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NUCLEAR POWER AND LEGAL ADVOCACY. By *Constance Ewing Cook*. Lexington, Mass.: Lexington Books / D.C. Heath. 1980. Pp. xvi, 155. \$10.95.

The conflict between increasing world demand for energy and public concern over nuclear plant safety has placed the nuclear power industry at a crossroads between expansion and extinction. The latter seems a real possibility, for during the entire two-year period before the Three Mile Island nuclear accident, only one electric utility had placed an order for a nuclear power plant. According to Constance Ewing Cook of Albion College, several factors deter all but the most determined industrialists from building a nuclear plant. Labor and material costs have increased; technological and safety regulations have become more stringent; and interest-group opposition has increased. Professor Cook's study of the nuclear power industry's decline focuses on the anti-nuclear environmental groups' use of legal advocacy to stall the licensing process.¹ Cook takes neither a pro-industry nor an anti-nuclear stand on the merits of the controversy. Her purpose instead is to assess the strategic uses of the legal process by interest groups. *Nuclear Power and Legal Advocacy* shows how the losers in court, the anti-nuclear groups, have become the real winners.

Cook first introduces the two combatants, the nuclear industry and the environmentalists, and traces the political phase of their struggle. She describes at length the groups with a stake in the future of the nuclear power industry — scientists, engineers, utilities, environmentalists, and public interests groups. As the economic strength of the industry increased,² so did the political strength of its opponents. Cook concludes that the anti-nuclear groups beat the nuclear industry in the political forum. Their visible leadership used organizational and political skill to mobilize public opposition, while the "fragmented" leadership of the nuclear industry failed to take advantage of all available political resources (p. 24).

J. POL. 727 (1979); Brakel, *supra* note 1; Cohn, Book Review, 8 N.Y.U. REV. L. & SOC. CHANGE 159 (1978-1979); Cronk, Book Review, 28 CATH. U. L. REV. 159 (1978); Linton, Book Review, 8 CONTEMP. SOC. 598 (1979).

1. Legal advocacy has been prescribed as an interest group strategy by other authors. See J. PELTASON, *FEDERAL COURTS IN THE POLITICAL PROCESS* (1955); J. SAX, *DEFENDING THE ENVIRONMENT* (1970); C. VOSE, *CAUCASIONS ONLY* (1959); Orren, *Standing to Sue: Interest Group Conflict in the Federal Courts*, 70 AM. POL. SCI. REV. 723 (1976); Vose, *Litigation as a Form of Pressure Group Activity*, 319 ANNALS AM. ACAD. POL. & SOC. SCI. 20 (1958). These works are cited by Cook. P. xiv.

2. The share of the nation's electricity supplied by nuclear plants grew from less than five percent in 1973 to thirteen percent in 1978. P. 3.

Cook believes that, at least until recently, the environmentalists' exploitation of the legal process has been their most potent weapon. Before building any nuclear plants, the utilities have to obtain construction and operating licenses from the federal administrative agencies.³ The federal licensing process affords opportunities for delay by anti-nuclear advocates. "[O]nly . . . the environmental groups . . . have taken full advantage of their legal resources by frequently intervening in regulatory hearings and then appealing the Commission's rulings to the courts for judicial review" (p. 107). Even though most court decisions have favored the nuclear industry,⁴ this has not diminished the effectiveness of the strategy of delay. Such long delays, accompanied by substantial interim increases in construction costs and loss of revenue, have demoralized the nuclear industry. Largely as a result of the environmental groups' efforts, "the total time allotment for building and licensing a nuclear plant now ranges from twelve to fourteen years" (p. 32).

Cook devotes the second half of the book to a case study of prolonged licensing of the Midland, Michigan nuclear plant. Cook outlines the battle over Midland, and guides the reader through the administrative licensing process, the administrative and judicial appeals, and the United States Supreme Court's final resolution of the legal issues. Consumers Power Company first announced the Midland project in December 1967; the Supreme Court's decision came in April 1978;⁵ the plant has yet to be completed as of mid-1980. The initial projected cost of \$349 million had risen to \$1.67 billion by 1976. The successful delaying tactics of the anti-nuclear attorney, Myron Cherry, caused one observer to conclude that "as Mr. Cherry loses battle after battle, he just may . . . be slowly winning the war" (p. 95). The environmentalists used various legal and political strategies to affect the outcome of the litigation: they chose a liberal forum, the District of Columbia Circuit; they solicited amicus curiae briefs; and they promoted favorable media coverage and law review commentary. Cook concludes that although the choice of an activist forum favored the environmentalists at the circuit court level (p. 79), it ultimately served to increase the likelihood of Supreme Court re-

3. The Nuclear Regulatory Commission has been responsible for plant licensing since 1974, when it replaced the Atomic Energy Commission. P. 5.

4. *See, e.g.*, *Siegel v. Atomic Energy Commn.*, 400 F.2d 778 (D.C. Cir. 1968). One important exception is *Calvert Cliffs' Coordinating Comm., Inc. v. United States Atomic Energy Commn.*, 449 F.2d 1109 (D.C. Cir. 1971) (environmental impact statement required for each proposed nuclear plant).

5. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

versal, because "the Court of Appeals ruling was at odds with the policy of judicial restraint which the Burger Court had been prescribing for the lower courts" (p. 87). In the Midland case, the Supreme Court told the lower courts to leave the licensing process to the Commission (p. 96).

Cook's decision to focus primarily on the environmentalists' use of legal advocacy blinds her to a consideration of larger systemic problems that have made the environmentalists' strategies successful. Much of her discussion of the extra-judicial tools of persuasion used by the anti-nuclear advocates in the Midland case, for example, seems rather pointless — first because the Supreme Court's resolution of the Midland case was influenced less by those extra-judicial tools than by the Court's conservative judicial philosophy, and second because delay itself, whatever its reasons, is success for the environmentalists. The environmentalists have succeeded in delaying plant licensing not because of specific strategic decisions, but because they exploited the illogical complexity of the licensing process.

The book's greatest value may lie in the issues that it implicitly raises but does not answer. Cook should have paid more attention to Congress's failure to write a sensible licensing law, since that failure deserves credit for the procedural delay: an incoherent national energy policy has permitted licensing cases to stay in the courts for years. Conspicuously absent from the book is any discussion of Congress's or the Chief Executive's role; Cook merely notes that the Supreme Court has urged Congress to change the administrative process if it wants licensing reform (p. 99). While Congress and the President are searching for a national energy policy, the environmentalists are writing it in the courts. The complexity and sophistication of nuclear technology, however, make the courts an uneasy arbiter of technological solutions.

Despite the narrowness of Cook's approach, the book provides a good descriptive case study of anti-nuclear litigation. Legal advocacy, as an interest group strategy, was particularly successful because of the absence of legislative guidance for the licensing agencies. Cook successfully highlights the abuse and weakness of a political and judicial system that can only resolve issues in favor of a combatant once it is already too bloodied to enjoy the spoils of its victory.