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Bad Neighbors By Emily Bazelon

Casualties of Medicine By Stephanie Mencimer

A Philadelphia Story By David Kairys

BAD NEIGHBORS

Emily Bazelon on the community that refused to live next door to Shell Oil.

By Emily Bazelon

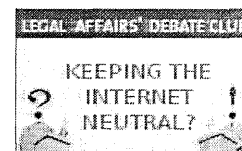
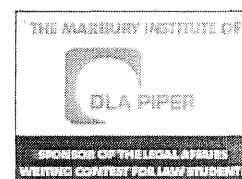
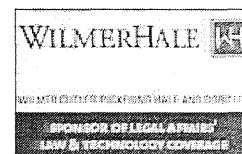
DRIVING HOME TO NORCO, LOUISIANA on a December morning in 1998, Margie Richard heard an emergency radio broadcast: The townspeople were being warned to stay inside. A tank at the giant chemical plant on Norco's border was threatening to explode because the pressure in it had gotten dangerously high. Richard, then 58, and her 78-year-old mother lived side by side next to the plant, on lots separated from it by a chain-link fence and an 11-foot-wide road. Thinking of her mother, who was home alone, Richard stepped on it.

The Norco plant is owned by Royal Dutch/Shell and is one of the multinational company's most profitable chemical facilities. It produces ethylene and propylene, both building blocks of common plastics, and methyl ethyl ketone, or MEK, a solvent used in paints and medicines. Richard, a retired schoolteacher, was accustomed to the plant's smokestacks belching noxious smells and flares. But that day, as she turned down the street to her mother's one-story peach-and-white house, Richard saw a huge plume of white smoke rising from the plant itself, an angular structure of tanks, towers, and intersecting steel pipes. In 1973, a faulty underground pipeline caught fire and killed a former student of Richard's and an elderly neighbor. Oh Lord, she thought, what now?

Richard's mother was waiting when she got out of the car. Some of their neighbors were also outside, coughing and using towels to shield their noses and mouths from the smoke that rolled from the plant. Eyes burning, Richard started coughing, too. She went inside and called the Louisiana Department of Environmental Quality, which monitors air across the state. The DEQ put her on hold. "It was the same thing as always," she recalled. "They tell you, 'Wait, I'm gonna connect you, I'll get back in touch with you.' I didn't want to wait."

Richard hung up and made a call that helped invigorate the decades-long campaign she and her neighbors were waging to get away from the plant. Convinced that living next to a giant chemical producer was unhealthy, they wanted Shell to buy their houses for above-market prices so they could afford to resettle elsewhere. They'd made little headway against the world's third-largest oil company, losing a lawsuit and failing to gain the aid of either the DEQ or the federal Environmental Protection Agency. But on that smoke-filled December morning, their fortunes began to turn—thanks to smart activism, luck, and a five-gallon plastic bucket.

THE TOWN OF NORCO sits on a mile of the Mississippi Delta, 25 miles west of New Orleans. It is sandwiched between the chemical plant and a major oil refinery, 2 of 156 industrial facilities that line the 80 miles between New Orleans and Baton Rouge. Oil companies were drawn to the area's abundant supply of natural gas and to the Mississippi River, which for decades they used to float their products cheaply to market and to dump their waste. Today, environmentalists call the stretch Cancer Alley because it produces 129 million pounds of toxins each year, more than one-sixteenth of the total in the United States and nearly twice as much as the next largest concentration of toxic releases, in southeast Texas. But to many Louisianians, this is the Chemical Corridor, one of the state's biggest economic engines, which pumped out 62,500 jobs and \$1.14 billion in state taxes last year.



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FEEDBACK

IN ADDITION TO MEK, WHICH IS A RESPIRATORY IRRITANT, the Norco chemical plant and refinery release toxins like benzene, which is a carcinogen, and toluene, which has been linked to developmental and reproductive damage. The question is whether the toxins spew forth at levels that endanger the health of the townspeople who breathe the air every day.

No scientist has done a comprehensive study of the incidence of cancer or asthma in the Chemical Corridor. The health data collected by Louisiana doesn't resolve the debate. The state has no tracking system for asthma. Its tumor registry shows no greater incidence of cancer as a cause of death in the state than elsewhere in the country. But Wilma Subra, a Louisiana chemist who won a MacArthur genius grant after starting her own consulting company to work with communities affected by pollution, discounts the data's significance; she says that industry doctors often fail to list cancer as the cause of death and that many cancer patients leave the state before they die.

Shell points to an internal study of its own employees, which found that they lived longer and were healthier than the general American population. "We believe the air is good here," said David Brignac, a Shell spokesperson. "There is no Cancer Alley."

Unable to rely on government or independent studies, the townspeople resort to anecdotal evidence to support their point of view. Some of the older white residents like to boast that people don't do much dying here, ticking off neighbors who've lived into their 80s and 90s. Rather than probe the dangers of living near the plant and refinery, they focus on the jobs Shell provides and the good schools its taxes pay for. Driving his truck along the levee that was built to tame the Mississippi after a devastating 1927 flood, Milton Cambre, 63, shrugs off the potential danger of living next to Shell. "I've worked for 30 years in and around chemical plants and refineries, so I'm aware of the risks. I wouldn't encourage my kids and grandkids to live here if I thought it wasn't safe here," said the retired mechanic. "People I know upriver have died of brain tumors. So you can't say that [industry] is the cause. It has to be proven to me."

Margie Richard, on the other hand, believes she is surrounded by the worst kind of proof. Her sister died at 43 of sarcoidosis, a chronic disease that often attacks the lungs. One of her daughters was rushed to the hospital as a child after her lung collapsed during an asthma attack outdoors. Richard can drive down a street in Diamond and recite the names of cancer victims who once lived in several of the houses. "All these people were getting sick and dying," she recounted as her 11-year-old grandson, home from school because of asthma, held a self-medicating mask to his face while he dozed in her living room. "They had cancer, breathing difficulties. I'm saying: This is a pattern. I had no scientific proof. But you look at things."

Many environmentalists would like the law to adopt a similar common-sense approach. Since most of us don't want to live next to a pollution-spewing facility, activists say, the law should protect the people who get stuck there.

Instead, the law demands much stricter proof. In 1994, President Bill Clinton thought he was bolstering the environmental justice movement with an executive order decreeing that everyone, regardless of class or race, is "entitled to a safe and healthy environment." Environmental lawyers seized on the order as a basis for civil rights suits, arguing that industrial emissions have a "disparate impact" on people of color. But the suits were stymied by a 2001 Supreme Court decision, *Alexander v. Sandoval*. Lower courts interpreted *Sandoval* (which wasn't about environmental law) as requiring plaintiffs to prove intentional discrimination, a much higher hurdle than disparate impact.

As a partial alternative to civil rights remedies, the 1980 Clean Air Act allows anyone to sue an industrial plant for exceeding permitted emissions levels or for failing to report chemical releases. But plaintiffs can't shut down chronic violators or win any damages from them, so these suits can only nip at their heels. Plaintiffs' lawyers often turn instead to personal injury suits. The movie *Erin Brockovich* tells the story of a dream case: A community is beset by health problems, blames them on a big, bad polluter, and wins an enormous settlement. But the law cuts against that plot line. Winning a personal injury case requires rigorous proof of causation. Defendants aren't legally responsible for problems that can't be directly and definitively attributed to them, and neither a company's deep pockets nor a jury's sympathy

for the plaintiff is supposed to lower the bar.

In 1988, about 250 Diamond residents sued Shell. The chemical plant, they said, was a nuisance in the legal sense because it hurt their health, diminished the value of their property, and made them fear for their safety. At trial in 1997, Shell countered with pharmacology and toxicology experts who insisted that the plant posed no health risk. "We all live in a society that has to tolerate certain inconveniences," the company's lawyer argued to the jury in closing. "Before you show them the money, they must show you the proof."

After two weeks of testimony, the jury voted 10-2 against the plaintiffs. Diamond residents blamed their lawyers for requesting no-strings-attached damages instead of money to be used for relocation—the remedy that the residents had wanted.

The loss was a serious blow to Richard and her supporters. She had formed the Concerned Citizens in the early 1990s, and 14 of the group's two dozen members had sat in the courtroom every day. After the verdict, the group's picketing of the chemical plant drew only a handful of people. "I should have collapsed from burnout and shock," Richard said of that time. She thought about getting herself and her family out of town. "But I woke up in the middle of the night, and I went to the window, and it was divine intervention by the Holy Spirit," she related. "It wasn't an audible voice. But it told me 'Share, share with the whole town.'"

A SHORT WOMAN WHO TIES HER HAIR BACK in bright-colored bows, Richard is a devout Pentecostal Christian who was raised to charge headfirst at unfairness. "My mama would say, 'If it's not right, then it's just not right,'" she said, nodding toward one of the many pictures of her parents that hang on her walls. "She was a firm woman. That part of her, I know it's alive in me." Her father, a community leader who was one of the few of his generation in Diamond to attend college, taught his daughter that being black was no excuse for keeping quiet when something was amiss. "When I was 16, I thought my dad must be in left field because of all that I was seeing," Richard said. "I'd read the Constitution and think: How could they have this on paper—it's so false!"

After she separated from her husband in 1970, Richard moved into a trailer home on the lot next to her parents' house. She raised two daughters there, one of whom works for Shell and regularly defends the merits of the plant against her mother's criticisms. For 28 years, Richard was an energetic and combative American history teacher at the local junior high. She challenged the state history textbook because it omitted the nearby 1811 slave revolt.

Richard also channeled her energies into fighting Shell. For years, the company had refused to meet with her, much less to accede to her group's demands. Then in 1994, Richard saw a newspaper notice for a hearing about the refinery sector to be held by the DEQ. "At the time, I didn't know what that was," Richard said of the hearing. Still, she went. "They had a comment period. When it was my turn, I just talked my story."

Richard caught the attention of Beverly Wright, a professor at Xavier University in New Orleans who ran training seminars for minority communities in the industrial corridor. Wright held a seat on an EPA advisory group, and she passed it along to Richard. "When I went to those places with the high-ups, it was like 'What am I doing here?'" Richard remembered. "For two years I just listened, getting educated. Then I said to myself, 'If we don't tell them, how will they know?' Communication—that was the missing link. It became like my heartbeat."

IT WAS SHELL'S MISFORTUNE that Richard couldn't get through to the DEQ in December 1998. As smoke continued to billow from the plant, she called Denny Larson, a veteran leader of the movement to clean up California's refineries who happened to be in Baton Rouge for an EPA meeting. The two had started working together a few years earlier after Wright and Wilma Subra introduced them. Now Larson leapt at the opportunity to help, especially because it gave him the chance to showcase his new baby: a do-it-yourself air-sampling bucket.

Larson had spent two years retooling the original version, invented by the lawyer who employed Erin Brockovich. Larson created a cheaper \$150 model made from parts available at any local hardware store: a plastic paint bucket with an airtight lid and a valve drilled

through the top, a liner bag, and a simple battery-operated pump used to draw air into the bag. "I said, 'Hell, Margie, I'm getting in the car now and I'm driving to Norco and we're gonna take the first sample,'" recalled Larson. He collected a bucket of air in the late afternoon and sent it by express mail to a California lab for overnight processing.

The next day, the results were in. The air sample showed, among other chemicals, benzene, toluene, and MEK. The concentration levels were below the permitted state limit. But the air had been collected several hours after the smoke rolled onto Richard's street. And Shell had reported no release of any kind. The environmental activists gathered for the Baton Rouge meeting—four busloads of whom had toured Norco earlier that week—began to publicize the results. The EPA fined Shell \$27,500. At a packed community meeting a few weeks later, Subra explained that Larson's samples contradicted Shell's self-reporting. For the first time, Diamond residents could blame their burning eyes and sinuses on a chemical with a name: MEK.

Laboratory results from the bucket samples have never been admitted in court. The EPA doesn't treat such data about an emission as definitive because the bucket sucks in air over three minutes, instead of the 8- or 24-hour period that the government uses for air-quality calculations. But the bucket tests were more than the DEQ had done. Standard monitoring of toxics is expensive, and the agency's closest site was more than 50 miles from Norco. The DEQ was not known for its scrupulous oversight: From 1994 to 1998, the agency fined the Norco refinery only \$14,500 for 3 spills out of the 561 that the refinery reported. The DEQ did impose a \$330,000 penalty after a whistleblower reported that leakage reports were being falsified in 1999. Last March, however, an audit commissioned by the Louisiana legislature called the agency's effectiveness into question. The auditors couldn't locate reams of DEQ records, and what they did find showed expired permits, missed inspections, and a regular failure to take enforcement action against violators.

THE CONCERNED CITIZENS continued to put their air to the test. Anne Rolfes, a local community organizer, formed the Louisiana Bucket Brigade. A Diamond resident proclaimed himself "keeper of the bucket" and began heading outside with one whenever he or his neighbors smelled a chemical odor. Based on the results, Wilma Subra estimated that the residents of Norco were being exposed to 100 to 1,000 times higher concentrations of toxics than people living in rural Louisiana. "The results were coming back with 20 to 30 chemicals in the air," Larson said. "The buzz in Diamond became: Shell, DEQ, EPA have been telling us the air is clear. But we knew the health effects, and now we can say, 'Wow, this air pollution is what's making us sick.'"

The Concerned Citizens started to get more attention from the local media—and the attention spread. Stressing Shell's alleged complicity in the death of the Nigerian writer and environmental activist Ken Saro-Wiwa, the group tried to pin Shell with an international record of bad race relations. California congresswoman Maxine Waters toured Norco and denounced Shell to the press. A Polish filmmaker living in Ithaca, N.Y., shot a documentary that aired nationwide on PBS. And, with a grant from the Sierra Club, Richard flew to Geneva in April 1999, bucket in hand, to testify before the U.N. Human Rights Commission. She brought with her 500 informational packets about the campaign back home, and the audience quickly snapped up her supply.

In the fall of 2000, Shell started to make concessions. Announcing a "Good Neighbor Initiative," the company offered to buy 75 lots in Diamond for 30 percent above market value. Without being asked, Shell offered the same terms to the 40 white homeowners across town who lived closest to the refinery. To the rest of Norco, the company promised air-monitoring stations and reduced emissions. The stations started collecting data in September; in March, Shell postponed releasing the results. The company also pledged \$6 million to community and economic development in the area, \$100,000 of which has been allocated to date.

The Concerned Citizens were skeptical of the initial buyout offer because it excluded 160 families in Diamond who lived farther away from the plant and failed to guarantee a minimum purchase price. By combing through town property records, Rolfes discovered that in the previous 25 years, Shell had bought 48 lots, or about one-fifth of Diamond, at the bargain-basement average price of \$27,000 per home. Would Shell try to lowball the residents again? Two days after Rolfes reported her findings, the company promised to offer a minimum of \$80,000 per house and \$50,000 per mobile home, though it did not expand the buyout to

include Diamond's back streets. The biggest wish of Richard's mother had been to leave Norco before she died. She did so after Shell bought her home for \$114,000. When Richard went with her mother after selling her trailer to Shell for \$61,000, some neighbors accused their leader of selling them out. "For me, that was the hardest thing to digest," Richard remembered. "I said, 'Why didn't you join us earlier? Where were you when there were three of us picketing?'"

The rift didn't last. While residents from the two back streets stepped in to lead the Concerned Citizens of Norco, Richard stayed active, traveling in the fall of 2001 to a U.N. conference on climate change at The Hague. During a presentation by a British Shell executive, she stood up and raised her hand. "I just want to know if you're going to be true to what you say on paper about cleaner air," she said as she walked toward him, pulling a liner bag from one of Larson's buckets and holding it up for him to see. "I know there are issues from around the Norco refinery," the executive answered in clipped tones. "We're trying to resolve those. But in this forum, I'm just not capable of answering any of these detailed questions."

Richard tilted her chin to look up at the executive, who was at least a foot taller. "Yes, because I came all the way here for this and it's really important," she said, enunciating each word. "I'd like to give you a gift of the air." She held out the liner bag.

"Can I breathe it?" the executive quipped, raising the bag to his face. He and Richard smiled, and the tense room broke into laughter.

Two weeks later, a representative from Shell's London office knocked on her door back in Louisiana. He asked her to tell him about the problems in Norco. Environmentalists often stress the dangers of globalization. But in the end, Richard and her group were lucky to be up against an international household brand name: Shell's global reach made the company amenable to a deal. Last June, after nine more months of negotiation, Shell expanded its buyout offer to all four streets of Diamond.

SHELL SPENT AN ESTIMATED \$30 MILLION to buy and then raze 250 houses in Norco. For the money, the plant and refinery got to stay and churn out annual profits in the tens of millions. Only 70 company employees currently live in the town. A smattering of "For Sale" signs are up—not many, but more than people say they've seen before. The company says it is committed to helping the rest of Norco prosper, too. But a local couple who own the town supermarket say that when they told Shell that their business was withering along with the town's population, the company refused to help them refinance. Laura Savage, who loved riding her bike through the town as a child, is a dressmaker whose business has dropped 40 percent since the Diamond residents started leaving. "Hush money," she calls the company's donations to the town, "for keeping our mouths shut and smiling when someone says 'Shell.'"

Emily Bazelon is a senior editor of Legal Affairs.

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LETTER TO THE EDITOR

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