

Interview with Steve Irving: Attorney for the Plaintiffs on May 3, 2013

Interviewer: Jennifer Anderson

*Interviewee: Steve Irving*

Generally, I just wanted to ask you questions about your work on the McCastle v. Rollins Case; your experiences with Ms. McCastle and what role you think Rollins Played in the larger environmental justice movement. Well, I have a list of questions, but if you could start out with how you met Ms. McCastle and how you became the lawyer for the plaintiffs in that case

*Well, there was a federally funded project that I ran for several years that did intervention in utility rights cases on behalf of low income people. I left that project around 1980 when the budget was in the process of being cut out. The project had been very successful, but I went into private practice. I had been into private practice somewhat during the time, but I went full time into private practice not long before the case was filed. A friend of mine who was really involved in the environmental movement named Willie Fontenot had been working with Ms. McCastle and he thought she needed a lawyer. Willie knew me and Willie introduced me to Ms McCastle as someone to handle her case. And then I was invited to come out and meet them about filing a suit. So I went to meet with her about filing the suit and invited another lawyer that I knew in town; he was an older guy to come with me and we met with her about filing a suit.*

Could you tell me about some of your general impressions of Ms. McCastle when you first met her? What were her ties to the community? What were her interests behind filing the suit?

*The problem became immediately obvious when I went out to the meeting because there was an episode that night. What was being released was from an activity called they called land farming where they inject chemicals into the soil and let the bacteria eat it. You had three problems from land farming; First of all, you had hydrocarbons that would evaporate in the air that would spread out in the air from being spread out on the ground and being in the hot sun. The Second problem you had is that when they started to decay sometimes there wasn't enough oxygen and the decay process would become anaerobic. You would get sulfur compounds that would get very strong odors. And the third problem is they use film dust as a sort of a fertilizer for the type of bacteria and that dust would mix with the fumes. So what the community would get is a combination of hydrocarbon odors, sulfur compounds, and film dust which had a very unique effect on them. And that's what happening the night I drove out there to meet with her. It was pretty bad.*

*Ms. McCastle was roughly the age of my parents. She was, I think, the undisputed boss of the community. She was well spoken and pretty emphatic that she wanted to do something about the problem. As it turned out, once I met her, I realized I had several years earlier worked with Ms. McCastle for a short time on a problem with her water system. I had worked at the time as an investigator for the consumer protection center while I was in law school. Neither one of us, until that night, realized that we had known each other previously. Through discussion we were able to figure that out.*

In working with Ms. McCastle and the people within the community, did you ever feel like there were tensions between the lawyers and the community member over your goals in filing the suit against the environmental services organization?

*To answer that question, you would have to break the question down into sections. There was an evolution that happened over time. First of all, in filing the lawsuit, there wasn't really anybody who was interested in representing them. So I came out, I met with them; they were interested in me doing something. They were a little suspicious. They weren't used to having people who were really trying to help them. But, I got very accepted by the people very quickly. I got to be friends with them and got total support from the community in filing the suit. With the suit, there were two things that needed to happen with the evolution of the suit because the suit was unusual. It was very different from most class actions. The suit had a component where we were asking for money. Then there was another component where we were asking for an injunction to stop the fumes and odors. And the injunction issue came up first. We had an interesting experience with the injunction hearing. There was some preliminary dancing around with the lawyers pulling maneuvers. But when we finally got up in front of the judge, we had the hearing and the guy from the environmental services actually got up and testified to offer the jar of the sludge into evidence. This jar wasn't representative of what the community was getting. It was just fresh sludge. It didn't have the film dust or the sulfur compounds. So we put it into evidence and we offered our evidence and the judge took it under advisement. Not long afterward he called. He was issuing the injunction because the odors that were coming out of the sacrum jar were stinking his office up. So he issued the injunction and Rollins immediately challenged it saying that the adoption of the Louisiana Affairs act had preempted all traditional remedies. So we had a trip through the court of appeals, which took a year or more litigating injunction issues that had nothing to do with class certification and had nothing to do with damages. The lower number of the two cases that I referred you to is the court of appeals decision ruling that we were in fact correct. We had all the rights of, I was going to say under the civil code of 1870, but it actually goes back farther than that, all the rights that people traditionally of people who were affected by businesses that were creating nuisances within the community. It then comes back to the trial court, with the court appeals saying that he was right in issuing an injunction. Well the next step is to move toward the certification of class so that we can become one case where the entire community is represented. At that point in time, that had never been done, at least not here, and maybe not nationally either. The trial judge denied certification of class and it went up. I think the court of Appeals affirmed that. And the Supreme Court granted writs and certified the class, if I have that right. Anyway, the class got the Supreme Court decision which became a very national quoted decision in class actions and in many of the class actions in Louisiana since Louisiana issued a decision stating that we had a class. Well, up until that point in time, the rest of the legal community had largely ignored us because they didn't think we could do it. Greed has a funny way of changing attitudes. Once we had a certified class, we had people who became interested. Rollins developed a political process of approaching the community. They hired a guy who was a preacher, who was an African American; he was a preacher and a convicted felon. They hired him to go behind my back and have a dialogue with the class that started to try to get some type of settlement. This went on for an extended period of time. You had Rollins brought in different lawyers at different times. They had brought in Dan Burt who had been the lawyer in Westmoreland case on the Vietnam War. I think he represented Westmoreland. Anyway,*

he was a nationally known lawyer. Their grand scheme of things was that they wanted a settlement, but they wanted to buy what I would call a "servitude of stake" whereby the residents settled all future claims so that they couldn't make any future suits against them. Well one of the points of filing the lawsuit was that if Rollins was forced to pay the costs of what it was doing, that it was imposing on the community, then might affect its behavior to make it quit and control the odors. So, this concept of buying a "servitude of stake" was inconsistent with what took on to do to begin with and we refused. So Rollins had his preacher talking to my clients, some of the members of the class behind my back and at one point in time I was told that I was told by some of my clients, this was not Ms. McCastle, this was some of the other people that the people had entered into an agreement/ settlement with Rollins. The settlement offer was going to be made to me that day and they had voted to accept it. This is some of the members of the community. And indeed, they had called a meeting for that night. I went out there, and indeed as I was leaving, I had gotten a call from my co-council that some of the members of the community had voted to accept was in fact delivered. And I met with the group; what happened in that meeting was um, obviously was out. There were lots of people there and I explained to Ms. McCastle why this was unacceptable and of course the servitude of stake was one of the things there were also a number of people who signed up to be in the class who didn't live in the community that had to be weeded out. So anyway, Ms. McCastle backed me. And that was a high point in the case because she went against heavy pressure in the community to back me. She took my word over the word of all these other people who were of course just interested in money and she refused the settlement. Rollins, one of their lawyers filed a bar complaint against me accusing me of lying to my clients to keep them from accepting the settlement offer by telling them that I had a bigger settlement offer. And that is somewhat ridiculous because they had voted to accept that settlement offer and if I had told them that I had a settlement offer, they would have voted to accept a settlement offer that I didn't really even have. I filed a response to the complaint, I don't have the complaint anymore, that I am accused of convincing my clients to accept a counter offer to that which was made by a convicted felon behind my back. And um, it took the bar association about three months and they denied the complaint. I um, left out that they also had a whole bunch of litigation in connection with that. And I guess I can tell this story, they had filed motions to sanction me and it was like a continual personal attack because they wanted that servitude of stake. And one of the hearings was around just before Christmas. We had been accused of everything and the judge took it under advisement. And of course, I'm this young lawyer, and I got this fancy lawyer accusing me of everything under the world. And not long after I got finished I got a call from the judge in my office and it was on some minor administrative thing that was perfectly ok to call me about-he could have had his secretary call me but he decided to call me. But casually he mentioned that he had never seen a lawyer come to his court wearing a green suit and red socks. Because the lawyer on the other side had indeed come to court in a green suit wearing red socks. I went home for Christmas feeling good that the only thing the judge had bothered to pay attention, in this motion where I was called everything other than a saint, was a lawyer was wearing a green suit and red socks. So anyway, I won all of those motions. It was after that that they filed a bar complaint and I won that. And um, and this was totally with all of Mary McCastle's backing. She was continually being pressured by people in the community. "We want the money" "settle it, settle it" But settle it meant the servitude of stake. Well about August of that year, this was 1986, well about August of that year Rollins had one of their house council. It was someone I knew in law school. I knew he had never been involved in any of the stuff that went on. And I

*get a call from him one day telling me that they had hired somebody new and they brought in a treaty negotiator from the Nixon white house-the guy who had negotiated treaties with Richard Nixon to negotiate the peace treaty with me. And we sat down and worked out a settlement that was put to a vote in the community that did not have a "servitude of stake" in it. And it got 80 percent of the votes of the people in the community. Now the irony of that is that the 20 percent of the people who voted against it were the people who had been pushing Ms McCastle to take the settlement because they had been promised big money and they were not going to get it.*

Did you face a lot of criticism because the settlement that was eventually agreed to was relatively small to each claimant?

*For that day in time, and given what we had to work with, and the fact that there was no history, the settlement wasn't that small per each claimant. I mean, the people who had medical claims got substantial money. You might get more than that, this day and time, but those settlements-by the standards of the day (were pretty substantial). There was a confidentially order. Everyone who got the settlement knew what they were going to get. There were zones. People in the closest zones who had it the worst got the minimum of what a broken leg was going for at that time. So these were not small settlements. This is not one of those 50 dollar deals. And the biggest settlement, there was one that was 100,000 dollars.*

So it ranged in terms of medical needs and proximity to the facility?

*It varied depending on three things: Length of time in the community, the number of exposures that you had, the proximity you were to the source and medical claims that you had. Everyone who had a medical claim that could reasonably be associated with it got paid for it. Now there were actually two settlements. The first suit actually involved the land farm. The second suit involved the incinerator. It was not a class action; rather it was a group action by around 400 or 500 of the claimants in the class. These were people that were close to it and got the effects of the incinerator.*

Do you have any of the briefs you filed in the case? I wasn't able to find any on Westlaw or LexisNexis?

*I may still have the brief that I filed with the Supreme Court about the class certification, but I would have to dig through some stuff to try to find it.*

That would be great!

*At that point in time, the only class action case I could site was William vs. state and that was a story about prisoners in the state who had gotten food poisoning. That was the most analogous case that I had. While McCastle case was pending, they had the Livingston train derailment. In the Livingston train derailment, the judge certified that group as a class. And I think the first circuit affirmed. Do you know what the Livingston train derailment was?*

No

*It was a train running east from Baton Rouge that derailed in Livingston and blew the ton up.*

OMG

*It was impressive. It severely damaged the town and burned for days*

Did a lot of people die in that?

*I don't think a lot of people were killed. Not immediately at least. Well I know of people who died from it. There weren't any people who died immediately. There was a state trooper who ran up on the scene and whose lungs were severely damaged and I think he eventually died but that was years later.*

Oh, that's really sad.

*It messed the town up pretty bad. And yet that case became a class action and it, I think the court of appeals decision in that one, came ahead of my case. That was the one where the Louisiana Supreme Court went through all of the actions and said that that group of people could be a class. And McCastle was filed first. I think the train derailment; we might have been in the appellate court, when the train derailment happened. The trail derailment happened in 83.*

Do you think the McCastle suit had an impact on Rollins eventually being shut down or bringing more attention to regulating polluters in that area?

*As a result of our suit and an administrative action that was done temporarily that I intervened with in that administrative action. I intervened on behalf of the residents on that action. It actually went to hearing and was settled during the hearing. The land farm was closed. That process was stopped. After the incinerator incident in 86, probably in 86 also, they had an incident where the incinerator, just raked the community with fumes during church services and later on that night. When the DEU secretary had come out to see it herself the incinerator went black and dioxin was flying everywhere. They closed the incinerator and it never reopened. So the litigation that we did, and the pressure that we put on everyone through our litigation, closed everything that they were doing minus the residual stuff that they were doing somewhere in the back away from the community. Rollins eventually sold out to safety clean and um, if you want to see all the fun that happened after that, Google safety clean and have a look at it. They eventually wound up in bankruptcy in a few years but um.*

The last thing I would like to touch on is the lasting impact that the McCastle suit has had on the environmental justice movement.

*That's one of the things that is missing. There is a lot of talk of environmental justice these days and McCastle was known as the first environmental justice case in Louisiana, and may have been the first environmental justice case nationally. That's really what it was about. What was going on in that community would have never been tolerated in any white community in the state of Louisiana. You would have had the police, the governor, the legislator; you would have had everyone else if you had that happening in a white community at that time. It just would not have happened.*

Why do you think that McCastle is often overlooked as being one of the first environmental justice cases?

*I think McCastle became so well known as a certification of class case and is so often cited. The fact that it is the threshold as an environmental case has just been overlooked. But it was, I mean, this was 1981.*