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Environmental Justice Comes Full Circle: Warren County Before and After

Dollie Burwell

Luke W. Cole

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ARTICLE

ENVIRONMENTAL JUSTICE COMES
FULL CIRCLE:

WARREN COUNTY BEFORE AND
AFTER

DOLLIE BURWELL & LUKE W. COLE***

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* Regional District Director, Office of U.S. Representative G.K. Butterfield, Weldon, North Carolina; co-founder, Warren County Concerned Citizens Against PCB; former co-chair, Joint Warren County/State PCB Landfill Working Group.

** Executive Director, Center on Race, Poverty & the Environment, San Francisco, California.. Both authors thank Elena Gil for her expert research and editorial assistance on this article.

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I. WARREN COUNTY, PAST AND PRESENT

The Warren County protests of 1982 are seen by many as the spark that lit the Environmental Justice Movement.¹ But Warren County's iconic status obscures the fact that the struggle for environmental justice there began years before 1982 and continued for more than two decades afterward. The Warren County protests were dialectically both the effect and the cause of African American empowerment in North Carolina, and they led to concrete political gains for African Americans there that continue to this day. Warren County's legacy goes far beyond merely being a catalyst for the Environmental Justice Movement: it sparked congressional research demonstrating the disparate impact of toxic-waste dumping in the southern United States and the United Church of Christ ("UCC") Commission for Racial Justice's study *Toxic Wastes and Race*, which documented that disparate impact nationally. It stands as a model for community control over the process of cleaning up and detoxifying a failing dumpsite, a process that took from 1994 to 2004. It also stands as a monument to the maturity of environmental justice thought, as the residents in Warren County refused to have the waste moved to another poor, rural, African American community when the dump site failed, but insisted instead on on-site detoxification. The Warren County story is complex, multi-layered, and inspirational, and much of it remains thus far untold. This is part of that story.

This article/remembrance chronicles the Warren County struggle. It begins before the protests that thrust it into the national spotlight, examining the factors that led to the struggle in the first place. It touches on the protests themselves, and then recounts part of the Warren County story that is not well known: the ultimate detoxification of the polychlorinated biphenyls ("PCBs") site. Finally, it examines the legacy of the Warren County struggle, both nationally and locally in the county itself. In places, it self-consciously departs from the third person to describe in first person narrative (presented in the italicized portions of the article) the actual events of Warren County as remembered by one of its central participants, Dollie Burwell.

¹ See, e.g., UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE IN THE UNITED STATES (1987); ROBERT D. BULLARD, DUMPING IN DIXIE: RACE, CLASS AND ENVIRONMENTAL QUALITY 38 (Westview Press 1990) ("DUMPING IN DIXIE").

II. THE PCB SPILL AND PROPOSED CLEANUP, 1978-1982

The Warren County struggle had its genesis in the illegal disposal of highly toxic PCBs.² In the summer of 1978, a trucking company seeking to avoid the expense of trucking the waste out of state disposed of more than 30,000 gallons of PCB-contaminated waste oil along 210 miles of North Carolina roads.³ The illegal dumping was the largest PCB spill in United States history.⁴ The three operators of the company—who rigged a truck with a special sprayer to dispose of the PCBs—pleaded guilty to criminal charges and went to prison.⁵ The PCBs stayed by the roadside where they had been sprayed until the State and the United States Environmental Protection Agency (“EPA”) figured out what to do about the dumping. Governor James Hunt prohibited farmers from grazing cows along the roadways and ordered nearby crops destroyed.⁶

*We heard that toxic waste had been dumped along the highway from the newspapers, TV, radio. It was a big issue. It was all over the news that the spill had occurred; and, of course, you saw the men in their white suits along the roadside. This is from TV, and it was obvious to the children that this was just such a dangerous substance that had been put on the roadside. The talk about carcinogens and that kind of thing that made even the children feel like this is something we don't want in our community.*⁷

The State Department of Environment and Natural Resources conducted a siting process for a dump to dispose of the PCB-laden waste, beginning with a list of more than a hundred sites in thirteen North Carolina counties.⁸ State officials inspected each site and then focused

² PCBs, or polychlorinated biphenyls, are a class of once-widely used heat transfer chemicals that have proven to be highly toxic. See *PCBs: Problem for All Parties*, CHEMICAL WEEK, Dec. 3, 1975, at 40; *Closer Look at PCBs*, CHEMICAL WEEK, Sept. 8, 1975, at 26; *New Breed of Pollutants: The Dangers They Carry*, U.S. NEWS & WORLD REPORT, Feb. 7, 1977, at 42 (A 1960s study showed PCBs can cause reproductive disorders, skin lesions, liver trouble, loss of hair, and problems with metabolism.); *Why PCBs lost out*, CHEMICAL WEEK, Sept. 6, 1976, at 29.

³ DUMPING IN DIXIE, *supra* note 1, at 35-36; Dale Russakoff, *As in the '60s, Protesters Rally; But this Time the Foe is PCB*, WASH. POST, Oct. 11, 1982, at A1.

⁴ DUMPING IN DIXIE, *supra* note 1, at 36.

⁵ *Id.* *Carolinians Angry Over PCB Landfill*, N.Y. TIMES, Aug. 11, 1982, at D17.

⁶ *Id.*

⁷ The italicized first-person reminiscences of Dollie Burwell are based on a transcribed conversation between Burwell and Cole on December 6, 2006.

⁸ Russakoff, *supra* note 3, at A1; ROBERT W. COLLIN, THE ENVIRONMENTAL PROTECTION AGENCY: CLEANING UP AMERICA'S ACT 107 (Greenwood Press 2006).

on eleven sites for soil testing. Six of the sites were then chosen for further soil and water studies.⁹ The discussion of locations for the dump soon focused on the town of Afton in Warren County, among other locations. Some advocated for a toxic-waste facility for the entire region, not just for the PCB-contaminated soil. Others pushed to have all of the waste trucked out of state to a hazardous-waste landfill in Emelle, Alabama.¹⁰

A. COMMUNITY REACTION, 1978-1979

After the State named the small, rural community of Afton in Warren County as a potential dump site, the community reacted immediately. Dollie Burwell and Debra and Ken Ferruccio started community meetings in 1978 at the courthouse in Warren, the county seat. The Ferruccios were a white couple who had recently moved to North Carolina from Boston, and they were strong environmentalists. Burwell brought connections she had made through her civil rights work.

Burwell was not an unlikely activist: born in Warren County, she graduated from high school at the segregated Henderson Institute in neighboring Vance County in 1967. During that time, she became involved in civil rights issues, particularly voter education, voting rights and registering people to vote. She worked to integrate lunch counters in Vance and Warren counties and attended civil rights rallies. In 1978, she was a member of the board of directors of the Southern Christian Leadership Conference ("SCLC") and working on the integration of the schools in Warren County. Through this work she knew national civil rights leaders like Reverend Joseph Lowery, president of SCLC, and other local leaders like Ben Chavis, an organizer with the UCC's Commission for Racial Justice.

The whole community was coming to the meetings at the courthouse. Because of the images that people saw on TV about how dangerous the PCBs were or how they perceived it, people—including my own child Kim—actually thought that once the PCBs were put in Warren County that people would immediately start dying from cancer. That's the way they perceived it on TV, they saw the men dressed up in these space suits, they just really thought that people would die immediately—it was almost like anthrax. That's the perception that a lot of people had, particularly children and a lot of adults too because they

⁹ Russakoff, *supra* note 3, at A1.

¹⁰ *Alabama Dump Promoted for Carolina PCB's*, N.Y. TIMES, Sept. 25, 1982, at § 1, p. 17.

did not know. They didn't know anything about PCBs.

So when the meetings started, it was not hard to get people to come to the meetings. Many people in the Afton community were poor, but they owned their own little home, the piece of property that had been left to them by their family and that was the only thing they had. I knew folks who worked in the cotton mills. They owned their own little home, and they thought that, if they brought the chemicals here, that was going to destroy the value of the little property that they owned. They had to try to stop somebody from destroying their livelihood.

Residents feared for their property values and also for their health. Ken Ferruccio told the New York Times that residents were “fighting for their lives.”¹¹ The residents organized a group, which they called Warren County Citizens Concerned About PCBs, and continued to meet at the courthouse in downtown Warren, roughly ten miles from the proposed landfill site itself. Burwell chose the courthouse out of her experience with SCLC.

Well, the courthouse is just a public building. I remember working with the SCLC and every meeting we had was at the courthouse somewhere because Dr. Lowery would always say “our house, the courthouse is our house.” So I think we saw the courthouse as a public place, a public building that everybody would feel welcome to come to, and it was just the most logical place for people to meet. In Warren County there are not a lot of community buildings, and the courthouse is a community building.

At the first meeting, Warren County was one of the sites on the list. There were about 15 or 20 other sites. At one point it was said that Warren County would not be the site because it didn't meet some of the scientific criteria. We were feeling a little safe at one point that it wouldn't be this site. Because, you know, it didn't meet some of the scientific criteria like the soil in Warren County was real sandy. Our water table is less than five feet below ground level. There were some other issues like the roads were not the best roads. I would say about three or four months after the spill when Warren County became one of the sites that was listed, even though at one point we were not the site that was listed highest, I had this gut feeling that it will be in Warren County.

¹¹ *Carolínians Angry Over PCB Landfill*, *supra* note 5, at D17.

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Then we learned that the State had actually purchased a site in Warren County, and that concerned us.

B. THE STATE CHOOSES WARREN COUNTY, 1978-1979

Governor James Hunt chose the Afton site in late 1978.¹² It was not until months after the location was chosen and touted as the “safest site” that detailed analysis was done of the site. The State and EPA then discovered that the site did not meet federal standards for toxic-waste disposal: soils under the site were not as compacted as required, and the water table was higher than allowed.¹³ The EPA thus had to grant waivers to the State to construct the site.¹⁴ EPA approved the site in 1979.¹⁵ By that time the group Warren County Concerned Citizens Against PCB had raised some money, through bake sales and other contributions. The group paid a scientist for a technical review of the site; that scientist determined that the landfill site was not scientifically suitable.

The scientific flaws in the plan and the site’s failure to meet EPA’s standards for toxic-waste disposal troubled local residents greatly. Even more alarming, however, was the discovery that of all the ninety-three sites considered, the Warren County site had the highest percentage of African American residents. When the county was chosen by the State, according to the most recent Census, it had a higher percentage of “Negro and other races” than any other of North Carolina’s one hundred counties, 62.5 %.¹⁶ Four years later in 1982, at the moment it burst into national prominence, Warren County had a higher percentage of African American residents than ninety-nine out of North Carolina’s one hundred counties.¹⁷ African American residents in this rural area—products of

¹² *55 Arrested in Protest at a Toxic Dump in Carolina*, N.Y. TIMES, Sept. 16, 1982, at A18.

¹³ Russakoff, *supra* note 3, at A1.

¹⁴ *Id.* Scientists pointed out that the location was not suitable for a PCB dump – the water table was just five feet below the ground’s surface and most residents got their drinking water from groundwater. DUMPING IN DIXIE, *supra* note 1 (citing Ken Geiser and Gerry Waneck, *PCBs and Warren County*, Science for the People 15, 17 (July/Aug. 1983)).

¹⁵ *Carolinians Angry Over PCB Landfill*, *supra* note 5, at D17; Leon Daniel, *Racial Issue, raising in dumping dispute*, UNITED PRESS INTERNATIONAL, Oct. 21, 1982.

¹⁶ U.S. Dept. of Commerce, Bureau of the Census, 1970 Census of Population, Volume 1, Characteristics of the Population, Part 35, North Carolina, Table 16: Summary of General Characteristics, 1970, at 35-53 (U.S. Government Printing Office 1973). The closest other county was neighboring Northampton County, at 59.1%.

¹⁷ Various press reports at the time put the percentage of people of color in Warren County in 1982 at 64% and reported it as the highest percentage in North Carolina (*see, e.g., Carolinians Angry Over PCB Landfill*, *supra* note 5, at D17; *Carolinians See Governor in PCB Landfill Dispute*, N.Y.

the civil rights movement and still fighting for school desegregation and voter registration—saw the dump as another vestige of continuing racism. This fueled even larger community meetings.

“We know why they picked us,” the Reverend Luther Brown later told the Washington Post. “It’s because it’s a poor county – poor politically, poor in health, poor in education and because its mostly Black. Nobody thought people like us would make a fuss.”¹⁸ If state officials thought that the community would not make a fuss, they were soon to be proven dramatically wrong.

C. LOCAL OPPOSITION ESCALATES, 1979-1981

To formulate a response to the State, the meetings at the courthouse continued for ten months, every two to three weeks or more often depending on what the State was doing. The meetings started with forty to fifty people and grew into the hundreds. By the time the State decided that it was going to site the landfill in Warren County, four to five hundred people were attending the meetings. The State also had several meetings in Warren, too, at the National Guard Armory. More than seven hundred people attended one hearing in Warrenton in 1979.¹⁹

The composition of the meetings was really representative of the County. The overwhelming majority was African Americans, but there were whites and Native Americans. The Afton community is about eighty to eighty-five percent African American. The County itself is about sixty-five percent African American; and we have about maybe four percent Native American in Warren County and the rest is white American. So I really think that the meetings were representative of the County, and so you had maybe sixty, sixty-five percent attending the meeting who were Black. It was one of the few times I think that Blacks, whites, and Native Americans all joined together, to say that Warren County was not conducive for a landfill for a number of reasons.

TIMES, Oct. 10, 1982, at § 1, p. 31), but the 1980 Census reports that Warren County was 59.5% African American, while adjacent Northampton County was 60.7% African American. U.S. Dept. of Commerce, Bureau of the Census, 1980 Census of Population, Volume 1, Characteristics of the Population, Chapter B: General Population Characteristics, Part 35, North Carolina (PC80-1-B35), Table 14: Summary of General Characteristics, 1980, at 35-13 (U.S. Government Printing Office, 1982). Today, the percentage of African Americans in Warren County stands at 55%. <http://quickfacts.census.gov/qfd/states/37/37185.html>. This is down slightly from 57% in 1990. http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qr_name=DEC_1990_STF1_DP1&ds_name=DEC_1990_STF1_&geo_id=05000US37185.

¹⁸ Russakoff, *supra* note 3, at A1.

¹⁹ *Carolinians Angry Over PCB Landfill*, *supra* note 5, at D17.

“If anybody had ever told me whites and Blacks would get together in this county like this for anything, I wouldn’t have believed it,” Jim Ward, a white hog farmer, told the New York Times.²⁰ Although Warren County was overwhelmingly African American, and had been since before the Civil War, Blacks had little political power. They held just one elective office in the entire county, the seat of County Commissioner George Shearin. Within a few months of the meetings beginning, Burwell and other civil rights leaders realized that to make their voice heard, they needed to register Black voters. Activists like Eva Clayton, Ruby Jones, and Burwell joined forces with Henry Pitchford, president of the local National Association for the Advancement of Colored People (“NAACP”), to register voters.

We had one Black on the County Commission. We felt like we had him because his name was George Shearin, and there were two other whites in the county whose names were also George Shearin—when he got elected, I think people didn’t know which Shearin they were voting for. And it wasn’t because Blacks hadn’t run before. Blacks had run. They were just not elected. There weren’t enough Blacks registered to vote. Whites didn’t vote for Blacks during that time.

Warren County had seen organizing around civil rights issues, but Blacks had not registered and voted in numbers enough to win local races. In order to build African American political power and representation in Warren County, and to desegregate local schools, community leaders had earlier formed the Warren County Political Action Committee, and the local NAACP was active, but at the time African Americans could not get elected in Warren County.

It was not easy to get people involved around registering and voting because Warren County was a big sharecropping area. Blacks were discouraged from participating in voting and registering to vote. Even after the end of some of the sharecropping when people started working at some of the factories, they worked in those factories under some of the same folks. People were just not comfortable with registering and voting, and they were not encouraged to do so. Some people thought I could lose my job by registering and voting. But when it came to it, they saw that what they owned might be destroyed because it was a political decision—I think somehow the dots were connected a little bit better for

²⁰ Russakoff, *supra* note 3, at A1.

them 'cause they had more to lose.

As the meetings continued, passions and tensions ran high. At a certain point, Burwell knew she had to involve the faith community in a more direct way.

Having been a part of the civil rights movement, and hearing some talk of some potential violence around what people would do if the State brought toxic waste into the community, I personally thought that we needed to get the faith-based folk involved. Reverend Luther Brown reached out to us because he had heard the same talk that there was going to be some violence, and the only way to keep the violence down was to bring the faith to the community into the whole issue of formulating a protest rather than folks taking matters into their own hands and being violent.

I was hearing talk of violence from people in the community, including my own brother. In fact, my brother was like, "I'm not gonna let anybody come in here and destroy my life. And if I have to get my gun, I'm going to shoot the first truck"—it was that kind of talk. Both white and Black people that I had heard make statements in meetings that we had in the courthouse made me think that there would be some violence if we didn't bring the faith of the community into it.

I've always been a member of the United Church of Christ. So around the whole desegregation that I have been involved in, and other issues, it was civil disobedience rather than violence that was going to bring attention to what was happening. The violence would bring the wrong kind of press and the wrong kind of attention.

After an invitation from Reverend Luther Brown, Burwell and the Ferruccios moved the meetings to Coley Springs Baptist Church in Afton, the actual community in which the State was considering placing the PCB dump. Coley Springs was the largest Black congregation in Warren County.²¹ The church is within a mile and a half of the proposed landfill site.

When we moved to the church, the composition of the group was still similar. It was probably the first time ever in Warren County where you had white, Black, Native American all gathered in a Black church. It

²¹ *Id.*

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was really reminiscent of civil rights rallies—the meetings were. We would have discussions, but the meetings ended up with us singing spirituals and ministers often in prayer. People leaving feeling empowered. I think some people really did believe that they were going to actually stop this thing.

People came together really in their own community first, before actually coming together at Coley Springs Baptist Church to try to formulate a response to the State even anticipating putting it in Warren County.

One reason people fought the dump is that Warren County was so predominantly poor, and so we didn't have access to health facilities—if there were any problems with the site or with even bringing the waste into Warren County, we were a long ways away from health facilities. So once we found out that the State was definitely going to put it in Warren County, there was a number of other meetings that were held in between that time with folks from the State coming in trying to convince us that it will be a safe site. That it will be just the Cadillac of landfills and still the people didn't buy that.

With a \$2.5 million grant from the U.S. EPA, the State purchased the land and, about a year before the dump actually opened, began constructing the site.²² During the construction, as the plastic liner was being installed, it was vandalized.²³

Someone—I don't know how they got over in that landfill, but they got over in the landfill, and they just cut up the liner. They cut it all up; and people were saying that that was indicative of what was going to happen to a truck driver. Somebody was going to take action against the truck drivers the same way they took action against the landfill itself.

People in Warren County had learned of a major hazardous-waste landfill in Emelle, Alabama, and many residents were advocating taking the waste there instead. Their reasoning was that there was already a toxic-waste site in Emelle, so there was no need to build another one and

²² Daniel, *supra* note 15.

²³ Dollie Burwell, *Sometimes the Road Gets Lonely*, in *THE POLITICS OF MOTHERHOOD: ACTIVIST VOICES FROM LEFT TO RIGHT* 62-69, 74 (A. Jetter, A. Orleck, D. Taylor, eds., Univ. Press of New England 1997); Eleanor Lee, *Landfill Vandalism in Warren County is Probed*, *Durham Morning Herald*, Aug. 24, 1982, at 1B, cited in TEMMA KAPLAN, *CRAZY FOR DEMOCRACY: WOMEN IN GRASSROOTS MOVEMENTS* (Routledge 1997).

burden Warren County with the waste. Local residents got support from white environmentalists in this demand: James Sharp, the head of the Conservation Council of North Carolina—the state’s largest environmental organization—advocated shipping the contaminated soil to the waste facility in Emelle. In the *New York Times*, Sharp called the Emelle facility “as close to a safe landfill as any in the country we know of.”²⁴ These calls fell on deaf ears as the landfill construction reached completion. The State said that it would cost too much to dispose of the waste at Emelle or decontaminate the waste on site.²⁵

Burwell and other experienced civil rights activists began to plan the protests that would take place. Burwell invited her pastor, the Reverend Leon White, the field director for the North Carolina-Virginia field office of the UCC Commission for Racial Justice in nearby Raleigh, to attend the planning meetings and bring his experience planning civil rights marches. “We decided we had to march,” white hog farmer Jim Ward told the *Washington Post*, “but most of us in the group were white and we didn’t have any experience marching. We had to call in somebody who did.”²⁶

Once they actually started constructing the landfill, we knew that we were going to have to protest. Because we knew that the State had spent so much money constructing that landfill that it was going to be the place and that civil disobedience was going to be the only thing that could possibly stop the trucking of the soil.

D. THE LEGAL APPROACH FAILS, 1982

There were at least two lawsuits filed to try to block the waste disposal in Warren County. The County Commissioners filed suit against the State. They lost the suit before Judge W. Earl Britt in federal district court in Raleigh in October 1981 and appealed to the Fourth Circuit. In May 1982, the County Commissioners agreed to drop their appeal²⁷ in exchange for the State deeding to the County a buffer zone around the dump site itself. The State retained title to the nineteen acres

²⁴ *Alabama Dump Promoted for Carolina PCB’s*, N.Y. TIMES, Sept. 25, 1982, at § 1, p. 17.

²⁵ *On-Site PCB Disposal Called Too Expensive*, DURHAM MORNING HERALD, Aug. 6, 1982, cited in TEMMA KAPLAN, CRAZY FOR DEMOCRACY: WOMEN IN GRASSROOTS MOVEMENTS (Routledge 1997). It is ironic in retrospect, because the State did not know what it would have to go through to build the dump – the cost of the highway patrols and all the arrests. State officials did not realize they would have to spend significant amounts on police power to actually get the site in.

²⁶ Russakoff, *supra* note 3, at A1.

²⁷ *Carolinians Angry Over PCB Landfill*, *supra* note 5, at D17.

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where the dumping would take place, but the County now owned the 123 acres around the site.²⁸ Walter J. Harris, chair of the County Commission, explained that “the state was going to put it on us anyway,” so the Commissioners tried to “make the best of it.”²⁹

A second suit, by the local chapter of the NAACP, the Coley Springs Baptist Church and twenty-six residents—Black and white—near the site, charged racial discrimination in the siting of the dump.³⁰ It also alleged violations of state and federal environmental laws.³¹ The residents’ application for an injunction against the waste dumping was denied on August 4, 1982, by the same federal judge.³² “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.”³³ At this point, residents had run out of options in the legal system. They continued to plan for direct action once the trucks arrived.³⁴

III. THE WASTE COMES TO WARREN COUNTY, 1982

With legal challenges out of the way, Governor Hunt announced that waste hauling would begin on September 15, 1982.³⁵ As the date drew near, residents continued to formulate plans for resisting the toxic intrusion. They rehearsed what people would do once the trucks started arriving. The Sunday before the dumping was to begin, the group had a practice run following a rally at the church, marching to the entrance of the landfill.

When the NAACP lawsuit was dismissed by the judge, that really made folks feel like they had to come together in a spiritual way if they had any chance of stopping it. About a week before the date for them actually trucking PCBs in, we held meetings at Coley Springs Church and actually decided how we would do the protest. We knew that the first day of demonstration certain folks will be arrested. Certain folks were not going to be arrested, and we sought to plan who would be

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *55 Arrested in Protest at a Toxic Dump in Carolina*, *supra* note 12, at A18.

³³ *Carolínians Angry Over PCB Landfill*, *supra* note 5, at D17.

³⁴ *See, e.g., 7 More Arrested in PCB Protests*, BOSTON GLOBE, Sept. 16, 1982, available at 1982 WLNR 41948 (leader of citizens group “said the group decided on protests because attempts to stop the landfill in the courts were stymied.”).

³⁵ Russakoff, *supra* note 3, at A1.

arrested, and we demonstrated how people were to march. We talked about whether we would march all the way to the landfill before we would start blocking the trucks versus blocking them sooner along the roads. That Sunday afternoon we had a practice run on people marching and staying in line.

A. A COMMUNITY DEFENDS ITSELF, SEPTEMBER-OCTOBER 1982

On September 15, more than 125 protesters gathered at Coley Springs Baptist Church and then marched to the dump site. They were met by sixty police officers in full riot gear.³⁶ Ten dump trucks full of waste arrived, and the police arrested two of the leaders as the others sat on the road and blocked the trucks.³⁷ Burwell, Ferruccio, and Reverend Leon White of the UCC were among those arrested. Although the protest was carefully planned and rehearsed, not all went as planned. Two protesters were injured the first day, including Reverend Donald Jarboe, who ran in front of the first truck as it entered the landfill and was struck.³⁸

We had planned to march down to the landfill, and everybody got all emotional when they saw the trucks. People just spontaneously jumped out in front of the truck. A couple of people almost got killed. We couldn't control every aspect of it. I know there was a white minister—I think he really got hit. He was not hurt. After everybody had been taken away, and they started letting the truck in, he just jumped out in front of the truck. Some people, their emotions just got the best of them. It did not go like we planned.

In another unanticipated development, children were also arrested.

That morning I got my ten-year-old daughter ready to go to school, and took her to the bus stop, but then I came back in the house to get myself ready, and when I went out again she had come back from the bus stop. "I'm waiting for you," she said. "I'm gonna go and march with you."

I didn't have time to argue with her. "Okay. Come on." She was saying, "well, if you go, I can go." I was one of the ones that knew that I

³⁶ 55 Arrested in Protest at a Toxic Dump in Carolina, *supra* note 12, at A18.

³⁷ *Id.*

³⁸ *Id.* Jarboe's injuries were minor and he was released from the hospital that day.

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was going to get arrested. I said to her, "I'm going to get arrested." She said, "that's okay. If you get arrested, you know, I can be with some of the other people. I know how to call my daddy. I know how to call my aunt."

So we had not prepared children for being arrested. We never even knew. Once we decided that we would lie down in front of the truck, I was put on the paddy wagon. I saw her—this whole crowd of reporters and stuff around her. And I can see water was flying from her eyes. I was in the paddy wagon. As you can imagine a mom with a child out there crying. I didn't know what the devil was going on. Just as the driver of the paddy wagon was pulling off 'cause he had about fifteen or twenty of us in the wagon at the time, I wanted to just jump out of the wagon. I could see her crying, and I could see people around her, but I could not see what was going on.

They arrested her that day. When she stepped out in front of the truck, one or two other kids stepped out with her and they took them to the high school—to one of the middle schools and I think she called her aunt and she came to get her. I was in jail. They came to the jail where I was. I could see them from the window.

When I got out and saw the TV report—I thought she had gotten scared and was crying because I was being arrested. What she was saying on TV was she was scared that we were going to get cancer. Dan Rather asked her, "was she afraid of being arrested?" She said she was not afraid of going to jail, but she did not want her parents and the people in her community to get cancer. She was afraid they were going to die. She was just crying so passionately. When I saw her that afternoon it was not a fear cry, but it was like a cry for her community.

Part of the organizers' planning paid off: there were numerous representatives of the media present to witness the confrontation between Warren County residents and the PCB trucks. Kim Burwell's tearful encounter with the trucks made national television, appearing on the CBS Evening News.³⁹ The Warren County protests—civil rights protests

³⁹ Kim Burwell's actions ultimately led students from Chapel Hill and other places to join the protest and be arrested. *150 PCB Protesters Arrested*, N.Y. TIMES, Sept. 21, 1982, at A10. There was later a "student day" when a number of high school and college students, and other youth, including one four-year-old, were arrested. *45 Arrested in PCB Protest*, BOSTON GLOBE, Oct. 5, 1982, available at 1982 WLNR 84550.

over an environmental threat—were national news, and stories appeared in the New York Times and other papers across the country.⁴⁰

We had sent press releases that we were going to engage in civil disobedience, that people were going to put our bodies on the line and the local press people were playing that up. In fact, the local press—I'm talking about the Raleigh TV media—were in on our practice demonstration on that Sunday afternoon. So they heard that story where they followed us in the practice march from the church to the landfill on that Sunday afternoon. That may have sparked the attention of the national media.

On the first day, the protesters had encountered ten trucks, each carrying six tons of contaminated soil, the result of a state crew of about fifty workers scraping the soil from nearby roadways.⁴¹ Reverend Brown and Burwell had brought in Leon White of the UCC to help train community members for the protests; after Reverend White was arrested the first day, he refused to make bail, spending the night in jail.⁴² Those protesting the first day were all local residents, but some, like White and Burwell, had connections to national civil rights organizations. Burwell was on the board of SCLC, and White was deputy director of the UCC's Commission for Racial Justice.

The second day, the trucks continued, and so did the protests. After the first day's arrests, leaders including Burwell reached out to UCC organizer and internationally known former political prisoner Ben Chavis, who led the protest on the second day.⁴³ With Chavis in the lead, a smaller group of forty-five marched to the dump site, and the highway patrol arrested seven.⁴⁴ Chavis would continue his involvement in the

⁴⁰ 55 Arrested in Protest at a Toxic Dump in Carolina, *supra* note 12, at A18.

⁴¹ 7 More Arrested in PCB Protests, *supra* note 34.

⁴² *Id.*

⁴³ *Id.* Chavis was well known as a leader of the "Wilmington Ten," a group put in prison for allegedly firebombing a grocery store in 1971. Their convictions – seen by many, including Amnesty International, as trumped-up charges to punish political activists for their work desegregating Wilmington schools – were overturned by a federal appeals court in 1980 because of prosecutorial misconduct (*Chavis v. North Carolina*, 637 F.2d 213, 223 (4th Cir. 1980)); Wayne King, *The Case Against the Wilmington Ten*, N.Y. TIMES MAGAZINE, Dec. 3, 1978, available at 1978 WLNR 100546; BUD SCHULTZ & RUTH SCHULTZ, IT DID HAPPEN HERE: RECOLLECTIONS OF POLITICAL REPRESSION IN AMERICA 195 (2000); Susan Fraker, Vern E. Smith, & Elliott D. Lee, *US Political Prisoners*, NEWSWEEK, July 31, 1978, at 23. Burwell knew Chavis from school desegregation work in the 1960s and was active in organizing support for the Wilmington Ten, one of the central civil rights struggles in North Carolina in the 1970s.

⁴⁴ 7 More Arrested in PCB Protests, *supra* note 34.

protests, during which he coined the term “environmental racism” to describe Warren County’s experience.⁴⁵

At this point, significant outside support began to arrive. After the story on the CBS Evening News, people whom Burwell did not know began arriving at the church to join the protests. On the third day, thirty more protesters were arrested after lying down in front of the trucks.⁴⁶

By the sixth day, the protests were gaining momentum and continued to receive national press. More than 320 protesters marched from Coley Springs Church to the dump site, focusing their wrath on Governor James Hunt, chanting “Dump Hunt in the Dump.”⁴⁷ The Reverend Joseph Lowery, president of SCLC and a national civil rights figure who had marched with Reverend Martin Luther King, Jr., whom Burwell knew from serving on SCLC’s board, joined the protest and was arrested along with ninety people blocking trucks from entering the dump in the morning; sixty-five more were arrested in the afternoon as they attempted to block the trucks from leaving.⁴⁸ Those arrested included twenty-one children.⁴⁹ The protests continued daily, with arrests; many quickly made bond and then rejoined the protests.⁵⁰ On day eight, nine more people were arrested, bringing the total to 242.⁵¹ There was a protest in the state capitol of Raleigh.⁵² Some of those arrested were long-time civil rights activists like Chavis and Lowery, while others were locals—white and Black—who were spurred to action by the threat of the dump site. “I’m worried about PCBs leaking into the water table,” Raeford Pernell, a white tobacco and soybean farmer from Afton, told the press. “This thing is going to drive down the price of land. Who wants to live close to a toxic waste dump?”⁵³

The marchers often directed their ire at Governor Hunt, who had made the final decision to send the waste to Warren County. “We don’t want no PCB, give it to Hunt, don’t give it to me,” they chanted.⁵⁴ One African American protester carried a sign, “Watermelon, watermelon,

⁴⁵ Second National People of Color Environmental Leadership Summit, *Environmental Justice Timetable – Milestones* (2002), 4; Lorraine Ahear, *NAACP Leader: Pass the Torch*, NEWS & RECORD (Greensboro, N.C.), Apr. 10, 1994, at A8.

⁴⁶ *30 More PCB Protesters Arrested in Carolina*, N.Y. TIMES, Sept. 18, 1982, at § 1, p. 6.

⁴⁷ *150 PCB Protesters Arrested*, *supra* note 39, at A10.

⁴⁸ *Id.* After the first day of protests, Burwell had called SCLC operative James Orange, who contacted Rev. Mr. Lowery.

⁴⁹ *Id.*

⁵⁰ Daniel, *supra* note 15.

⁵¹ *9 More Persons Arrested in PCB Protest in N.C.*, BOSTON GLOBE, Sept. 23, 1982.

⁵² *Id.*

⁵³ Daniel, *supra* note 15.

⁵⁴ *45 Arrested in PCB Protest*, *supra* note 39.

Cadillac car, we ain't as dumb as Hunt thinks we are."⁵⁵ Commentators saw Hunt's hard line as a signal to chemical and microchip companies—which North Carolina was courting for economic development—that the State was friendly to business and would provide for necessary toxic-waste disposal.⁵⁶ Hunt, for his part, accused “outside agitators” of fomenting the unrest in Warren County and refused to meet with the protesters.⁵⁷ Because Hunt had to redirect considerable police resources to keep the trucks rolling, he accused the protesters of endangering North Carolinians.⁵⁸

Jim Hunt said he would blame any death that occurred on the highway in North Carolina on the folks in Warren County, because he said all the troopers had to be in Warren to deal with putting in the landfill, and they were not out on the highway protecting lives. Hunt had a couple of press conferences where he said that it was the outside agitators causing problems—I guess he felt folks like Ben Chavis who came in were outside agitators. He didn't give anybody in Warren County credit for having the sense to organize.

After a couple of weeks into the demonstrations the media was sort of weaning off. I came up with an idea: Let's have an outside agitator day, where we invite everybody to come in and take part. So on that day we had busses of folks from Alabama, from Virginia, from Georgia.

What had been happening up until that point at the protests was after folks blocked the trucks, when the troopers came and took people off, they just walked onto the paddy wagon. We realized we had to slow this thing down. So Fred Taylor and Golden Frinks from SCLC and some folks came in and actually demonstrated to people how they could go limp and how they did it in the early '60s when people were being arrested.

On “outside agitator day,” Lois Gibbs, who had brought national attention to illegal toxic-waste disposal at Love Canal, New York, exhorted the crowd of hundreds to stand up to the government.⁵⁹ Police

⁵⁵ Daniel, *supra* note 15.

⁵⁶ *Id.*

⁵⁷ 45 *Arrested in PCB Protest*, *supra* note 39.

⁵⁸ 150 *PCB Protesters Arrested*, *supra* note 39, at A10.

⁵⁹ Jerry Zremski & Andrew Z. Galarneau, *25 Years Later: Love Canal and How it Changed the World*, Buffalo (N.Y.) NEWS, Jul. 27, 2003, at A1. Gibbs was the Niagara Falls, N.Y., housewife who became a national anti-toxics activist after finding her housing development at Love

arrested almost a hundred demonstrators, including Walter Fauntroy, the District of Columbia's Delegate to the United States Congress and chair of the Congressional Black Caucus.⁶⁰ He, along with seventy of those taken into custody, was charged with impeding traffic and resisting arrest.⁶¹

When we had our special "outside agitator day," we sent out press releases to the national media. Walter Fauntroy, the District of Columbia Delegate to Congress, came down. That was when I encouraged him to help block the truck, because I wanted the media. I knew, if he would get arrested, that would get the national media. I really didn't think that Fauntroy would do it. We sent out a lot of press releases that day about our outside agitator day and who had been invited to participate. So the national media knew that Fauntroy would be there that day.

Normally what we would do was march to the landfill first, get arrested, and then hold the rally that night. But the House was in session and Fauntroy had flown down and had his plane waiting for him at the airport to fly back quickly. So we had the rally at 9:00 o'clock that morning. Then we marched to the landfill. I encouraged Fauntroy to help block the trucks, because I wanted the media—I knew that if he would get arrested, that would get national media. So Fauntroy and other "outside agitators" were arrested that day. The police held Fauntroy all day; he did not get released until about 6:30 in the afternoon. He missed the whole day in Congress. He was so mad, he went back to Washington and asked the General Accounting Office to do a study. That study, of toxic-waste disposal sites in the southeast U.S., documented the fact that three out of the four landfills are in Black communities and all of them are in poor communities.⁶²

Canal was built on a toxic-waste disposal site. See generally LOIS M. GIBBS, LOVE CANAL: MY STORY (Grove Press 1982). She went on to found Citizens Clearinghouse for Hazardous Wastes (now the Center for Health and Environmental Justice) and continues to assist activists nationwide. The Love Canal struggle launched what would become one of the main tributaries of the Environmental Justice Movement, the grassroots anti-toxics movement. See LUKE W. COLE & SHEILA FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 22-23 (NYU Press 2001).

⁶⁰ D.C. Delegate in Congress Arrested in PCB Protest, BOSTON GLOBE, Sept. 28, 1982.

⁶¹ *Id.*

⁶² General Accounting Office, Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities (GAO/RCED-83-168) (U.S. Government Printing Office, 1983). See text accompanying notes 100 & 101 *infra*.

Total arrests reached approximately 350 over the two weeks of protest.⁶³ Still, Hunt refused to meet with the Warren County residents. The protesters began to vary their approach, blocking the roads in from other counties. On Day Fifteen of the protests, eleven were arrested, but this time in neighboring Vance County, as demonstrators tried to prevent trucks from entering Warren County.⁶⁴ The total arrested grew to 379.⁶⁵

The protests continued to grow. October 4 was the "Students' March," with forty-five arrested, including children as young as four years old.⁶⁶ The 330 marchers marched from Coley Springs Baptist Church and later split into five groups.⁶⁷ One group lay down on Highway 1604, attempting to block the trucks from entering the landfill.⁶⁸ State troopers had now arrested a total of almost 450 people in the ongoing protests.⁶⁹

On October 8, Governor Hunt changed his mind and met with eleven Warren County protest leaders as the total number of arrests reached 505, including ninety-four juveniles. In a major concession to the residents' demands, Hunt agreed to detoxify the dirt in the landfill "when technologically feasible," to support legislation banning any future landfills in Warren County, and to monitor all residential wells within a three-mile radius of dump.⁷⁰

By late October, the State had largely completed disposal of the contaminated soil at the Afton landfill.⁷¹ In total, some 7,223 truckloads of waste were dumped at the site.⁷² The protests continued throughout the dumping. On October 27, eight of the original protesters were found guilty and given a thirty-day sentence, suspended on the condition that they pay a \$10 fine and court costs; with the help of pro bono lawyers, the eight appealed and the conviction was later overturned. Not all

⁶³ *D.C. Delegate in Congress Arrested in PCB Protest*, BOSTON GLOBE (Sept. 28, 1982).

⁶⁴ *11 Arrested in PCB Protest*, Boston Globe, Sep. 30, 1982, available at 1982 WLNR 33455.

⁶⁵ *Id.*

⁶⁶ *45 Arrested in PCB Protest*, *supra* note 39.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Carolinians See Governor in PCB Landfill Dispute*, *supra* note 17, at § 1, p. 31; Zremski & Galarnau, *supra* note 59, at A1. News articles note that Hunt's change of heart came after his opponent in the upcoming Senate race, Senator Jesse Helms, met with the administrator of the Environmental Protection Agency, Anne Gorsuch, to discuss the detoxification of the landfill. *Carolinians See Governor in PCB Landfill Dispute*, *supra* note 17, at § 1, p. 31.

⁷¹ *See, e.g., Judge Drops 214 Charges in PCB Landfill Protest*, N.Y. TIMES, Oct. 30, 1982, at § 1, p. 6.

⁷² *County Learned from PCB Battle*, GREENSBORO NEWS & RECORD (N.C.), Nov. 5, 1990, at B3.

protesters faced punishment; in fact, most did not: on October 29, a judge dropped charges against many of those arrested in the protests, reasoning that the arrests for “impeding traffic” were improper because the police had actually blocked the road to the landfill while the demonstrators protested; since the road had been blocked already, the judge ruled, demonstrators could not have interfered with traffic.⁷³ With the dumping complete, residents planned their next move.

People were never really discouraged even though the landfill was built and the soil was sent there. People had by that time got so empowered by just being involved that they did not feel defeated. That’s part of the feeling that many people in the community had—that feeling is what gave us the importance to hold the Governor to his promise to detoxify the land. Because people didn’t feel defeated.

Having been a part of the desegregation and supported the Wilmington Ten, I knew that these are long-term struggles. With the Wilmington Ten, Ben Chavis and the others were convicted, and together they received 240 years in prison. That didn’t stop the struggle, and they were ultimately freed. So when the trucks stopped, it wasn’t the end of the struggle. It was a culmination of what we had been doing for four years, but it was not really the end of the struggle, and I didn’t see it as the end of the struggle. I don’t think that many in the community saw it as the end of the struggle. The demonstration was an action that had to take place at that time rather than all the meetings, but it was not the end of the struggle.

B. POLITICAL EMPOWERMENT, NOVEMBER 1982

The most immediate impact of the PCB struggle happened just a few weeks after the PCB disposal was complete, with the election of November 1982. In a sea change, African Americans were finally elected to county-wide offices in Warren County. The change had its seeds in the landfill struggle: as the State was constructing the landfill, in the winter and spring of 1982, anti-dump activists were registering Black voters in Warren County, and throughout the struggle county residents were becoming more politically active.

One of the things we recognized even before the dumping of the PCBs in Warren County was that Blacks had no political power. Before

⁷³ Judge Drops 214 Charges in PCB Landfill Protest, *supra* note 71, at § 1, p. 6.

the PCB fight, people had put together the Warren County Political Action Committee and Blacks had run for County Commissioner. Blacks had run for a seat in the state house. But Blacks had never won. So when people realized that a political decision by the Governor was made to bury PCBs in Warren County, people could see then that, if in Warren County we were more actively involved politically, we would have more clout.

It took almost a year to actually construct the landfill. That was really when most of the registration increased, and in May 1982—before the actual dumping of the PCBs at the landfill—was when the primary was and people actually voted. That's when all of these people became the Democratic nominees, which in this county means it is almost guaranteed they will get elected. Some of them had Republican opposition in November, but as the Democratic nominees it was almost guaranteed that they would get elected.

During the summer of 1982, the registration drive continued, adding almost 1,700 voters to Warren County's rolls—an eighteen-percent increase in registered voters.⁷⁴

In the November election, a remarkable thing happened: African Americans won almost every office they ran for in Warren County. Three Black members were elected to the five-member County Commission—Francis Alston, Eva Clayton and George Shearin, Sr.—giving Blacks a majority for the first time in history.⁷⁵ Two Blacks—NAACP activist Henry T. Pitchford, Jr., and Yarborough Williams, Jr.—were elected to the County Board of Education,⁷⁶ along with a Native American, giving people of color a majority on that board for the first time. Theodore Williams was elected Sheriff, the first African American to hold that position ever.⁷⁷ Frank Ballance was elected to the North Carolina Assembly, the first African American from that district.⁷⁸

The new-found electoral power had an immediate payoff for Warren County residents: Assembly member Ballance introduced

⁷⁴ *County Learned from PCB Battle*, *supra* note 72, at B3.

⁷⁵ Telephone interview with Richard Hunter, Warren County Clerk of Court, Jan. 25, 2007. Shearin was already on the Commission.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Telephone interview with Julia Covington, reference librarian of the North Carolina General Assembly Legislative Library, Apr. 17, 2007; *see also* North Carolina General Assembly, African Americans in the General Assembly, <http://www.ncga.state.nc.us/LegLibrary/African-Americans.pdf> (last visited July 30, 2007).

legislation to prohibit any other landfill from being sited within a 25-mile radius of the Warren County site.⁷⁹ This was particularly important to Warren County residents because Governor Hunt had been soliciting businesses to come to North Carolina with the promise that there would be a place for them to dispose of their hazardous waste. Ballance also codified Governor Hunt's promise to detoxify the landfill, adding a sentence to the state code that "hazardous waste landfill facilities and polychlorinated biphenyl facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation."⁸⁰

People were concerned that everyone was going to dump their stuff in Warren County, so the community wanted legislation to prevent Warren County from becoming another Emelle, Alabama. There was enough property to develop a larger landfill—the State had purchased 140 acres, and they had an option on another 340 acres. So that's when people realized that trucks weren't stopped, but politically we were in a position to deal with that because we had elected people on the County Commissions and in the State House. So the legislation was passed in the state house to not have another toxic- or hazardous-waste facility within a 25-mile radius. The landfill itself is only on a five-acre tract of land, with a twenty-acre buffer around the landfill owned by the State. The rest of the land the State had deeded back to the County, which was now controlled by an African American majority.

Having the Governor see the ongoing protests in Warren County, seeing the national publicity we generated, seeing people actually coming out and participating and seeing that we were able to organize, put so much political pressure on him that he was forced to give an open letter in which he said that when technology became available the State of North Carolina would detoxify the landfill. That was October. Well, Frank Ballance was elected in November, and when he went to the state house, he wrote legislation that called on the State to detoxify the landfill because of the Governor's letter. Of course, the Governor had to support that legislation, because it was based on his letter to the people of Warren County, and it passed.

Ballance also requested that the General Assembly provide

⁷⁹ Chapter 605, House Bill 79, G.S. 130-166.18(c)(8) (1983); *County Learned from PCB Battle*, *supra* note 72, at B3.

⁸⁰ Chapter 605, House Bill 79, G.S. 130-166.18(c)(8) (1983).

\$1,000,000 to the County in compensation for hosting the landfill; the Assembly provided \$100,000.⁸¹ Partly in response to the State choosing the Warren County site despite its water table being higher than allowed, the Assembly passed a law requiring that the “bottom of a hazardous waste landfill shall be at least ten feet above the seasonal high water table and more when necessary to protect the public health and the environment.”⁸² Had the law been in place before the PCB dump was sited, it could not have been located in Afton.

Those elected in 1982 continued to serve the County politically. Frank Ballance moved from the Assembly to the State Senate in 1988.⁸³ The North Carolina Association of County Commissioners named Eva Clayton its “Outstanding County Commissioner” in 1990.⁸⁴ Clayton served until 1992, when she was elected to the U.S. House of Representatives, the first African American woman elected from North Carolina ever, and the first African American to serve in Congress from that state since 1898.⁸⁵ To win the seat, she beat Walter B. Jones, Jr., the son of the white twenty-six-year incumbent Walter B. Jones, Sr., who passed away shortly before the election.⁸⁶ Clayton was elected president of the freshman class of the 103rd Congress by her peers.⁸⁷ The political power of African American elected officials from Warren County would be put into action during the next chapter of the Warren County struggle, beginning in 1994.

IV. “WE TOLD YOU SO” – THE DUMP FAILS AND IS DETOXIFIED, 1994-2004

When the PCB dump was first proposed, government officials touted its safety. “We have chosen the best possible alternative and the only safe one available to us,” Heman Clark, secretary of the North

⁸¹ Chapter 849, House Bill 745 (1983); *County Learned from PCB Battle*, *supra* note 72, at B3.

⁸² Chapter 546, House Bill 554, G.S. 130-166.18(c)(17) (1983).

⁸³ Neil Mara, *Kincaid, Simpson Lead in 27th District Senate Race*, CHARLOTTE (N.C.) OBSERVER, Nov. 9, 1988.

⁸⁴ Phil W. Petrie, *Carol Moseley Braun Power Beneath Her Wings and Running for the House*, ESSENCE, Oct. 1992, at 58.

⁸⁵ Linda M. Harrington & Lynne Marek, *The New Who's Who*, CHICAGO TRIBUNE, Jan. 24, 1993, at 3.

⁸⁶ Mason Peters, *Meeting the Candidates*, VIRGINIAN-PILOT & LEDGER STAR (Norfolk, Va.), Apr. 22, 1992, at D5. Jones, Jr., would shift his registration from Democratic to Republican and run successfully from the adjacent district in the following election.

⁸⁷ *Ballance elected to Lead Freshmen of 108th Congress*, GREENSBORO NEWS & RECORD (N.C.), Nov. 22, 2002, at B2. Frank Ballance succeeded Eva Clayton in Congress in 2002. *Id.*

Carolina Department of Crime Control and Public Safety and coordinator of the cleanup effort, told the public.⁸⁸ “We feel very confident we built a facility that’s going to work the way it was intended,” federal EPA spokesperson Gordon McKenna echoed.⁸⁹

When the dump was constructed, in the early 1980s, numerous people—scientists, academics, EPA officials,⁹⁰ activists—predicted that it would ultimately fail. Their predictions were scoffed at by North Carolina officials; the Governor himself assured residents that the landfill would not leak.⁹¹ Less than fifteen years later, the skeptics proved right. In 1994, the State discovered that water was leaking into the landfill.⁹² As the landfill filled with water, the force of the water was threatening to rupture the landfill liner.⁹³ Environmental experts concluded the leachate recovery system was not working and that the landfill was leaking.⁹⁴

We found out in 1994 that the pump was not working, and there was water in the landfill—exactly what was predicted. The State sent a representative to meet with us, and their solution was they were going to pump the water out and take it to Alabama for disposal. We said no. In fact, we threatened the Governor. Caroline Coleman, the special assistant to Governor Jim Hunt, came to meet with us at the Warren County courthouse. I told her, “you know, at the time that the PCBs were put in Warren County there were no environmental justice movement. There is a movement nationally now. So where there were more than 500 people in the Warren County jail in 1982, if you pump water out, you can easily look at 5,000 folk in the Warren County jail.”

But we also sent the message that we would work with them. The community came together and said, “don’t pump any water out of here and take it to Emelle, Alabama. You said you would detoxify it. Let’s find the technology to detoxify it.”

⁸⁸ *55 Arrested in Protest at a Toxic Dump in Carolina*, *supra* note 12, at A18.

⁸⁹ *Id.*

⁹⁰ *EPA Official Criticizes Landfill*, WINSTON-SALEM (N.C.) Journal, Sept. 27, 1982 (William Sanjour, head of EPA’s hazardous waste implementation branch).

⁹¹ *Carolínians Angry Over PCB Landfill*, *supra* note 5, at D17.

⁹² James Eli Shiffer, *Struggle Pushes Toxic Waste Out of Warren County*, THE NEWS & OBSERVER, June 12, 2001, at A1.

⁹³ *Id.*

⁹⁴ Estes Thompson, *Experts: Warren Landfill Leaking; State Denies Charges PCB Dump is Unsafe*, THE HERALD SUN, Nov. 13, 1996, at C1; *see also* Jim Warren, *State Moving Too Slow on Toxic Warren Landfill*, THE HERALD SUN, Apr. 11, 1995, at A10 (scientist claims that there is a “documented release of dioxins into the groundwater”).

After we had started looking for a detoxification technology, then there were several Republican members of the State Assembly who wanted to just dig up all the soil and the water and take it out to Utah. And the community said “no, we feel like we have developed enough support around the environmental justice movement, that if it’s ever going to be detoxified, it’s got to be detoxified here.”

One of the things that the community learned during that whole struggle and following the whole environmental justice movement coming together was that they didn’t want to see anybody else go through what we went through. In 1981, the citizens in Warren County were saying, “take the waste to Emelle, Alabama. You already got a site there.” People didn’t realize what Emelle, Alabama was. The GAO investigation and the United Church of Christ Toxic Wastes and Race report led to an understanding in the community that people of color and poor people have been affected by toxic dumping, that anything that was dug out of Warren County was going to be put into another Black or poor community. It was the whole education piece that they didn’t have in ‘82 that they had in ‘94.

That understanding came through education, through churches, through the media. All of the churches were beginning to talk about environmental justice and what environmental justice meant. When the United Church of Christ Commission for Racial Justice did the Toxic Wastes and Race report, people learned about it through the churches. And every couple of years some media outlet—the newspaper or the TV—would do some kind of historical piece that had helped also educate people about the environmental justice movement that started in Warren County.

Facing certain revolt from the residents of Warren County, the State acceded to their demands and began looking at options for detoxification of the waste. In an irony, the Governor at the time of the initial Warren County struggle, James Hunt, who had left office in 1984, had been reelected Governor in 1992 and was thus confronted with the possibility of another politically damaging struggle in Warren County. Hunt supported the detoxification, as he had promised in 1982; residents could point to the state law enacted in 1983 and signed by Hunt calling for detoxification of the landfill when it became technologically feasible.

The local residents demanded a say in the decisionmaking process. The Governor’s response was to form a citizens’ advisory panel on the

dump cleanup, made up of representatives of the local community and state bureaucracies. The 15-member Joint Warren County/State PCB Landfill Working Group—which many simply called the “task force”—was set up under the Governor’s authority in 1994 and lasted until the landfill was finally detoxified in 2004. There were three co-chairs of the task force, one person from the State and two from the community. Dollie Burwell and Ken Ferruccio represented Warren County.

We insisted on a number of things. One was the majority of the people had to be community people that made up the task force. We will hold a majority on the task force. That the task force would meet in Warren County, because we didn’t want the undue burden of having to come to Raleigh to meet them. Plus I will say this: we sensitized a lot of people from the State by having them come to Warren County.

Warren County representatives also successfully pushed to have other community demands met: the soil would be cleaned up to cleaner than before the dumping; there would be no fence around the site on completion of the detoxification; any amenities, such as street lights, would be permanent; and there would be a requirement that local contractors be hired to do some of the work.

The task force took about a year to figure out what technology would be used. Once the technology was decided on, we visited some of the sites where that technology had been put into use, and we talked to people in the community where that technology had been used. We wanted to see how the folks felt about the contractors that were doing the technology.

The task force strived to make the selection process as transparent as possible. First, a detoxification technology was chosen at public meetings. Then bids for the process were solicited, and once a contractor was chosen, there were further public meetings at the Warrenton courthouse where the company had to explain to the public how the process would work. Each major contractor on the project appeared at a town hall meeting to explain its role. The bid process included requirements that some local contractors be used, and as a result, several local contractors were involved in the remediation. The electrician was from Oxford, North Carolina, thirty miles away. The African American who handled all of the soil removal from Warren County started a hauling business afterward and is now a well-established businessperson in the community.

The task force was most active on the front and the back end. Once we actually selected a technology, up until that point we were meeting almost every week. Then once we had selected the technology, then, of course, we insisted that we hire our own person to represent the community even though he or she was going to be paid from the state fund. We wanted somebody whom we could trust. So we hired Patrick Barnes out of Florida. I particularly wanted a person of color to be able to monitor and to report to us what the State was doing and somebody that we could trust. Once they hired a contractor, the State had never had a community person being involved in hiring a contractor. That was the hardest thing for them to accept—when they interviewed a contractor, that a community person could take part and have a say. I wanted to make sure that the contractor understood and had some allegiance to the community. From the very beginning to the very end, the community was heavily involved, and the State had never had the community involved in issuing a contract.

Warren County's political power continued to serve its residents throughout the detoxification struggle. Burwell was on Congresswoman Eva Clayton's staff while on the Working Group, which increased the clout of the community; in a sense, the federal government was at the table at each Working Group meeting to pressure the State to do the right thing and to pressure the federal EPA to fund it. Frank Ballance had become the number-two-ranking member of the State Senate and so was also able to appropriate the necessary state funds. Governor James Hunt also supported the funding requests.

I think Jim Hunt had understood our political clout, and the effect of the environmental justice movement, especially after the Environmental Justice Executive Order was signed by Clinton in 1994.⁹⁵ And people in Warren County understood how all of that began. I think folks in Warren County felt like if this little county can start a movement, then we can get the PCB dump cleaned up—that's why I said we never felt defeated once the landfill was there.

After a series of state appropriations and federal grants in the early 2000s, the site was finally detoxified. Warren County is planning to build a park on the decontaminated site and dedicate it to the

⁹⁵ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994), amended at Exec. Order No. 12,948, 60 Fed. Reg. 6381 (Jan. 30, 1995).

Environmental Justice Movement.

V. THE MULTIPLE LEGACIES OF THE WARREN COUNTY STRUGGLE

The struggle of a small group of residents in rural Warren County has reverberated across the country for twenty-five years, helping spawn a national movement, spark two studies, discussed below, that raised consciousness of environmental racism across the U.S. and around the world, and create a model for community involvement in environmental oversight and remediation. It also led to seismic political changes in Warren County and the empowerment of the African American majority of that county to take power long denied them. Perhaps most profoundly, it led to local consciousness of environmental racism and a demand during the detoxification of the dump site for environmental justice—another lasting lesson Warren County has provided for the Environmental Justice Movement in particular and the country in general.

A. THE BIRTH OF THE ENVIRONMENTAL JUSTICE MOVEMENT

Warren County was the first national protest by African Americans against a toxic-waste dump.⁹⁶ Growing out of his experiences in the protests, Reverend Ben Chavis coined the term “environmental racism,” which to this day is a rallying cry against environmental injustice around the world.⁹⁷ Many students of the Environmental Justice Movement point to Warren County as a, or the, beginning of the Movement;⁹⁸ it is without question a defining moment in that movement.

B. THE GAO AND UNITED CHURCH OF CHRIST STUDIES

One of the lasting legacies of the Warren County struggle is its catalytic role in launching an entire research field: the documentation of the disparate impact of environmental hazards on people of color and poor people. Delegate Fauntroy’s pique at having been held in jail all day after his arrest during the civil disobedience protests in Warren County led the District of Columbia’s Delegate in Congress to request

⁹⁶ DUMPING IN DIXIE, *supra* note 1, at 38.

⁹⁷ See, e.g., Stacey Shepard, *Oppressive Ozone*, BAKERSFIELD CALIFORNIAN, Jan. 7, 2007 (clean-air advocates and civic leaders claim failure to clean up air sooner “is a form of environmental racism”).

⁹⁸ See, e.g., Caroline Farrell, *SB 115: California’s Response to Environmental Justice—Process over Substance*, 1 GOLDEN GATE U. ENVTL. L.J. 113 (2007).

that the General Accounting Office⁹⁹ (“GAO”) investigate the placement of toxic-waste sites in the southeastern United States.¹⁰⁰ That study, released in 1983 and documenting that three of the four commercial toxic-waste disposal facilities in the southeastern United States were in African American communities (and the fourth was in a community thirty-eight percent Black), all of which were poor, continued to fuel the national consciousness about environmental racism first sparked by the Warren County protests.¹⁰¹

Growing out of the GAO study, the UCC’s Commission for Racial Justice looked at the distribution of uncontrolled hazardous-waste sites and commercial toxic-waste disposal sites on a national scale. The result of that study, *Toxic Wastes and Race*, was the first national study documenting environmental injustice to break into public consciousness.¹⁰² It, in turn, inspired activists in the movement and in academia. In environmental struggles in towns as remote as rural Kettleman City, California, where local Latino farmworkers successfully fought a proposal by the world’s largest toxic-waste dumper, Chemical Waste Management, to build California’s first toxic-waste incinerator, it led to a critical conceptual break-through. “I thought it was just us until I began to hear about the United Church of Christ study and the other studies,” Mary Lou Mares, one of the sparks that lit and sustained the Kettleman struggle, says. “Then I realized that we were part of a national pattern.”¹⁰³ *Toxic Wastes and Race* both confirmed Ms. Mares’ personal understanding of the impact she was facing and provoked her

⁹⁹ Subsequently renamed in July 2004 as the U.S. Government Accountability Office.

¹⁰⁰ General Accounting Office, *supra* note 62.

¹⁰¹ See, e.g., Charles S. McCowan, Jr., & J. Randy Young, “Intent” in *Environmental Racism is Hard to Prove but Plaintiffs May Not Have to*, CORPORATE LEGAL TIMES, Jan. 1994 (GAO report sparked the UCC report, and both prompted the creation of EPA’s “Environment and Equity” workgroup. U.S. Civil Rights Commission created state advisory groups to investigate environmental justice claims); Susannah Zak Figura, *And Justice For All*, GOVERNMENT EXECUTIVE, July 1998, at 38 (GAO and UCC reports prompted people-of-color groups to pressure EPA, which created Office of Environmental Justice as a response); Viola Gienger, *Rights Groups Take Aim at Environmental Racism*, PALM BEACH POST, Mar. 27, 1994, at 1A (GAO and UCC studies prompt study of environmental equity in Florida).

¹⁰² Several earlier studies had been of national scope but did not receive widespread attention as *Toxic Wastes and Race* did. Burwell also had a role in the study’s launch.

When the Commission for Racial Justice decided to do the study, I was a delegate to our national church meeting, and on the floor of the national church meeting, I asked the church to provide resources to do this study. Then, of course, that became a part of my work in the community to let people know that the United Church of Christ was doing this. And the Commission for Racial Justice guy that they sent to talk to people in Warren County actually stayed with me, so that’s how the community learned about the study.

¹⁰³ COLE & FOSTER, *supra* note 59, at 25.

into becoming a leader in the Environmental Justice Movement.

Toxic Wastes and Race also spurred similar research by a host of academics—Robert Bullard, Bunyan Bryant and Paul Mohai chief among them—on the impacts of other environmental hazards on communities of color.¹⁰⁴ Today, sociologists, demographers, geographers, historians, and political scientists continue to mine the data of disparity in studies that can trace their origin through the GAO and UCC studies directly to Warren County.

C. THE JOINT TASK FORCE AS A MODEL

The Warren County remediation process is a model for the rest of the country. It brought together the State and local stakeholders to creatively and transparently determine how best to detoxify the landfill, which contractors to use, and how to undertake the process. Community residents were at the table as decisionmakers throughout the process. Warren County may have been unique in that its elected officials helped bring both money to the process and pressure to bear on the State to include local residents, but it is a model that other communities can use in demanding to be included in the decisionmaking process. Warren County residents succeeded in making their government work for them—about as demonstrable an exercise of power as one can imagine.

One of the things we said to the State was that, if the community could sit down with the State that dumped on them and came up with the solution that will satisfy the community, then that was a great milestone for the State. And what I said to other communities is that in order to solve some of these issues, the community and government really need to work together.

And part of what I saw was that out of the protest comes some solution. Some people had problems working with government, but part of the government was the people we put there. So we didn't have to protest as hard as we protested in '82 when we didn't have any people. Your first model is to try to get people in government that you trust. Then you can work with government and solve the problem. I mean, it was not easy. The protest was not easy and getting the landfill detoxified to the satisfaction of the community was even harder. I think it is a model because the community will never be able to do anything without

¹⁰⁴ See, e.g., *id.* at 167-83 (annotated bibliography of more than ninety studies of disparate impact of environmental hazards).

forcing the government to work with them.

D. THE EXERCISE OF POLITICAL POWER FOR ENVIRONMENTAL JUSTICE IN WARREN COUNTY

Warren County did not have a representative government because you only have one Black that was an elected official prior to the dumping of the PCBs in Warren County. That all changed because people registered, and we used the community to register people. Not only was Warren County predominantly Black and predominantly poor, but it was politically impotent. And that was just the recipe for dumping. So after that time a lot of African Americans were elected to different positions.

The protests against the PCB dump led to a seismic shift in political representation in Warren County. As noted above,¹⁰⁵ African Americans held a majority on the County Commission, held the office of Sheriff, and represented the County in the State Assembly—all for the first time in history. That assumption of political power had direct, beneficial consequences for county residents: the legislation that barred similar facilities within the county also mandated detoxification of the landfill. When that detoxification ultimately became possible, the County was again in a politically powerful position, with Congresswoman Eva Clayton's office represented on the Task Force through Dollie Burwell. These exercises of political power were instrumental in achieving environmental justice in Warren County. "This country is ours, not the government's," observes Kim Burwell.¹⁰⁶

E. ENVIRONMENTAL JUSTICE CONSCIOUSNESS

The residents of Warren County grew up with the Environmental Justice Movement and, over the course of fifteen years of struggle, embraced and embodied environmental justice principles. When the Warren County dump was first proposed, many local residents joined North Carolina's white environmentalists in demanding that the PCBs be taken to Emelle, Alabama, to be disposed of.¹⁰⁷ Over the course of the struggle, in part because of the GAO report, Warren County residents learned that Emelle was an impoverished, rural African American community that looked not that different from Warren County itself. So

¹⁰⁵ See *supra* pt. IIIB.

¹⁰⁶ *County Learned from PCB Battle*, *supra* note 72, at B3.

¹⁰⁷ *Alabama Dump Promoted for Carolina PCB's*, N.Y. TIMES, Sept. 25, 1982, at § 1, p. 17.

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when the dump began to fail, and state officials and some legislators proposed pumping the contaminated water out and disposing of it offsite and out of state at Emelle or a similar facility, residents demanded that the waste *not* be taken offsite. They demanded that the waste be detoxified *in situ*, so that no other community had to be burdened. This dramatic shift in consciousness once again put Warren County residents at the forefront of creating and practicing environmental justice principles.

Warren County's iconic status as the place that gave birth to the Environmental Justice Movement is deserved. To focus only on those days of protest in 1982, however, would miss the many other lessons that the struggle in Warren County can provide. African Americans coming to power in that rural county and calling for and executing a cleanup strategy for the dump, which was in itself environmentally just, are legacies as powerful as—and perhaps longer lasting than—the famous protests. To this day, Warren County residents continue to both educate and inspire us.