of complaints with regulators.² A Native American mother had her child ride her bike, with training wheels, inside to avoid the mist.³ A teenager kept his prized white Dallas Cowboys jersey wrapped in plastic.⁴ State inspectors documented the pollution for more than a decade, but levied few financial sanctions against industry.⁵

In Tallevast, Florida, an underground plume of toxins seeped into the community's groundwater for decades before detection, billowing into a 200-acre brew of cancer-causing TCE and other hazards.⁶ The historic black community, built by turn-of-the-century turpentine workers, only discovered the plume by chance; government and industry didn't tell the residents.⁷ Now, Tallevast threatens to wither from pollution years after residents began charting cancer cases with stick pins on a board.⁸

In Norco, Louisiana, explosions from a Shell chemical plant and neighboring refinery killed citizens in the streets and workers in the plant.⁹ For decades,

² The plant the author is referring to is Continental Carbon, a carbon plant located in Ponca City, Oklahoma. See Continental Carbon, *Ponca City, Oklahoma, Plant*, <http://www.continentalcarbon.com/company/ponca-city-directions.asp> (last visited Apr. 1, 2012).

³ The "mist" the author is referencing is "carbon black," a product used in tires, rubber and plastic goods. Carbon black is a "carbon in the form of colloidal particles that are produced by incomplete combustion or thermal decomposition of gaseous or liquid hydrocarbons under controlled conditions." See Carbonblack.org, *What is Carbon Black?*, http://www.carbon-black.org/what_is.html (last visited Apr. 1, 2012).

⁴ Greene, *Community Coated in Black*, *supra* note 1.

⁵ *Id.*

⁶ Tallevast Information Center, *Tallevast, Florida & Lockheed Martin*, <http://www.tallevast.info/tallevast> (last visited Apr. 1, 2012).

⁷ Greene, *Toxic Florida Town*, *supra* note 1.

⁸ BUREAU OF ENVTL. PUB. HEALTH MED., FLA. DEP'T OF HEALTH, *TALLEVAST CANCER REVIEW 7* (2008), *available at* <http://www.myfloridaeh.com/medicine/superfund/tallevastcancerreview.pdf>.

homeowners in the four-street, all African American Diamond neighborhood, suffered sickness and worry as some of their homes stood twenty-five feet from the chemical plant fence line.¹⁰ For more than a decade, Shell Oil refused their requests for relocation.¹¹

These three fence line fights, centered in little known hamlets hundreds of miles apart, serve as striking case studies of how working class communities of color—imperiled by pollution and seemingly neglected by regulators—must take the law in to their own hands. In each case, the residents turned to the courts for justice. They filed lawsuits against big industry as their last hope for relief—seeking relocation from these dangerous fence lines.¹² The legal results in these cases ultimately brought some measures of relief, but the respective journeys in Ponca City, Tallevast, and Norco were hindered by delays and difficulties.

In Louisiana, Diamond residents lost their court case against Shell Oil in 1997.¹³ Yet the legal case helped re-energize their quest for relief and attracted aggressive grassroots activists to their cause. Five years later, in 2002, the Diamond community cemented a historic relocation pact with the Fortune 500 Company.¹⁴ This settlement was among the most noteworthy environmental justice verdicts for generations.

The Ponca Tribe of Indians in Oklahoma secured a \$10.5 million settlement with the Continental Carbon Company, the world's fourth largest carbon black manufacturer, in 2009 the case was filed in U.S. District

⁹ See generally *Death Toll up to 6 in Blast*, N.Y. TIMES, May 7, 1988, available at <http://www.nytimes.com/1988/05/07/us/death-toll-up-to-6-in-blast.html>.

¹⁰ GREENE, NIGHT FIRE, *supra* note 1, at 7.

¹¹ *Id.*

¹² *Ponca Tribe of Indians v. Cont'l Carbon Co.*, 439 F. Supp. 1171 (W.D. Okla. 2006); *Ward v. Lockheed Martin Corp.*, 2008 WL 8188990 (Fla. Cir. Ct. Dec. 23, 2008) (Trial Order); *Richards v. Shell Oil Co.*, 1993 WL 541525 (E.D. La. Dec. 21, 1993).

¹³ *Richards*, WL 541525.

¹⁴ GREENE, NIGHT FIRE, *supra* note 1, at 223.

Court for the Western District of Oklahoma.¹⁵ This instance was one of four community lawsuits settled with industry within the past six years. Tallevast residents secured an out of court settlement in 2010 with Fortune 500 Company Lockheed Martin on their main property contamination lawsuit.¹⁶ The settlement of this lawsuit was one of four legal cases the community filed after learning of the pollution plume.

As a journalist and author, I spent years researching the stories in Louisiana, Florida and Oklahoma, talking with people on the ground, pulling environmental inspection reports and reviewing the legal papers filed in each case. As an investigative journalist for The Center for Public Integrity, a nonprofit investigative news center in Washington, I described Ponca City's travails with carbon black in 2011.¹⁷ As an investigative journalist with *The Miami Herald* for a decade before that, I explored Tallevast's plight with Lockheed Martin and TCE.¹⁸ As an author, I detailed Diamond's struggle with Shell in my narrative nonfiction book, *Night Fire: Big Oil, Poison Air, and Margie Richard's Fight to Save Her Town*.¹⁹

The three seemingly unrelated cases, my research shows, actually hold much in common. For instance, in each case, citizens pressed for reform in the courts because they believed government wasn't fully protecting them and industry was not responsive to their concerns.

¹⁵ *Continental Carbon*, 439 F. Supp. at 1171; see also *Ponca Tribe of Indians v. Cont'l Carbon Co.*, 2009 WL 2836508 (W.D. Okla. Jul. 30, 2009) (hereinafter Ponca Settlement).

¹⁶ Timothy Wolfrum, *Tallevast Residents, Lockheed Martin Settle Suit*, BRADENTON.COM, (Sept. 4, 2010) <http://www.bradenton.com/2010/09/04/2552125/tallevast-residents-lockheed-martin.html>

¹⁷ Greene, *Community Coated in Black*, *supra* note 1.

¹⁸ See Greene, *Small-town Residents*, *supra* note 1; see also Greene, *Toxic Florida Town*, *supra* note 1, and Greene, *Residents, Lockheed*, *supra* note 1. TCE is the chemical compound, trichloroethylene.

¹⁹ GREENE, *NIGHT FIRE*, *supra* note 1.

In short, the people had to find justice themselves, not depend on industry or government.

Furthermore, each legal case led to steps forward—either directly or indirectly. In Ponca City, the four cases produced settlements and helped fence line residents nearest the carbon plant move to new homes. In Tallevast, the prime lawsuit landed a settlement agreeable to most in the plaintiff class. In Norco, the legal case was lost, but the trial’s publicity attracted advocates that helped the neighborhood ultimately move away from the fence line.

Moreover, successes came only after hurdles, frustrations and setbacks. Each community had to overcome significant obstacles and wait years to secure progress. Ponca City homeowners complained to state regulators for more than a decade about pollution before finally turning to the courts. Norco residents pushed Shell for more than a decade to fund relocation and lost their court case before resolution came. In Tallevast, despite the lawsuit settlement, residents still await an industry-funded relocation as they suffer through a decades-long cleanup and dwindling property values.

Most significantly, big industry had placed its plants, and thus its pollutants, in blue collar communities of low income, of color, or both. Ultimately, these cities showcase that fence line communities can fight back. But, as these case studies show, cities in similar situations should not expect success to arrive quickly, or easily.

This article will summarize each community’s story from my point of view as an investigative journalist. The lessons revealed in Oklahoma, Florida, and Louisiana carry resonance for any community battling big industry, environmental hazards, and seemingly indifferent regulators.

II. PONCA CITY, OKLAHOMA.

In this city of 25,000 two hours upstate of Oklahoma City, the air pollution was so prevalent residents could touch it: on their hands, their shoes, their pets, their clothes, their children’s toys. For more than a decade, residents filled the local Department of Environmental Quality office with complaints so vast they

took twenty binders to hold.²⁰ The complaints, some coming from members of the Ponca Tribe of Indians living nearest the plant, cited Continental Carbon Co., manufacturer of carbon black, a product used in tires, rubber and plastic goods.²¹ The plant manufactures carbon black from petroleum refinery residual oil, and the finished substance is a form of almost pure carbon classified as a possible carcinogen.²²

Homeowners complained their dogs' feet turned black walking through town, and that their white tennis shoes changed color.²³ Yet, records reveal that the state's own policies hampered efforts to curb the pollution; for many years, the Oklahoma Department of Environmental Quality would file a citation and seek fines against Continental Carbon only if its inspectors actually witnessed the "fugitive dust" leaving the plant.²⁴ Evidence of black dust found on residents' property was not enough. "They said as they interviewed people and took complaints, unless it happened while they were here—and it didn't—it didn't happen. They didn't have the resources to take samples and to go back and test it," Richard Stone, the city's former mayor, stated.²⁵

For a time in 2003, overrun with complaints, the state regulatory agency told residents it could no longer send inspectors to visit homes.²⁶ Even after inspectors

²⁰ Greene, *Community Coated in Black*, *supra* note 1.

²¹ Carbonblack.org, *supra* note 3.

²² See CENTER FOR DISEASE CONTROL AND PREVENTION, OCCUPATIONAL AND SAFETY GUIDELINE FOR CARBON BLACK POTENTIAL HUMAN CARCINOGEN (1988), <http://www.cdc.gov/niosh/docs/81-123/pdfs/0102.pdf>

²³ Greene, *Community Coated in Black*, *supra* note 1.

²⁴ The author researched the Oklahoma Department of Environmental Quality records and conducted interviews. See Greene, *Community Coated in Black*, *supra* note 1.

²⁵ Greene, *Community Coated in Black*, *supra* note 1. The author was informed of this as he researched Ponca City's plight for The Center for Public Integrity's national series on air pollution, *Poisoned Places*.

²⁶ Greene, *Community Coated in Black*, *supra* note 1.

turned out again, complaints continued to pour in. “They just really ignored us, and got mad when we told them they were ignoring us,” Jesse Beck, environmental manager for the Ponca Tribe of Indians, said of state regulators.²⁷

State inspectors often spotted black particulate matter on residents’ property. But the cases nearly always ended there, without a citation against industry, the Center’s review of 726 citizen complaints logged from 1993 to 2011 revealed.²⁸ State regulators said they were diligent, taking action as their rules allowed. Houston-based Continental Carbon, Ponca City’s third largest employer, blamed other sources for the pollution and said it spent millions to reduce emissions.²⁹ “Any issues that are identified in the plant operation are immediately addressed,” Dennis Hetu, Continental Carbon’s recently appointed president, told me.³⁰ He said the company puts environmental compliance behind only safety.

But the people, fed up, had enough. “Living with that plant was a complete nightmare,” resident Karen Howe stated.³¹ Howe recalled moving into a 3-bedroom house just across the fence from the plant. At the time, she was a single mother. “The dust came into your home. I couldn’t open my windows on the east side of the house because it came in,” she said for my story for The Center for Public Integrity.

I tried to get the kids a couple of pets, of course they were outside dogs. As soon as they were outside even three or four days you couldn’t even pet them because your hands would be all black. If they rubbed up against you it would be black on your skin and on your clothes.

²⁷ *Id.*

²⁸ The Center for Public Integrity, <http://www.iwatchnews.org/> (last visited Apr. 10, 2012).

²⁹ Greene, *Community Coated in Black*, *supra* note 1.

³⁰ *Id.*

³¹ *Id.*

Files of the state environmental agency document multiple plant breakdowns over the years that allowed carbon dust to reach the air.³² For residents, it was a frequent struggle with carbon black. “It was a constant cleanup. It was bleach and water. It was always, bleach and water,” said Jonathan Thomas, a father of three who works for the Ponca Tribe of Indians. “You couldn’t have white clothes. You just couldn’t have nothing nice.” Scotty Simpson Jr., a member of the Ponca Tribe business committee, said he’d wash his 1997 white Ford truck, only to find it black the next day. A Dallas Cowboys fan, Simpson proudly owned jersey #22—Hall of Fame running back Emmitt Smith. He kept the jersey in a plastic bag inside his house to protect it. When he went out, he was careful not to touch anything. “Once you got carbon black on it, it was done,” Simpson said.³³

It took a string of lawsuit settlements before the complaints finally began to ebb. The first two cases were filed in 2005, one by town residents, businesses and City Hall, and another by the Ponca Tribe of Indians.³⁴ In 2006, the plant settled with City Hall for \$400,000 and residents for about \$8 million. In 2009, Continental Carbon Co. paid a \$10.5 million settlement to the Tribe. Residents filed a third case in 2007 against Continental Carbon and refinery ConocoPhillips, a case settled in 2010. A fourth case, brought by homeowners in 2009, reached an \$800,000 settlement. Each time, Continental Carbon denied that it caused the pollution but said it settled the cases to move its business forward.

In all, the cases settled for some \$20 million.³⁵ The extent of state fines in the same period: \$25,437.³⁶ As the cases moved through the courts, emissions went down and

³² The author reviewed thousands of pages of Citizen Complaints about carbon black on file at the Oklahoma Department of Environmental Quality offices in Oklahoma City, Oklahoma, during field research in 2011. The files, catalogued by year as Complaints, were contained in 20 binders.

³³ Greene, *Community Coated in Black*, *supra* note 1.

³⁴ *See Continental Carbon*, 439 F. Supp. at 1171.

³⁵ Greene, *Community Coated in Black*, *supra* note 1.

³⁶ *Id.*

citizen complaints did, too. In 2006, the state Department of Environmental Quality changed its policy on fugitive dust "from having to see it cross the property line," an agency spokeswoman said, "to if there is clear evidence of fugitive dust crossing the property line, such as dust on cars."³⁷ That change came a year after the first two lawsuits were filed.

In 2009, the year of the \$10.5 million settlement, plant emissions reported to EPA dropped drastically.³⁸ In the \$10.5 million settlement, the Ponca Nation received a \$320,595 check, and individual homeowners received thousands.³⁹ Lawyers, who logged almost \$1.8 million in expenses and 15,000 hours, received 40 percent.⁴⁰ The largest individual payouts went to 11 homeowners living closest to the plant; the carbon company spent \$300,000 each to move them to new homes.⁴¹

³⁷ *Id.*; OKLA. ADMIN. CODE § 252:100-29-2(c)1 (2012):

(c) Emission boundaries.

(1) No person shall cause or allow the discharge of any visible fugitive dust emissions **beyond the property line** of the property on which the emissions originate in such a manner as to damage or to interfere with the use of adjacent properties. If the DEQ determines that this rule has been violated, the owner or operator of the fugitive dust emissions source or sources shall implement controls, subject to economic and technological feasibility, to prevent future violations.

Id. (emphasis added).

³⁸ Greene, *Community Coated in Black*, *supra* note 1.

³⁹ Ponca Settlement, WL 2836508 *4.

⁴⁰ *Id.* at *3.

⁴¹ See Brian Daffron, *Ponca Nation Gets \$10.5 million Settlement in Environmental Lawsuit*, (Oct. 1, 2009) <http://indiancountrytodaymedianetwork.com/ictarchives/2009/10/01/p-ponca-nation-gets-10-5-million-settlement-in-environmental-lawsuit-83863>.

Today, the ground is covered with grass. “I almost blame the government for allowing those homes to even be there. They should never have been built there,” plaintiff Amos Hinton stated.⁴² A descendant of Ponca Chief Standing Buffalo, Hinton said he even spotted black residue at the gravesite. “My interest was to stop the polluting on my family’s land—the desecration of this man’s burial site,” he said.⁴³

While residents still occasionally cite carbon black, the level of complaints has dipped tremendously.⁴⁴ In Ponca City, change, residents and community leaders say, is in the air.

III. TALLEVAST, FLORIDA.

A long-closed plant anchors one end of this small blue collar town, and the main drag, Tallevast Road, is without sidewalks.⁴⁵ Yet, a small town atmosphere pervades this hamlet near Bradenton, Florida. News spreads from house to house, neighbors are often related, and most of the eighty homes exude the stability of its working-class inhabitants.

Environmental contamination threatens to destroy the heritage of this historic black town. In an environmental drama that has played out for more than a decade, the residents are pitted against giant defense contractor Lockheed Martin, Manatee County, and the state of Florida. The problem begins at the former American Beryllium Company plant at 1600 Tallevast Road, across the street from a community church.⁴⁶

⁴² Greene, *Community Coated in Black*, *supra* note 1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ The author writes as to his personal recollections as he visited Tallevast, Florida as an investigative reporter for THE MIAMI HERALD. See Greene, *Small-town Residents*, *supra* note 1; see also Greene, *Toxic Florida Town*, *supra* note 1; see also Greene, *Residents, Lockheed*, *supra* note 1.

⁴⁶ American Beryllium Corporation was purchased by Lockheed Martin in 1996. See Florida Department of Health, *DOH Timeline of Activities Around Former American Beryllium Site, Tallevast Community*,

Opened in 1961 and closed in 1996, the plant manufactured machine parts for nuclear weapons using beryllium-containing metals. Workers inhaled hazardous dust and handled a toxic degreaser that cleaned machine parts.

In January 2000, as it prepared to sell the plant it had recently purchased, Lockheed Martin discovered a leak of solvents from those degreasers.⁴⁷ The leaching, state officials say, could have begun thirty-eight years earlier.⁴⁸ The company told the county and state, which discovered an underground plume seeping 200 acres in a town of 1.5 square miles, where some residents still drank and showered from well water.⁴⁹ The main hazard was TCE, a cancer-causing chemical used in the degreaser that had drawn attention in the book *A Civil Action*.⁵⁰

Tallevast residents were not informed of the contamination, but discovered it by chance more than three years later, in September 2003. “Why didn't anyone tell us?” Cassandra 'Casey' Brice, whose grandfather co-founded the town's Bryant Chapel Christian Methodist Episcopal Church, asked as I sat at her kitchen table one morning in 2010. Brice became the town's unofficial historian, clipping every article about the contamination.

Both of Brice's parents died after bouts with cancer. She worried her mother's death was linked to the pollution. “All these years we were drinking the water and not knowing it was contaminated,” Brice told me as I investigated the community's struggle for *The Miami Herald*. The pollution's discovery killed property values and sparked worries that any deaths, cancers, and cases of the deadly lung disease Berylliosis⁵¹ were linked to the

<http://www.doh.state.fl.us/environment/community/SUPERFUND/hazwastework/currenttimeline.htm> (last visited Apr. 10, 2012).

⁴⁷ *Id.*

⁴⁸ Greene, *Toxic Florida Town*, *supra* note 1.

⁴⁹ *Id.*

⁵⁰ JONATHAN HARR, *A CIVIL ACTION* (1995).

⁵¹ Berylliosis is lung inflammation caused by the inhalation of dust or fumes that contain the metallic element beryllium.

plant. Affixing stick pins on a board, residents count more than eighty cancer cases over three decades.⁵²

Now, deeply rooted homeowners are desperate for Lockheed Martin to pay to move them out. The company refuses, saying the contamination has been capped and citing a 2005 opinion from a Florida Department of Health doctor that there is no “imminent” health threat.⁵³ “Had we been shown that there was a pathway between those groundwater contaminants and the community, that decision may have been different,” said Lockheed spokesman Gary Cambre, who said the company is committed to rebuilding Tallevast. “It’s not like Lockheed can’t afford to relocate us,” said lifelong resident Beverly Bradley, the sister of Casey Brice. “The money they spent over the years to fight us, they could have relocated us and we would be over this.”

Like others, Bradley is torn. She loves her hometown—but believes she must flee for a community uncluttered by pollution, dwindling property values and health fears. Her sister shares the view. “They expect us to live here all the rest of our lives on this toxic plume,” said Brice. “It was such a vibrant, close-knit community before this happened.”

Residents filed four lawsuits, engaging their campaign from their grassroots headquarters: a squat one-story white building across the street from the former plant. The community is getting help from the School of Law at Barry University in Orlando, which has closely examined Lockheed Martin’s decades-long cleanup plan filed with the state. Jeanne Marie Zokovitch Paben, Director of Barry University’s Earth Advocacy Clinic, told me the case represents one of the most complex contamination cleanups in recent Florida history.

A. Town History

Tallevast was once blanketed with longleaf slash pine trees that lured laborers from Georgia and the

⁵² Greene, *Toxic Florida Town*, *supra* note 1.

⁵³ Greene, *Toxic Florida Town*, *supra* note 1; *see also* MANATEE COUNTY BOARD OF COUNTY COMMISSION MINUTES 6 (2005), *available at* <http://clerkofcircuitcourt.com/boardrecords/Minutes/BccMinutes/BCCMINUTES20050201DOC001.PDF>.

Carolinas. The thousands who trekked to this hamlet at the turn of the 19th century built small homes and turpented for village founder J.H. Tallevast. The men slashed the 100 foot pines to extract the resin, then boiled the sticky, brownish-yellow fluid and loaded the turpentine into barrels. The railroad line was extended here so tons of turpentine could be shipped north.

In 1948, with turpentine becoming a memory, the Visioneering Company opened an engineering plant on Tallevast Road. In 1960, the company became American Beryllium, a subsidiary of Loral Corporation.⁵⁴ American Beryllium (ABC) shifted its headquarters just up the road. At 1600 Tallevast Road, the ABC plant opened in the early 1960s to manufacture nuclear reactors and weapons. Former janitor Morris Robinson said he cleaned out tanks holding a colorless solution. “I had to hold my breath,” Robinson, a third-generation homeowner, told me. “And I would have to step out of the room, get fresh air, hold it, and go back in and finish up.”⁵⁵

In 1996, after the plant closed, Lockheed Martin bought the property as part of a \$9.1 billion purchase of many of the assets of owner Loral Corp. At purchase, it did not conduct an environmental review. A year later, as Lockheed began the process of selling the site, it did. By January 2000, the company discovered a leak of trichloroethylene, TCE, a cancer risk in drinking water that can remain in groundwater for long periods.⁵⁶ Other hazards found include 1,4-dioxane, an industrial chemical that can affect the central nervous system and forms contamination plumes in groundwater, and the chemical tetrachloroethylene, a cancer-causing agent.

As the owner of the property when the leak was discovered, Lockheed Martin was liable for its cleanup. It shared its findings with Florida and Manatee County

⁵⁴ FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, TALLEVAST COMMUNITY, TALLEVAST, MANATEE COUNTY, FLORIDA, PRELIMINARY CONTAMINATION ASSESSMENT REPORT 2 (2004), *available at* http://www.dep.state.fl.us/waste/quick_topics/publications/wc/Tallevast/TallevastCommunity.pdf.

⁵⁵ Greene, *Small-town Residents*, *supra* note 1.

⁵⁶ TCE is the chemical compound, trichloroethylene.

officials and, in September 2001, 538 tons of tainted soil was excavated. Evidence I examined showed that contamination leaked into the community.⁵⁷ A 2001 state review said organic compounds “may be migrating off-site.” In 2002, Florida officials “raised concerns about potential impacts to off-site private wells.” Residents were told nothing. Why didn't the state inform the community? “I don't believe we had a regulation,” a spokeswoman with the Florida Department of Environmental Protection told me in 2008, when I first wrote of Tallevast.⁵⁸

One afternoon in September 2003, resident Laura Ward peered out her window to find a rig drilling on her land. “You don't know, but the water is contaminated here,” a worker told her.⁵⁹ “We're putting in monitoring wells in your community because the water is contaminated.” Finally, the community was getting wind of what was in its groundwater. A few weeks later, Ward and a neighbor huddled with a Lockheed Martin executive at the Mount Tabor Missionary Baptist Church. “There's some TCE in the water,” he said. “We don't think it's very far off site.”

In truth, the documented size of the plume kept growing. In one spot, the TCE concentration was 10,000 times above state standards.⁶⁰ Elsewhere, the state found TCE where the company hadn't. The discovery came just as Ward and others founded a nonprofit—Family Oriented Community United Strong (FOCUS)—in hopes of luring quality low-cost housing and new businesses to Tallevast. Their revival dreams were buried with the

⁵⁷ See Greene, *Small-town Residents*, *supra* note 1; see also Greene, *Toxic Florida Town*, *supra* note 1, and Greene, *Residents, Lockheed*, *supra* note 1.

⁵⁸ Greene, *Small-town Residents*, *supra* note 1.

⁵⁹ *Id.*

⁶⁰ The Florida Department of Environmental Protection has set the Florida drinking water standard for trichloroethene (TCE) is 3 micrograms per liter of water. See FLORIDA DEPARTMENT OF HEALTH, CHEMICALS IN PRIVATE DRINKING WELLS FACT SHEET 1 (2005), available at http://www.doh.state.fl.us/environment/programs/chemical_fact_sheet_s/Trichloroethylene_FS.pdf.

plume, but the residents prompted a state law that requires polluters to notify communities within thirty days. It is called the Tallevast Bill.⁶¹

In September 2010, a decade after the leak's discovery, the community and company agreed to settle a property contamination lawsuit brought by 270 residents against companies that owned or operated the plant.⁶² For residents, a fuller victory remains elusive: relocation to new homes. Today, the village remains an environmental testing ground, with 275 wells monitoring the plume, sprinklers turned off so as not to spread pollution and worry about the future. "Everything I've done, everything I've worked for, is all for nothing," said Robinson, a father of three and Bradenton city worker.⁶³

IV. NORCO, LOUISIANA.

In August 1973, a leak from a Shell Chemical plant in Norco, Louisiana caught fire with a lawnmower being pushed by a 16-year-old, Leroy Jones. The explosion set him afire, taking his life, and catapulted a 72-year-old woman, Helen Washington, from her home into the street. She, too, was killed.⁶⁴

In May 1988, at 3:30 in the morning, a cataclysmic explosion from a Shell refinery, on the other side of the four-street Diamond neighborhood, killed seven workers inside the plant, turned night into day, and triggered tremors thirty-five miles away.⁶⁵ The explosions seared fear in the Diamond, a small community sandwiched between the chemical plant and refinery. Some homes

⁶¹ See FLA. STAT. § 376.30702 (2011). The bill required that within 30 days after receipt of actual notice from the person responsible for site rehabilitation, the Department of Environmental Protection must notify the mayor, the city manager, all real property owners, tenants, and essentially everyone affected, of the contamination.

⁶² Wolfrum, *supra* note 16.

⁶³ See Greene, *Small-town Residents*, *supra* note 1; see also Greene, *Toxic Florida Town*, *supra* note 1; see also Greene, *Residents, Lockheed*, *supra* note 1.

⁶⁴ GREENE, NIGHT FIRE, *supra* note 1, at 17-19.

⁶⁵ *Id.* at 42; *supra* note 9.

stood just twenty-five feet from the chemical plant's fence line.

A year after the second explosion, Diamond residents gathered inside the quaint Masonic meeting hall and spoke of the smoke, deaths, and worries.⁶⁶ That evening in 1989, the community officially formed the Norco Relocation Committee. Margie Richard, a single mother and public school teacher living in a trailer home abutting the chemical plant, was named president.

The dues were \$2 for the elderly, \$5 for others. Their target: a company so rich with crude it turned \$1.5 million in worldwide profit each hour.⁶⁷ The residents prayed before each meeting and put aside the small group dues to pay for homemade picket signs of protest.⁶⁸ Margie had her neighbors record their list of goals. Number one: relocation from Diamond. Also on the list: a right to a long life, cleaner air and less noise, deduction of the flare from the chemical plant's smokestacks, and, getting Shell to talk to them like neighbors.

The last goal wasn't easy. "They would sit there and listen, and they would say, 'We'll consider it,'" Wilma Subra, a Louisiana chemist who studied Norco, told me as I researched my book, *Night Fire*.⁶⁹ "But there was never a response back, 'Well, we agree to do this.'"

On October 5, 1993, tired of inaction, the community went to court. *Richards vs. Shell Oil Company* was filed in the courthouse at the Parish of St. Charles, on Highway 18 in Hahnville.⁷⁰ Someone initially labeled the case "Richards vs. Shell," but Margie Richard was lead plaintiff representing the interests of like-minded residents.⁷¹

The legal claim identified the nature of the injuries as "negligence, reckless and wanton misconduct, strict liability, nuisance, trespass, battery, intentional infliction

⁶⁶ GREENE, NIGHT FIRE, *supra* note 1, at 49.

⁶⁷ *Id.* at 54.

⁶⁸ *Id.* at 55.

⁶⁹ *Id.* at 62.

⁷⁰ Richards, WL 541525; GREENE, NIGHT FIRE, *supra* note 1, at 72.

of emotional distress, [and] negligence in the conduct of ultra-hazardous activity.”⁷² The Diamond lawyers sought a verdict awarding enough money for residents to reap their ultimate goal of moving out.

The 25-page complaint stated that the “air breathed by the plaintiff . . . is contaminated,” and alleged “[p]hysical, economic and psychological” harm to the community.⁷³ It said the plant’s emissions dropped the market value in Diamond while tainting the air, food, and water.⁷⁴ “Indeed, there is no safe threshold level of exposure to many of the chemicals emitted from the Shell facility.”⁷⁵

The lawyers wanted the courts to shut the chemical plant down, “enjoining Shell from further use of said facility . . . and decreeing that in default of Shell removing said facility, that the Sheriff of St. Charles Parish be directed to remove the same at the expense of the defendant, Shell.”⁷⁶ Shell’s corporate and legal strategy was simple. “If they felt they were not wrong on these issues, they would fight the lawsuit,” one Shell official told me.⁷⁷ Shell did that, challenging the case on every count and contending the plant caused little, if any, harm.

On March 28, 1994, Margie Richard was deposed by Shell’s lawyers.⁷⁸ Her description of the plant’s harm to the community could not be more plain-spoken. “Do you have any particular evidence that would support any claim that you and the two hundred and eighty or so odd members are being treated any differently than, say, people that live on the north side of Norco?” the Shell lawyer asked her, according to the court deposition. She replied,

⁷² GREENE, NIGHT FIRE, *supra* note 1, at 73; original Complaint on file with author.

⁷³ GREENE, NIGHT FIRE, *supra* note 1, at 73.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 73-74.

⁷⁷ *Id.* at 74.

⁷⁸ *Id.* at 80.

The only evidence that we have that may not be concrete is what we walk through and live through daily” “It’s like we’re forgotten. It’s like, let us die. I mean, look, that noise and that flaring is bad. It shakes your house. The evidence is our dishes rattling in the cabinet, doors shake.” “The evidence, it’s like people on our street die.⁷⁹

In April 1997, as the case continued to wind its way through the courts, researchers from the Deep South Center for Environmental Justice, based at nearby Xavier University in New Orleans, published a survey of the community’s health.⁸⁰ Over thirty-five percent of husbands and wives reported having chest pains or respiratory congestion, and their children reported troubling rates of asthma (thirty-five percent) and bronchitis (twenty-eight percent).⁸¹ More than one-fourth of respondents reported suffering itching, burning eyes.⁸² Also common were blurred vision, ear itches, ringing in the ears, sinus infections, and persistent coughs.

The Diamond lawyers never put the Xavier study into evidence, however. Instead, they relied on other evidence including state pollution reports and residents’ testimony. Each side hired experts. In August 1997, twenty-four years to the month after Helen Washington and Leroy Jones died in the streets, the jurors spoke. The one-sentence question atop their jury verdict form had asked: “[d]o you find that the operation of the Defendant’s facility is a nuisance within the legal meaning of those terms as explained in the instructions?”

A large X was marked in the box for “No” to the question, and the jurors voted 10-2 in favor of Shell. With that, jurors didn’t have to consider what amount of damages should be awarded. There were no damages. The international conglomerate had won. Residents lost

⁷⁹ *Id.*

⁸⁰ DIAMOND HEALTH SURVEY, DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE 2-3 (1997) (Xavier University); copy on file with author.

⁸¹ *Id.*

⁸² *Id.*

the case, yet the lawsuit brought attention to the Diamond community—attracting environmental activists to town. And then more scares unfolded.

On December 8, 1998, at just after eight in the morning, a highly flammable chemical began to overheat inside a 5,000 gallon Shell tank in the plant’s batch resins unit.⁸³ Shell employees sweated furiously, laboring to lower the tank’s temperature before it exploded.⁸⁴ The incident commander ordered the Norco Elementary School, a half mile away, sealed shut.⁸⁵ Teachers dispersed water and towels, instructing the quarantined children to cover their noses.

Three-and-one-half hours later, the alert was called off. The chemical bomb in the making had been contained, and frantic parents rushed into Norco Elementary to pull their children out. The near explosion empowered more action. Residents started capturing plant air emissions in an EPA-approved five-gallon bucket, and then sent the results for testing. The “Bucket Brigade” documented evidence of pollution and harm that regulators had long overlooked.

Finally, Shell buckled. In a historic reversal on June 11, 2002, Shell offered to buy the entire Diamond community: Washington, Cathy, Diamond, and East streets. The company now offered \$80,000 minimum for an owner-occupied house and \$50,000 for a mobile home—nearly four times what it had been paying in a long-entrenched policy of paying market value. Shell assigned new faces to negotiate with Diamond, and the results showed.

Margie Richard, the community leader, was thankful the relocation pact was approved during her lifetime. Margie’s older sister, Naomi, had died years earlier from a rare lung disease often linked to environmental hazards.⁸⁶ “I want to cry tears,” Margie said after the homes were bought out. “Tears of joy.”⁸⁷

⁸³ GREENE, NIGHT FIRE, *supra* note 1, at 132.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ GREENE, NIGHT FIRE, *supra* note 1, at 152. “My sister died at the age of forty-three from an allergenic disease called sarcoidosis, a disease which affects [less than] one in one thousand people in the

Diamond residents succeeded, but it took nearly 30 years—from the first explosion that August day of 1973—to achieve their justice.

V. CONCLUSION

In each community, my reporting found, common sense justice was squarely on the residents' side. In Ponca City, Oklahoma, residents woke up many mornings to find black smudge on their homes and their clothes, and hundreds of times, they turned to state regulators to help them. The complaints piled up, and the pollution continued, unstopped, until Native Americans and other residents turned to the courts.

In Tallevast, Florida, residents were not responsible for the underground leak of chemicals—a former plant was—yet they were kept in the dark about the pollution, once it was discovered, by government and industry. To longtime homeowners, neither the county nor the state of Florida came to their rescue, and today, more than a decade after the leak's discovery, residents still find themselves pushing Lockheed Martin to fund a relocation from the underground plume.

In Norco, Louisiana, the Diamond residents had full grounds for concern; some of the resident's homes stood just twenty-five feet from the fence line of the Shell Chemical plant. In Louisiana today, homes must be at least 2,000 feet from such potentially harmful facilities, but Diamond's residences took root before that law was on the books. Residents witnessed neighbors die in the street, workers die at the refinery, and counted troubling rates of sickness in their homes. Yet, they felt regulators were not protecting them, and it took a protracted legal battle against a giant corporation to finally free them from harm's way.

Diamond's justice—achieved only after decades of struggle—is symptomatic of the larger struggles working class communities of color face when battling big industry and ineffectual regulators. The crusades waged in Oklahoma, Florida and Louisiana show that residents must dig for truths with their own hands, wiping away

United States, yet in Norco there are at least five known cases in fewer than five hundred people of color." *Id.*

⁸⁷ *Id.* at 225.

black particulate matter in Oklahoma, digging into the tainted groundwater in Florida, or capturing air in five-gallon buckets in Louisiana. Only with this evidence, literally gathered in their own hands, right on the fence-lines, can seemingly powerless communities achieve power and attain the justice they seek. Industry and local government, these case studies demonstrate, will not hand it to them.